

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2018

Coram

The Honourable Mr.Justice M.M.SUNDRESH
and

The Honourable Mr.Justice N.ANAND VENKATESH

Original Side Appeal Nos.160 and 161 of 2018

& C.M.P.Nos.8779and 8780 of 2018

M/s E.C. Bose and Company Private Limited,
'ECB Towers', No.13A, St. George Terrace,
P.S.Hastings, Kolkata-700 022.

... Appellant in
both O.S.As.

Vs.

M/s Sugesan Transport Pvt. Ltd.,
Rep., by its Director Mr.Kanthibhai Rajendra Sheth,
No.7C, Second Canal Road, Gandhi Nagar,
Adyar, Chennai-600 020.

... Respondent in
both O.S.As.

Original Side Appeal No.160 of 2018 is filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent to set aside the order dated 7.12.2017 made in A.No.694 of 2017 passed by this Court.

A.694/2017:-

Appeal praying to Direct the respondent to furnish Security to the tune of amount pending ie.. RS.3,47,00,000/- (Rupees Three crores Forty Seven Lakhs only) as per date 24.10.2016.

Original Side Appeal No.161 of 2018 is filed under Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of Letters Patent to set aside the order dated 7.12.2017 made in A.No.7662 of 2017 in A.No.694 of 2017 passed by this Court.

A.7662/2017:-

Appeal praying to Set aside the order dated 02/05/2017. in A.694/2017.

For Appellant : Mr.J.Ravikumar

For Respondent : Mr.Vaibhav R. Venkatesh

COMMON JUDGMENT

(Judgment of the Court was delivered by N.ANANDVENKATESHJ.)

These appeals have been filed against the order passed in the applications Viz., A.Nos.7662 and 7663 of 2017 in A.No.694 of 2017, where the learned single Judge had taken note of the fact that the parties are already before the Arbitral Tribunal and the order that has already been passed to furnish security will continue and the parties will be at liberty to seek modification of the same before the learned Arbitrator and the learned Arbitrator has been directed to consider and adjudicate the same upon hearing both the parties.

2. The learned counsel appearing for the appellant would state that an application for attachment before judgment has been filed by the respondent before the Arbitral Tribunal. It is the apprehension of the appellant that since an order directing furnishing of security has been passed by this Court, the Arbitral Tribunal may not take up the application for any modification or consider the fresh application filed before the Arbitral Tribunal for attachment before judgment. After the amendment of the Arbitration and Reconciliation Act, 1996, Section 17 gives wider power to the Arbitral Tribunal to pass interim orders as well as modify the same where the parties are already before the Arbitral Tribunal. Therefore, we make it clear that without being influenced by earlier order passed by this Court, it is open to the Arbitral Tribunal to pass orders on the application pending before it on its own merits after taking note of the facts and circumstances of the case and after hearing the parties. The two orders, which are subject matters of O.S.A.Nos.160 and 161 of 2018 are not orders, which were passed on merits. Therefore, there is no bar for the parties to canvass before the Arbitral Tribunal on merits for the purpose of obtaining an interim order.

3. The above Original Side Appeals are disposed of in terms of the directions that have been given herein above. Consequently, connected civil miscellaneous petitions are closed. On the facts and circumstances, there will be no order as to the costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Sub-Assistant Registrar,
Original Side,High Court,Madras.104

+2cc to Mr.Nithyaesh, Advocate, S.R.No.34945

O.S.A.Nos.160 and 161 of 2018

CA (CO)
GSP (18/06/2018)



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