

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI**C.R.P.(PD)No.3576 of 2016**
and C.M.P.Nos.18245 to 18247 of 2016

<i>Orders Reserved on</i>	<i>Orders pronounced on</i>
12.06.2017	04.09.2017

M/S. Transmission Corporation
of Telangana Limited
Represented by its Chairman
and Managing Director
Vidyut Soudha
Khairatabad, Hyderabad-500 082.

.. Petitioner

Vs.

1.M/S.Easun Reyrolle Limited
Represented by its Chief Financial Officer
P.Chandrasekaran
Having its registered office at
6th floor, Temple tower
No.672, (old No.476)
Anna salai, Chennai-600 035.

2. M/S. Transmission Corporation of
Andhra Pradesh Limited
Represented by its Chairman and
Managing Director
Vidyut Soudha
Khairatabad, Hyderabad-500 082.

3. Chief Engineer, Construction-1
M/S. Transmission Corporation of
Andhra Pradesh Limited
Represented by its Chairman and
Managing Director
Vidyut Soudha
Khairatabad, Hyderabad-500 082.

4. M/S. State Bank of India
Represented by its Chief Manager
Commercial branch
Having office at No.232, NSC Bose road
Chennai-600 001.

5. M/S. State Bank of India
Represented by its Chief Manager
Overseas branch
Having office at No.65
St. Marks road
Bangalore, Karnataka.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India, against the judgment and decree dated
17.06.2016 made in C.M.A.No.115 of 2015 on the file of the learned
VI Additional Judge, City Civil Court, Chennai, setting aside the fair
and decretal order dated 28.08.2015 in I.A.No.8880 of 2015 in
O.S.No.3545 of 2015.

For Petitioner : Mr.R.Parthasarathy
For R1 : Mr.Chella Pandian
Senior Counsel for
Mr.A.Karthikeyan

For R2 : No appearance
For R3 : No appearance
For R4 & R5 : M/S.Ramalingam Associates

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 17.06.2016 made in C.M.A.No.115 of 2015 on the file of the learned VI Additional Judge, City Civil Court, Chennai, setting aside the fair and decretal order dated 28.08.2015 in I.A.No.8880 of 2015 in O.S.No.3545 of 2015 on the file of the learned IV Assistant Judge, City Civil Court, Chennai.

2. The averments made in the plaint are as follows:

(i) The petitioner is third defendant, first respondent is the plaintiff and the respondents 2 to 5 are the defendants 1, 2, 4 & 5 in O.S.No.3545 of 2015. The first respondent filed suit against the petitioner and respondents 2 to 5 for permanent injunction restraining the petitioner and respondents 2 to 5 from invoking/encashing the bank guarantees described in the schedule to the plaint.

(ii) According to the first respondent, in the course of business, a contract was awarded by the second respondent to the

first respondent for supply of control & relay panels and sub station automation system (SAS), complete design, manufacture, packing, insurance, transport and delivery to sites, training, installation, testing and commissioning of protection panels with Substation Automation System compatible to IEC 61850 protocol, to control and operate the 220kv, 132kv & 32kv feeders, power transformers and equipment as per the terms and conditions in specification No.JB JICA-I&II-3-2-30-2011, vide Award Lr.No.CE/Const/I/SE/PM/-1/SAS/JB JICA-I&II -3-2-30-2011/RM4103 of 2011 dated 28.11.2011 for a value of Rs.6,83,02,501/- for security deposit and for performance.

(iii) The first respondent requested fourth respondent to issue the bank guarantee and as per the instructions of fourth respondent, fifth respondent issued four bank guarantees mentioned in the schedule. The second respondent came into existence on 01.02.1999 and it is an undertaking of the State of Andhra Pradesh. The petitioner came into existence on 29.05.2014 and it is an undertaking established by the State of Telangana.

(iv) As per Andhra Pradesh Reorganisation Act, 2014, the State of Andhra Pradesh was bifurcated into two States viz., Telangana and the residuary Andhra Pradesh. The petitioner is

claiming all the assets and liabilities of the second respondent as per the Reorganisation Act and claiming to have succeeded to the second respondent including bank guarantees and contract. The petitioner demanded supply of products as per the purchase orders issued by the second respondent. The first respondent demanded the petitioner to amend the purchase orders in his favour to supply the order. The petitioner did not issue any amended purchase order.

