

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.SUNDAR

O.S.A.No.109 of 2012

M/s.W.S. Industries (India) Ltd.,
Porur, Chennai - 116. .. Appellant

Vs

1.Tamil Nadu Electricity Board
rep. by its Chief Engineer,
Transmission,
No.800, Anna Salai, Chennai - 2.

2.P.Janikaraman, FIE,
Presiding Arbitrator,
M 436/7, Royal Enclave,
3rd Avenue, Anna Nagar (East),
Chennai - 102.

3.S.Elamurugan,
Arbitrator,
D/4, Mathura Terrace,
60, New Avadi Road,
Kilpauk, Chennai - 10.

4.K.C.Rajappa,
Arbitrator,
"Srinivas", New No.184,
294/295, Lloyds Road,
Royapettah, Chennai - 14.

.. Respondents

Appeal preferred under Order 36 Rule 1 r/w Clause 15 of
Letters Patent against the order dated 13.02.2012 in O.P.No.631
of 2004.

For Appellant .. Mr.Thriyambak J.Kannan

For Respondents.. Mr.N.C.Ramesh,
Sr. Counsel
for Mr.T.Sivaprakasam for R1

JUDGMENT

(Judgment of the Court was delivered by M.SUNDAR, J.)

This Intra Court Appeal is directed against an order dated 13.02.2012 made by a learned single Judge of this Court in O.P.No.631 of 2004.

2.O.P.No.631 of 2004 is a challenge to an arbitral award dated 30.04.2004. O.P.No.631 of 2004 is under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A & C Act' for brevity).

3.From the memorandum of grounds of appeal placed before us in this Intra Court Appeal, we find that this appeal has been filed under Clause 15 of the Letters Patent read with Order 36 Rule 1 of the Original Side Rules of the Madras High Court.

4.We pointed out that an intra court appeal under the aforesaid provisions against order made by a single Judge in a challenge to an award under A & C Act is not maintainable in view of the judgment of the Supreme Court in Furest Day Lawson Vs. Jindal Exports ((2011) 8 SCC 333) and in view of a Division Bench judgment of this Court in V.S.Ekambaram Vs. Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd. (2017 (5) CTC 420) (authored by one of us - M.Sundar, J.).

5.Faced with the above situation, Mr.Thriyambak J.Kannan, learned counsel for the appellant made a oral prayer that the memorandum of grounds of appeal be treated as one under Section 37 of the A and C Act.

6.Considering the nature of this intra court appeal, we accept the prayer and we treat this as an appeal under Section 37 of the A and C Act with a rider that this appeal shall perambulate strictly within four corners of Section 37 of A and C Act.

7.To be noted, Mr.N.C.Ramesh, learned senior counsel for the first respondent also fairly did not object to such a course being adopted.

8.Considering the nature of the submissions made at the bar we deem it appropriate not to delve into the factual matrix of this case.

9.As against the order made in O.P.No.631 of 2004 under Section 34 of A and C Act, an earlier intra court appeal came to

be filed. That intra court appeal is O.S.A.No.210 of 2009. O.S.A. No.210 of 2009 came to be disposed of by a Division Bench of this Court on 18.06.2010 wherein and whereby a Division Bench of this Court remanded the matter back to the learned single Judge. We deem it relevant to extract the operative portion of the said Division Bench judgment which is para 15. Para 15 of the judgment reads as follows:

On the one hand, we have various findings regarding the erroneous view of the Tribunal and on the other hand, we have the final conclusion that the award must be confirmed except for ordering reduction in interest rate, we feel that the proper course would be to set aside the order passed in O.P.No.631 of 2004 and remand the matter back to the learned single Judge for considering the petition under Section 34 of the Act afresh on merits. We are making it clear that we have not considered the issues on merits. Since there is a contradiction between the findings and conclusion, we remand the matter back to the learned single Judge. The original side appeal is allowed as above.

10.However, post remand, the learned single Judge, by order dated 13.02.2012 in O.P.No.631 of 2004, which has been called in question before us, has remanded the matter to the Arbitral Tribunal whereas the Division Bench had requested the learned single Judge to consider the matter post remand.

11.Learned counsel appearing for the appellant says that he would be satisfied if this Court requests the learned single Judge on the Original Side of this Court to hear O.P.No.631 of 2004 on merits sans remand. Learned counsel also adds that this is his only complaint in this intra court appeal.

12.To this, Mr.N.C.Ramesh, learned senior counsel for the first respondent does not have any serious objection and he fairly submitted that the learned single Judge of this Court may be requested to hear the original petition pursuant to and in accordance with the aforesaid order of the Division Bench dated 18.06.2010 made in O.S.A.No.210 of 2009.

