

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:12.12.2017

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.249 of 2013

MMTC Ltd.,
Essar House
6 Esplanade, Chennai-600 108
Rep. By its Deputy General Manager
S.K.Srinivasan

.. Plaintiff

Vs.

1.Shiv Sahal & Sons
1, Narasima Dasari Lane
60-61, NSC Bose Road
Chennai - 600 001
Represented by its Proprietor
Shri Naresh Prasad Agarwal

2.Shiv Sahai & Sons (India) Ltd.,
1, Narasima Dasari Lane
60-61, NSC Bose Road
Chennai - 600 001
Being the successor in title to Shri Shiv
Sahai & Sons, the Proprietary
Concern through its Directors
Represented by Shri Naresh Prasad Agarwal (Director)

3.Mr.V.Gurumurthy (Retired GM (F&A) of Plaintiff]
Flat No.2, Subramania Enclave
No.1, Subramania Nagar 2nd Street
Kodambakkam, Chennai - 600 024

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of the Madras
High Court Original Side Rules read with Order VII Rule 1 of the Code

of Civil Procedure, 1908, seeking a decree inter-alia to direct the defendants to pay jointly and severally, the plaintiff a sum of Rs.96,10,12,547/-, to direct defendants 1 and 2 to pay jointly and severally the plaintiff a sum of Rs.2,13,14,744/- in addition to amount stated in prayer (i) above, to direct the defendants to pay, jointly and severally the plaintiff a sum of Rs.74,59,25,228/- as interest on the sum of Rs.96,10,12,547/- at the rate of 18% p.a from the due date of payment till the filing of the suit, to direct defendants 1 and 2 to pay jointly and severally to the plaintiff a sum of RS. 38,63,820/- as interest on the sum of Rs.2,13,14,744/- at the rate of 18% p.a from the due date of payment till the filing of the suit, to direct the defendants to pay the plaintiff interest on the sum of Rs.170,69,37,775/- at the rate of 18% p.a from the date of filing of the suit till the date of realization, to direct the defendants 1 and 2 to pay the plaintiff interest on the sum of Rs.2,51,78,564/- at the rate of 18% p.a from the date of filing of the suit till the date of realization and to pay costs of the suit.

For Plaintiff : Mr.Thriyambak Kannan

For Defendants : Mr.Kalyan Jhabah
for M/s.Surana&Surana for D1 and D2
Mr.K.Rajagopalan for D3

JUDGMENT

Mr.Thriyambak Kannan, learned counsel for plaintiff is before the Court. Mr.Kalyan Jhabah, learned counsel for M/s.Surana and Surana, Law Firm on record for Defendants 1 and 2 is before the Court. Sri.K.Rajagopalan, learned counsel on record for Defendant No.3 is before the Court.

2. To be noted, there is one plaintiff and three defendants. Therefore, all the parties to this lis are represented by counsel before the Court.

3. All the aforesaid three learned counsel before the Court submit in unison that subject matter of the suit pertains to Bullion Trade. Qua facts, the plaintiff is nominated by the Government of India for import of Gold, Silver and precious metals, which, in industry parlance, I am informed, is referred to as Bullion Trade.

3. Defendants 1 and 2 had certain transactions with the plaintiff qua Bullion Trade.

4. To be noted, I am informed that Defendant No.3 is an ex-employee of the plaintiff and he had a role to play in the lis that has arisen out of the aforesaid transaction and therefore, he has been arrayed as Defendant No.3.

5. In the light of the trajectory this litigation has taken thus far and in the light of the order that I propose to pass, I deem it appropriate not to delve more on facts.

6. To be noted, the aforesaid narrative about facts have been set out for the limited purpose of ensuring that this Commercial Division has jurisdiction.