(v) The petitioner issued a show cause notice dated 23.12.2014 without answering the queries raised by the first respondent/plaintiff in its letter dated 07.01.2015 and 14.02.2015, the petitioner assumed the role of the second respondent. There is no contract between the petitioner and respondents 4 & 5. The bank guarantee cannot be assigned by the second respondent to any body without consent of first respondent. The petitioner is attempting to encash the bank guarantee. The petitioner has treated the contract awarded by the second respondent as terminated and is making attempt to enforce the bank guarantee by committing fraud on the first respondent. If the petitioner succeeds, the first respondent's right will be affected and cannot be compensated in terms of money. The Reorganization Act has not

given any right to the petitioner to step into the shoes of the second respondent. On these averments, first respondent filed suit for permanent injunction.

3. Along with the suit, the first respondent filed I.A.No.8880 of 2015 for interim injunction restraining the petitioner and respondents 2 to 5 from proceeding further in encashing/invoking the bank guarantees described in the schedule to the plaint, pending suit and an exparte order of interim injunction was granted in the said application.

4. The petitioner filed counter affidavit in the above I.A.No.8880 of 2015 and contended as follows:

(i) The Court has no territorial and pecuniary jurisdiction to entertain the suit. The contract between the parties entered into on 28.11.2011 in the erstwhile State of Andhra Pradesh and the same was subsequently modified by the letter dated 13.10.2014 in the State of Telangana. The bank guarantees were issued by the fifth respondent from Bangalore. The show cause notice dated 23.12.2014, the final notice dated 09.02.2015 as well as notice of termination of contract dated 23.06.2015 issued by the petitioner

are all at Telangana. None of the contracting parties the first respondent or the bank, which has issued bank guarantee carry on business within the jurisdiction of the Court and no cause of action arose at Chennai. Out of four bank guarantees, three bank guarantees are beyond the pecuniary jurisdiction of the Court and the suit cannot be entertained by the Court.

(ii) An order of interim injunction restraining invocation of the bank guarantee can be granted, only when the first respondent pleads and prima facie proves that invocation of the bank guarantee is an act of fraud to the knowledge of the bank and the same will cause irretrievable hardship to the first respondent. Except making a submission in para-18 of the plaint that the petitioner is trying to invoke the bank guarantee by committing fraud, the first respondent has not supported the said contention by any proper pleadings and without furnishing details of alleged fraud.

(iii) As per clause 39 of the letter of Award of contract dated 28.11.2011, any dispute, difference or controversy between the parties can be resolved exclusively by arbitration and the seat of arbitration will be at Hyderabad. In view of the said clause, the suit and interim application are devoid of merits, abuse of judicial process, interim injunction granted is untenable in law and is liable

to be vacated and liable to be dismissed.

(iv) As per Andhra Pradesh Reorganisation Act, 2014, the State of Andhra Pradesh was bifurcated into two States viz., Andhra Pradesh and Telangana. The Act provides for all aspects of division, including the division of assets and liabilities between the two States. In pursuance of the said Act, G.O.Ms.No.26, Government of Andhra Pradesh, Energy (CC) Department dated, 29.05.2014 was issued. The said Government Order provides for creation of petitioner and the division of assets and liabilities between the second respondent and petitioner. As per the said Government Order, the petitioner called upon the first respondent to supply the products as per the contract. On the failure of first respondent to supply the products, the petitioner issued show cause notice terminating the contract.

(v) The bank guarantee is an independent and distinct contract between the bank and the beneficiary and it is not qualified by the underlying transaction and the validity of the primary contract between the person, at whose instance the bank guarantee was given and the beneficiary. Unless fraud or special equity exists, the beneficiary cannot be restrained from encashing the bank guarantee.

