

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.Nos.259 & 260 of 2015**&****A.Nos.974 and 975 of 2018**

M/s.Blue Star Limited
 Represented by its authorized signatory
 Mr.S.Ganesh having its regional office
 At No.46, Garuda Building, Cathedral Road
 Chennai- 600 086 ... Plaintiff

Vs

- 1.East Coast Construction and Industries Limited
 Represented by its Managing Director
 having its office at Buhari Building
 No.4, Moores Road
 Chennai – 600 006
- 2.The Hong Kong and Shanghai Banking Corporation Ltd.,
 Represented by its Branch Manager
 Having their Branch office
 at 76, Cathedral Road
 Chennai – 600 086 ... Defendants

Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC seeking judgment and decree against the first defendant for the recovery of sum of Rs.1,04,30,218/- (Rupees One Crore Four Lakhs Thirty Thousand Three Hundred and Eighteen only) together with the interest of 15% per annum on the principal amount of Rs.1,04,30,318/- (Rupees One Crore Four Lakhs Thirty Thousand Three Hundred and Eighteen only) from the date of suit till the date of realization; to declare the bank guarantee bearing B.G.No.PEBMDR 090694 dated 05/08/09 for a sum of Rs.21,03,731/- (Rupees Twenty one lakh, three thousand seven hundred and thirty one only) and subsequent extensions issued to first defendant by plaintiff as null and void and to grant permanent injunction restraining the defendant in anyway invoking the bank guarantee bearing B.G.No.PEBMDR 090694 dated 05/08/09 for a sum of Rs.21,03,731/- (Rupees twenty one lakh, three thousand and

seven hundred and thirty one only) and periodical extensions issued by the plaintiff in favour of first defendant.

For Plaintiffs : Ms.S.S.Rajesh

For Defendants : Mr.P.J.Rishikesh for D1
Ms.V.Aishwarya
for M/s.R & P Partners for D2

COMMON JUDGMENT

Mr.S.S.Rajesh, learned counsel on record for the sole plaintiff is before this Commercial Division. Mr.P.J.Rishikesh, learned counsel on record for the first defendant is before this Commercial Division. Ms.V.Aishwarya, learned counsel of M/s.R & P Partners, Law Firm, on record for second defendant is before this Commercial Division.

2. Learned counsel for sole plaintiff has made like endorsements in suit files giving up the second defendant. The endorsements in suit files in both 33suits made by learned counsel for plaintiff reads as follows:

"The plaintiff hereby gives up the second defendant in view of referring the dispute between the plaintiff and 1st defendant being referred to Arbitration and the joint memo filed by plaintiff and the 1st defendant in this regard"

3. The endorsement is self-explanatory. In the light of the endorsement made by counsel on record for sole plaintiff, which has been extracted supra, the second defendant in both the suits stand given up.

4. Therefore, that leaves both the suits with one plaintiff and one defendant.

5. Mr.S.S.Rajesh, learned counsel on record for the sole plaintiff and Mr.P.J.Rishikesh, learned counsel on record for the sole defendant now have jointly submitted that the sole plaintiff and the first defendant have agreed to have this lis settled through Alternative Dispute Resolution mechanism ('ADR' for brevity) i.e, through arbitration.

6. The sole plaintiff and sole defendant i.e, Blue Star Limited and East Coast Construction and Industries Limited have placed before me a joint memo dated 15.03.2018.

7. In and by the aforesaid joint memo, sole plaintiff and the sole defendant (now) have agreed to have this entire lis referred to arbitration and have agreed to have the lis settled through a one member Arbitral Tribunal. The name of the sole arbitrator (as mutually agreed between the parties) has also been mentioned in the joint memo. The joint memo reads as follows:

"JOINT MEMO filed by plaintiff and 1st Defendant

It is respectfully stated as follows:

1.The suit has been filed by the plaintiff for inter-alia seeking recovery of monies and to declare the Bank Guarantee issued to the Defendant as null and void.

2. During the course of the suit, the 1st Defendant had filed applications under Section 8 of the Arbitration and Conciliation Act, 1996 seeking to refer the disputes raised in the suit to Arbitration. Thereafter, the plaintiff had also expressed its consent for the same. Therefore, it is mutually agreed between the parties that the reliefs claimed by the plaintiff in the suit and the defenses and counter claim if any on behalf of the Respondent can be tried and decided before the Sole Arbitrator Mr. Justice K. Mohan Ram (Retd.,) Judge High Court.

3. Further the plaintiff hereby undertakes and confirms that the suit Bank Guarantee will be kept alive until the disposal of the Arbitral Proceedings. The Defendant also confirms that the said Bank Guarantee will not be invoked until the award is passed by the learned Arbitrator.

4. In view of the same the suit can be disposed by recording the terms of the joint memo.

It is therefore, prayed that this Hon'ble Court be pleased to take this joint memo on record and pass such or other or further orders as this Hon'ble Court deems fit in the facts and circumstances of the case and thus render justice.

Dated at Chennai on this the 15th day of March 2018."