13.We have perused the order of the learned single Judge which has been called in question before us and we have also heard the submissions of both the learned counsel on this before us. We find two aspects of the matter, which according to us, are relevant for this order. One aspect of the matter is that the order of the learned single Judge is not in tune with the order of remand made by the Division Bench on 18.06.2010. The second aspect of the matter is that it is not an order under sub-section 4 of Section 34 of the A and C Act, because the order that has been called in question before us is one by which

the main petition being O.P.No.631 of 2004 has been disposed of. If it is an order under sub-section (4) of Section 34 of A and C Act, the main matter has to be kept pending and only the specific point/s or issue/s which need to be decided by the Arbitral Tribunal should be sent to the Arbitral Tribunal for it to give its findings. After the Arbitral Tribunal returns its finding on such issue/s, the main matter has to be decided by the Court. As such a course has not been adopted in the instant case and as the main original petition itself has been disposed of, we have no doubt in our mind that this is not an order under sub-section (4) of Section 34 of A and C Act, but an order in the main petition under Section 34 of A and C Act itself. It is a complete remand. Therefore, we have no hesitation in accepting the submission that this is impermissible and consequently, we accede to the limited prayer that has been made before us about which we have alluded to supra.

14. In the light of the narrative and discussion supra, we dispose of this appeal in the following manner:

- (i) The order of the learned single Judge dated 13.02.2012 in O.P.No.631 of 2004 is set aside.
- (ii) O.P.No.631 of 2004 is remanded back to the learned single Judge on the Original Side of this Court.
- (iii) Learned single Judge on the Original Side of this Court is requested to hear and dispose of O.P.No.631 of 2004 in tune with and in accordance with the judgment of the earlier Division Bench of this court in O.S.A.No.210 of 2009 dated 18.06.2010. To be noted, we have extracted para 15 (operative paragraph of the earlier Division Bench judgment)

15. With the above directions, this original side appeal stands disposed of. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Sub Assistant Registrar,
Original Side, High Court, Madras.

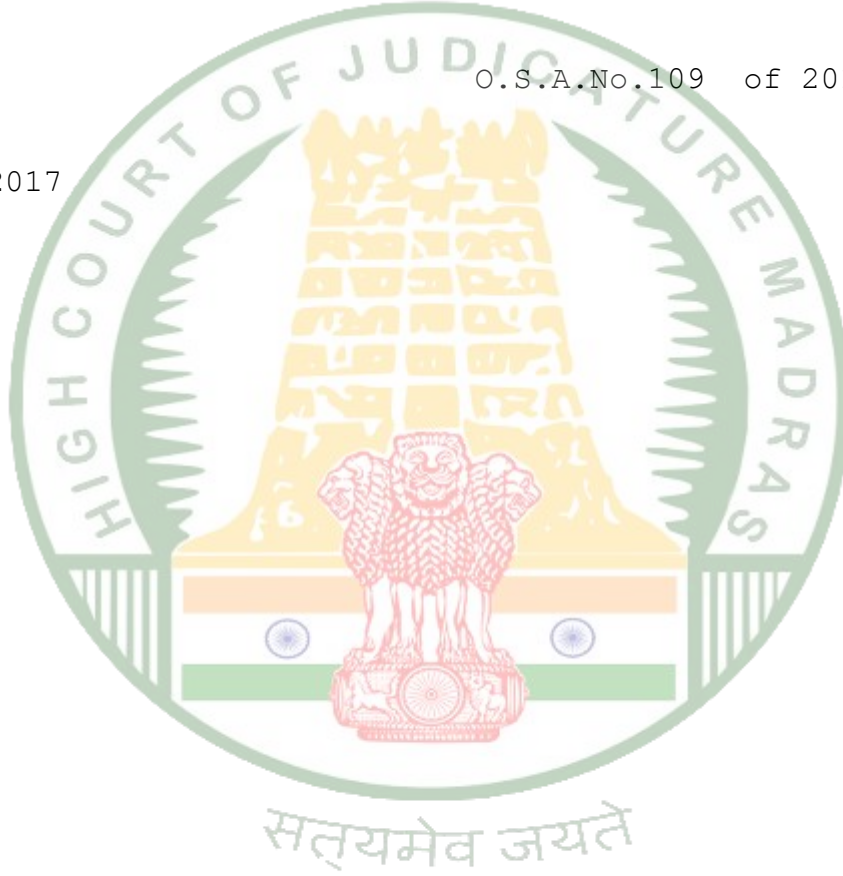
2. The Chief Engineer,
TamilNadu Electricity Board,
Transmission, No.800, Anna Salai,
Chennai-2.

+lcc to Mr.T.Sivaprakasam, Advocate Sr.No.77387/17

+lcc to Mr.Thriyambak J Kannan, Advocate Sr.No.77330

O.S.A.No.109 of 2012

GP(CO)
sm:29.11.2017



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