(vi) As per Sections 53 & 60(1)(a) of the Act and G.O.Ms.No.26, dated 29.05.2014, all the contracts which covers work exclusively to Telangana State, the same are transferred to Telangana TRANSCO along with the corresponding liabilities. The first respondent has not made out any case for grant of interim injunction and balance of convenience is not in favour of the first respondent, but it is in favour of the petitioner.

5. Before the learned Judge, no oral evidence was let in by the parties. The first respondent marked eight documents as Exs.P1 to P8 and the petitioner marked 22 documents as Exs.R1 to R22.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, made interim injunction granted absolute on the ground that the contract between the second respondent and first respondent is not covered by Sections 53 & 60 of the Andhra Pradesh Reorganisation Act, 2014 and G.O.Ms.No.26, dated 29.05.2014, the petitioner must take steps to amend the contract and the bank guarantee as well as Ex.R1 order bilaterally with the first respondent. There is no privity

of contract between the first respondent and petitioner.

7. Against the said order dated 28.08.2015 made in I.A.No.8880 of 2015, the petitioner filed C.M.A.No.115 of 2015 on the file of the learned VI Additional Judge, City Civil Court, Chennai.

8. Before the learned Appellate Judge, both the petitioner and first respondent filed written arguments. The petitioner reiterated all the contentions raised in the counter affidavit.

9. The learned counsel for the petitioner contended that the learned trial Judge erred in deciding the application for injunction without first deciding I.A.Nos.9793 & 9795 of 2015 filed by the petitioner to refer the dispute to arbitration and for rejection of plaint.

10. The learned counsel for the first respondent submitted that there is no privity of contract between the petitioner and first respondent. The trial Court has rightly held that contract issued by the second respondent is not an asset and Section 53 of the Act is not applicable to the said contract. Section 60 of the Act is applicable only to the contract by the State undertaking and not to

the petitioner and respondents 3 & 4. The G.O.Ms.No.26, dated 29.05.2014, is only a guideline and it cannot go beyond the provisions of the Act and not in consonance with Section 53 of the Act. Amendment of the contract unilaterally done by the petitioner without consent of the bank is not valid and it has been rightly rejected by the trial Court. The trial Court has granted interim injunction exercising its discretionary power and power of the Appellate Court to interfere with the discretionary power of the trial Court is very limited.

11. The learned Appellate Judge considering all the materials available on record and written arguments filed by the parties held that the trial Court ought to have heard the application for injunction as well as application to refer the matter to arbitration together and passed orders in accordance with law in order to provide just and convenient interim orders. The trial Court considered only application for interim injunction and made exparte interim injunction absolute, which leads to multiplicity of litigation. The trial Court failed to consider the balance of convenience and comparative hardships to the parties. In view of the above findings, the learned Appellate Judge allowed the CMA by setting aside the

order of the trial Court dated 28.08.2015 made in I.A.No.8880 of 2015 in O.S.No.3545 of 2015 making the exparte interim injunction absolute and remitting the matter to the trial Court for consideration afresh the application for interim injunction as well as application filed under Section 8 of the Arbitration and Conciliation Act, simultaneously and for pass orders on merits. The Appellate Court passed an order the exparte interim injunction shall remain in force and continue in the interest of justice.

12. Against the said order dated 17.06.2016 made in C.M.A.No.115 of 2015, the present civil revision petition is filed by the petitioner/third defendant.

13. The learned counsel for the petitioner as well as the learned Senior Counsel for the first respondent filed synopsis and dates & events. Both of them reiterated the very same averments made in the affidavit & counter affidavit, grounds of appeal in CMA, written arguments filed in CMA and the grounds raised in the civil revision petition. All the contentions raised by them are extracted above and therefore, not extracted again.

14. The learned counsel for the petitioner filed additional typed set of papers containing the documents mentioned in the list of dates & events, referred to them during the arguments again. In support of his contention, the learned counsel for the petitioner relied on the following judgments:

(i) **(1996) 3 SCC 443 (South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and others);**

"3. It is settled law that cause of action consists of bundle of facts which give cause to enforce the legal injury for redress in a court of law. The cause of action means, therefore, every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. In view of the admitted position that contract was executed in Bombay, i.e., within the jurisdiction of the High Court of Bombay, performance of the contract was also to be done

within the jurisdiction of the Bombay High Court; merely because bank guarantee has executed at Delhi and transmitted for performance in Bombay, it does not constitute a cause of action to give rise to the respondent to lay the suit on the original side of the Delhi High Court. The contention that the Division Bench was right in its finding and that since the bank guarantee was executed and liability was enforced from the bank at Delhi, the Court got jurisdiction, cannot be sustained."