7. With regard to jurisdiction of this Commercial Division, all the three counsel before this Court, representing all the parties to the lis, submitted in unison that this suit qualifies as a 'Commercial Dispute' under sub-clauses (ii) and (i) of Section 2(1)(c) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), which is hereinafter referred to as 'Act 4 of 2016' for brevity. There is also no disagreement amongst the counsel that this suit also qualifies qua 'specified value' within the meaning of Section 2(1)(i) read with Section 12 of Act 4 of 2016. To be noted, the value of the suit is over Rs.1.73 Crores. Therefore, all the three counsel make a joint submission that this suit relates to a 'Commercial Dispute' of 'Specified value' and therefore, this Commercial Division has jurisdiction to entertain the suit under Section 7 of Act 4 of 2016. As there is no dispute amongst the counsel that this Commercial Division has jurisdiction, on perusal of the plaint and the submissions made before me today, I have no hesitation in accepting the joint submission made by all the counsel, owing to which I proceed to dispose of the suit.

8. A brief and cursory narration of facts has been set out supra. As far as the trajectory of the litigation is concerned, Defendants 1 and 2 took out an application under Section 8 of the Arbitration and

Conciliation Act, 1996 (hereinafter referred to as 'A and C Act' for brevity). This is Application No.2830 of 2013 and the same, I am informed, was allowed by a learned single Judge of this Court on 30.06.2014. This was carried by way of an intra-court appeal, obviously by plaintiff, in O.S.A.No.244 of 2014 and I am informed that the intra-court appeal came to be dismissed at the admission stage itself on 28.10.2014. Not satisfied, the plaintiff carried the matter to the Supreme Court. In the Supreme Court, i.e, C.A.No.11148 of 2018, the matter ultimately came to be disposed of in and by an order dated 20.11.2017.

9. The copy of the order of the Supreme Court is jointly placed before me by all the learned counsel. A perusal of the order shows that the parties have agreed for appointment of a sole arbitrator to constitute an Arbitral Tribunal, further agreeing that the seat shall be Chennai and the venue shall be at a place convenient to the Hon'ble Arbitrator. In the order of the Hon'ble Supreme Court, there is also a mention about refund of Court fees to the plaintiff. I am informed that Arbitral Tribunal, consists of sole arbitrator, (a Hon'ble retired Judge of the Supreme Court of India) and he has fixed the first hearing on 14.12.2017.

10. In the light of the narrative supra, this suit has to be disposed of in terms of the above said order of the Supreme Court in C.A.No.11148 of 2017 dated 20.11.2017. Therefore, I deem it

appropriate to extract the order of the Hon'ble Supreme Court, which reads as follows:

"Heard learned counsel for the parties.

At the joint request of the learned counsel for the parties, we appoint Hon'ble Mr. Justice R.V. Raveendran, former Judge of this Court as Arbitrator to decide all disputes arising out of Memorandum of Agreement dated 2nd April, 2008 between the parties.

The parties agree that the plaint in the suit be treated as claim of the appellants and the claim petition filed by the respondents before the Arbitrator be treated as counter claim. The said documents will be furnished by the appellant to the learned Arbitrator within a period of two weeks from today. The venue of the arbitration can be at place convenient to the Arbitrator. However, the seat of the Arbitrator will be taken to be at Chennai. The arbitrator will be at liberty to take any expert assistance.

In view of section 16 of the Court Fees Act 1870, the appellant will be entitled to move the Collector for refund of the Court fee..

The above order will supersede the Arbitration Clause 11 in the Memorandum of Agreement dated 2nd April, 2008.

Parties are at liberty to communicate with the learned Arbitrator for further proceedings.

The appeal is, accordingly, disposed of. "

11. To be noted, there is a direction for refund of Court fees as would be evident from the extract of the order of the Supreme Court of India, It is open to the parties to the lis to pursue the same in a manner known to law. No costs.

12.12.2017

Speaking/Non-Speaking order

Index : Yes/No

gpa

Note to office: In the light of this Court being informed that the Hon'ble Arbitrator has fixed the first hearing on 14.12.2017, copy of this order shall be made available to the parties tomorrow by the Registry i.e., 13.12.2017.

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M.SUNDAR, J.

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Judgment
in C.S.No.249 of 2013

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