8. I have verified the signatories to this joint memo. On behalf of plaintiff i.e., Blue Star Limited, Mr.S.Ganesh, who has verified and signed the plaint on behalf of the plaintiff company, has signed the aforesaid joint memo dated 15.03.2018. In addition to this, Mr.S.Ganesh is also present before this Court and he reiterates the contents of the joint memo besides confirming that he continues to have the authority to represent the plaintiff company. With regard to the sole defendant (now) i.e., East

Coast Construction and Industries Limited, Mr.S.A.Mohammed Mohideen, one of the directors in the first defendant company, who has sworn to the affidavit in support of Section 8 application (A.Nos.974 and 975 of 2018) as well as the vacate injunction applications vide A.Nos. 5823 and 5824 of 2015 has signed the aforesaid joint memo dated 15.03.2018. I am also informed that the said S.A.Mohammed Mohideen has signed the vakalatnama also.

9. In the light of the aforesaid endorsements, submissions and joint memo dated 15.03.2018, both the suits are disposed of recording the aforesaid joint memo and referring the parties to the lis, i.e, Blue Star Limited and East Coast Construction and Industries Limited, to Arbitration by a one member Arbitral Tribunal. To be noted, as mentioned supra, both the parties have also agreed that the sole Arbitral Tribunal shall be Hon'ble Mr.Justice K.Mohan Ram (Retd.,)

10. It is also to be noted that it has been set out in the aforesaid joint memo dated 15.03.2018 that the plaintiff undertakes to keep alive the Bank Guarantee till the disposal of the arbitral proceedings and the defendant has confirmed that they will not invoke the Bank Guarantee until the award is passed by the Arbitral Tribunal. Though obvious, invoking the Bank Guarantee will be subject to the award that may be passed. As I am making it part of the order, though the joint memo says that defendant confirms that the suit Bank Guarantee will not be invoked

until the award is passed by the Arbitrator, in my opinion it is not happily word. It necessarily means that the invocation of Bank Guarantee, if at all by the defendant, shall be subject to the outcome of the arbitral proceedings and the award that may be passed by the Arbitral Tribunal.

11. Be that as it may, learned counsel for plaintiff at this stage makes a request for refund of Court fees. I have already taken a view that a plaintiff will be entitled to refund of Court fee under Section 69-A of Tamil Nadu Court Fees and Suits Valuation Act, 1955 when there is a reference to arbitration vide order dated 26.02.2018 in Application No.1102 of 2018 in C.S.No.389 of 2011. Citing this principle, Mr.S.S.Rajesh learned counsel on record for plaintiff persuaded me to order for refund of Court fee.

12. Considering that the entire lis in both the suits i.e., C.S.Nos.259 and 260 of 2015 have been referred to Arbitration, in the instant case also, Registry is directed to refund full Court fee to the counsel for plaintiff in both the suits by following the prevailing and applicable procedures.

Both the suits are disposed of on above terms. No costs. Consequently, all the interlocutory applications are closed.

14.03.2018

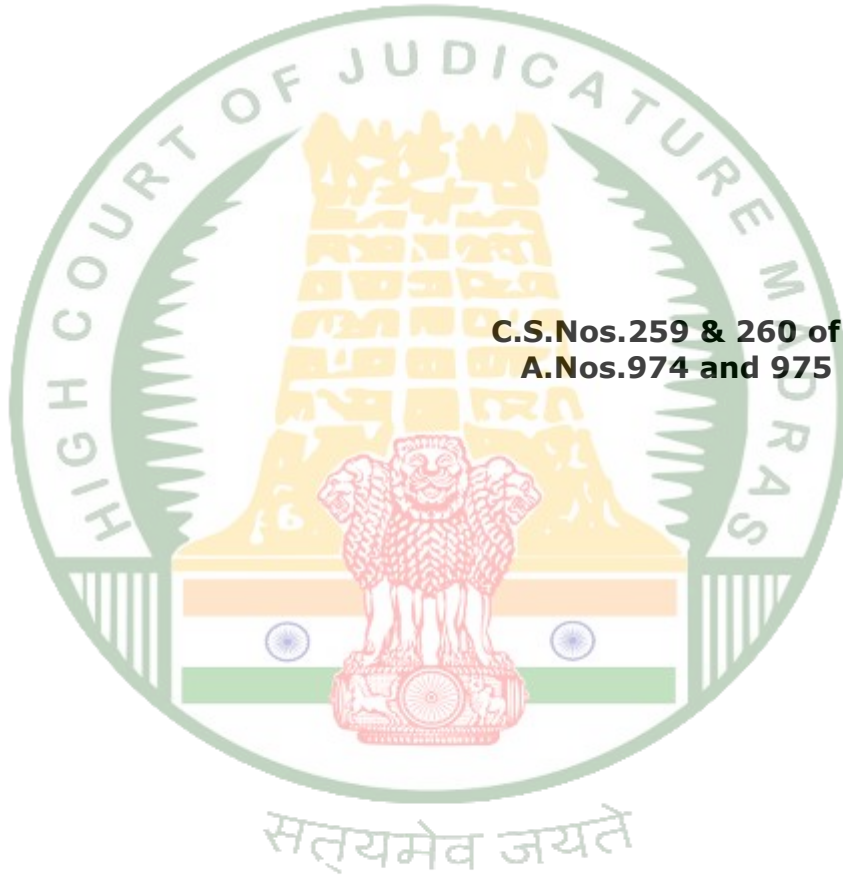
Index: Yes/No

Note: Issue order copy by 26.03.2018



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M.SUNDAR, J.
gpa



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A.Nos.974 and 975 of 2018**

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