(ii) **2012 (5) CTC 705 (S.N.S.Sukumaran v. C.Thangamuthu);**

"31. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under :-

(1) The Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order XIV, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of Court-fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and Court-fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

(4) Such objection with regard to improper valuation of the suit and insufficiency of Court-fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such

application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of Court-fee, together.”

(iii) **(2016) 14 SCC 275 (R.K.Roja v. U.S.Rayudu and another);**

“5. Once an application is filed under Order VII Rule 11 of the CPC, the Court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election Petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case, the application is rejected, the defendant is entitled to file his written statement thereafter (See Saleem Bhai and others v. State of Maharashtra and others (2003) 1 SCC 557). But once an application for rejection is filed, the Court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from paragraph-20 of Sopan

Sukhdeo Sable case (2004) 3 SCC 137:

"20. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant." "

(iv) **(2007) 8 SCC 110 (Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.);**

"14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit :-

(i) While dealing with an application for injunction in the course of commercial dealings,

and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit.

(iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned.”

(v) **(2008) 1 SCC 544 (Vintec Electronics Private Ltd. v. HCL Infosystems Ltd.);**

"12. It is equally well settled in law that bank guarantee is an independent contract between bank and the beneficiary thereof. The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one. The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and of no consequence. In BSES Limited (Now Reliance Energy Ltd.) vs. Fenner India Ltd. And anr. this court held :

" 10. There are, however, two exceptions to this Rule. The first is when there is a clear fraud of which the Bank has notice and a fraud of the beneficiary from which it seeks to benefit. The fraud must be of an egregious nature as to vitiate the entire underlying transaction. The second exception to the general rule of non-intervention is when there are 'special equities' in favour of injunction, such as when 'irretrievable injury' or 'irretrievable injustice' would occur if such an injunction were not granted. The general rule and its exceptions has been reiterated in so many judgments of this court, that in U.P. State Sugar Corpn. V. Sumac International Ltd. (1997) 1 SCC

568 (hereinafter U.P. State Sugar Corpn) this Court, correctly declare that the law was settled." "

(vi) **(2014) 5 SCC 1 (Enercon (India) Limited and others**

v. Enercon GMBH and another);

"82. Further, the arbitration agreement contained in clauses 18.1 to 18.3 of IPLA is very widely worded and would include all the disputes, controversies or differences concerning the legal relationship between the parties. It would include the disputes arising in respect of the IPLA with regard to its validity, interpretation, construction, performance, enforcement or its alleged breach. Whilst interpreting the arbitration agreement and/or the arbitration clause, the court must be conscious of the overarching policy of least intervention by courts or judicial authorities in matters covered by the Indian Arbitration Act, 1996. ... "

(vii) **(2016) 10 SCC 813 (Sasan Power Limited v. North**

American Coal Corporation (India) Private Ltd.);

"19. An assignment is understood to be the transfer from one person to another (referred to in law as the assignor and assignee respectively) the whole or part of an existing right or interest in

intangible property presently owned by the assignor. The right or interest itself is not extinguished.

20. It is settled law that there can only be as assignment of rights arising under a contract but not the "burden of a contract". In *Tolhurst v. Associated Portland Cement Manufacturers (1900) Ltd.*, Collins MR held as follows: (KB p. 668)

"It is, I think, quite clear that neither at law nor in equity could the burden of a contract be shifted off the shoulders of a contractor on to those of another without the consent of the contractee. ... this can only be brought about by the consent of all three, and involves the release of the original debtor ... it is equally clear that the benefit of a contract can be assigned...."

The Court of Appeal further laid down

"(i) Assignment of the benefit of the contract IS PERMISSIBLE where the consideration has been executed and nothing remains but to enforce the obligation against the party who has received the consideration; and

(ii) There is, however, another class of contracts, where there are mutual obligations still to be enforced and where it is impossible to say

that the whole consideration has been executed. Contracts of this class cannot be assigned at all in the sense of discharging the original contractee and creating privity or quasi privity with a substituted person."(*Tolhurst case* 12 KB p.669)

The decision of the Court of Appeal was affirmed by the House of Lords."

15. The learned Senior Counsel appearing for the first respondent relied on the following judgment of the Apex Court reported in **1999 (8) SCC 436 (*Hindustan Construction Co. Ltd. v. State of Bihar and others*)**:

"21. As pointed out above, Bank Guarantee constitutes a separate, distinct and independent contract. This contract is between the Bank and the defendants. It is independent of the main contract between HCCL and the defendants. Since the Bank Guarantee was furnished to the Chief Engineer and there is no definition of "Chief Engineer" in the Bank Guarantee nor is it provided therein that "Chief Engineer" would also include Executive Engineer, the Bank Guarantee could be invoked by none except the Chief Engineer. The invocation was thus wholly wrong and the Bank was under no obligation to pay the amount covered by the

"Performance Guarantee" to the Executive Engineer."

The learned Senior Counsel contended that in view of the fact that the second respondent is the beneficiary, only the second respondent can invoke the bank guarantee. The petitioner not being a beneficiary under the bank guarantee can invoke the bank guarantee, only after amendment of the bank guarantee with the consent of the respondents 1, 4 and 5 making him as beneficiary under the bank guarantee.

16. Heard both sides and perused the materials available on record.

17. The point for consideration in the civil revision petition is as follows:

(i) Whether the first respondent is entitled to injunction pending suit as prayed for?

(ii) Whether the trial Court is right in making exparte interim injunction absolute without considering I.A.Nos.9793 and 9795 of 2015 filed by the petitioner to refer the dispute to arbitration and for rejection of plaint.

Point Nos.1 & 2:

18. The first respondent filed suit for permanent injunction restraining the petitioner and respondents 2 & 3 from invoking/encashing the bank guarantees issued by the fifth respondent as per the instruction of fourth respondent. Along with the suit, the first respondent filed I.A.No.8880 of 2015 for interim injunction pending suit. The main contention of the first respondent in the suit is that there is no privity of contract between the petitioner and first respondent and that Sections 53 & 60 of the Reorganisation Act and G.O.Ms.No.26, dated 29.05.2014 do not enable the petitioner to step into the shoes.

19. On the other hand, the contention of the petitioner is that the Court has no power to grant interim injunction restraining the beneficiary from invoking bank guarantee unless the first respondent alleges and proves fraud being played by the petitioner to the knowledge of the bank.

20. According to the learned counsel for the petitioner, the first respondent has not alleged and proved except making vague

allegations of fraud.

21. As per Sections 53 and 60 of Reorganisation Act and G.O.Ms.No.26, dated 15.09.2014, the petitioner stepped into the shoes of the second respondent. In the meeting held between the officials of the petitioner and first respondent, the first respondent agreed to supply the product as per the contract issued by the second respondent. Suppressing these facts, the first respondent has filed suit and is not entitled to get the relief as prayed for in the suit as well as in the application for interim injunction. Further, the petitioner has filed I.A.Nos.9793 & 9795 of 2015 for refer the dispute to arbitration and for rejection of the plaint.

22. The learned trial Judge did not consider the objections raised by the petitioner with regard to the condition based on which the bank guarantee can be invoked, the dispute is to be referred to arbitration, plaint has to be rejected as no cause of action arisen within the territorial jurisdiction and the Court has no pecuniary jurisdiction to entertain and try the case. The learned trial Judge made exparte interim injunction absolute on the ground that there is no privity of contract between the petitioner and first respondent

and the petitioner has not stepped into the shoes of the second respondent. The first Appellate Court in CMA held that the trial Court has not considered the balance of convenience, prima facie case and pendency of application in I.A.No.9793 of 2005 filed by the petitioner under Section 8 of the Arbitration and Conciliation Act. The learned first Appellate Judge set aside the order of the trial Court and remanded the matter to the trial Court with a direction to the learned trial Judge to hear and dispose I.A.No.8880 of 2015 for interim injunction and I.A.No.9793 of 2015 filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, pass orders on merits and extended the interim injunction till the disposal of the above two applications. Against the said order, the petitioner filed the present civil revision petition.

23. The contention of the learned counsel for the petitioner that when applications are filed under Order VII Rule 11 of C.P.C. and Section 8 of Arbitration and Conciliation Act, to reject the plaint and to refer the matter to arbitration, the Court must decide the said issues first before deciding the other issue, has considerable force. Similarly, when the issue is raised with regard to the value of the suit, the same has to be tried as primary issue before deciding

the other issues. The judgment relied on by the learned counsel for the petitioner reported in **(2014) 5 SCC 1 (Enercon (India) Limited and others v. Enercon GMBH and another)**, **(2016) 14 SCC 275 (R.K.Roja v. U.S.Rayudu and another)** and **2012 (5) CTC 705 (S.N.S.Sukumaran v. C.Thangamuthu)** are squarely applicable to the facts of the present case. The petitioner has also filed I.A.No.9795 of 2015 for rejection of plaint. The said application must be heard along with the application for interim injunction and application for refer the matter to arbitration. The trial Court is directed to hear all the three applications together and pass orders on merits and in accordance with law.

24. Considering the issue raised by the petitioner that the suit is not maintainable in view of clause 39 of the letter of Award of contract dated 28.11.2011, the learned first Appellate Judge has rightly remanded the matter to the trial Court to consider both the applications simultaneously and pass orders on merits. There is no irregularity or illegality warranting interference by this Court with the judgment and decree of the learned first Appellate Judge, dated 17.06.2016.

25. The learned counsel appearing for the petitioner submitted that he has filed C.M.P.No.18247 of 2016 to direct the first respondent to furnish fresh bank guarantees a) for an amount of Rs.1,84,15,156/- towards security; b) for an amount of Rs.69,70,040/- towards performance; c) for an amount of Rs.69,70,00,400/- towards advance; d) for an amount of Rs.35,102/- towards security, totaling to the sum of Rs.3,23,90,338/-.

26. The learned Senior Counsel appearing for the first respondent submitted that suit itself filed on the basis that petitioner is not entitled to invoke the bank guarantees.

27. In view of the contention of the learned Senior Counsel appearing for the first respondent that petitioner is not beneficiary and in view of the fact that the petitioner has already invoked the bank guarantees and the suit is pending, there is no necessity to direct the first respondent to furnish the fresh bank guarantees as prayed for by the petitioner.

28. In the result, the Civil Revision Petition and CMP No.18247 of 2016 are dismissed. Consequently, connected C.M.P.Nos.18245 and 18246 of 2016 are also dismissed. No costs.

04.09.2017

Index : Yes

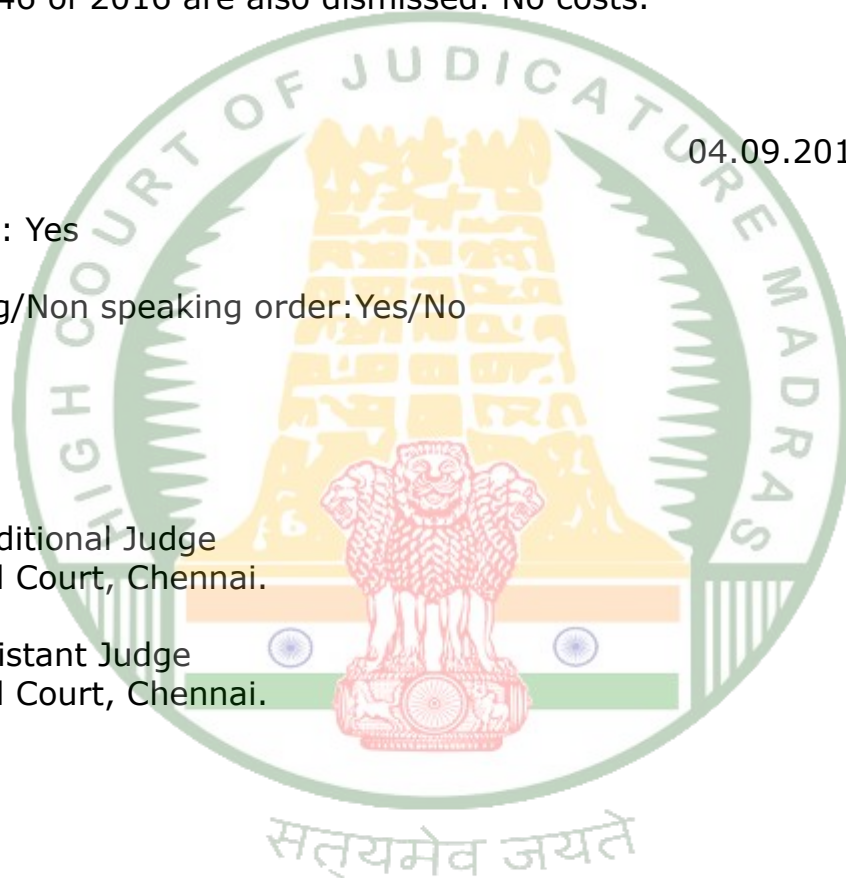
Speaking/Non speaking order:Yes/No

kj

To

1. VI Additional Judge
City Civil Court, Chennai.

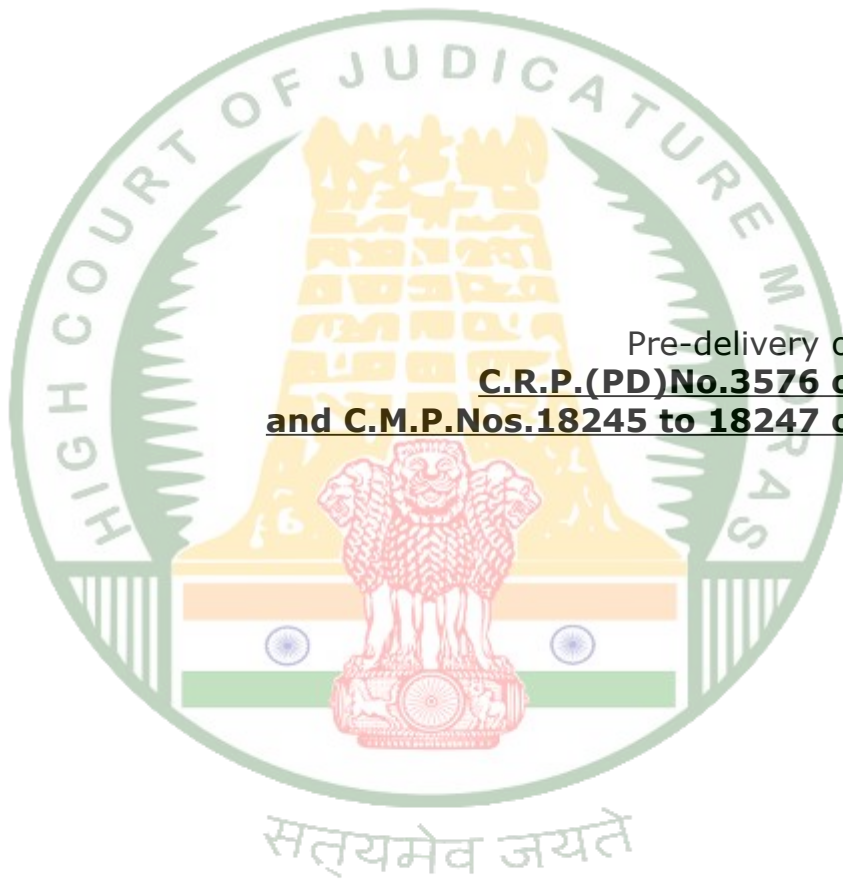
2.IV Assistant Judge
City Civil Court, Chennai.



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V.M.VELUMANI,J.

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Pre-delivery order in
C.R.P.(PD)No.3576 of 2016
and C.M.P.Nos.18245 to 18247 of 2016

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04.09.2017