

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 22ND DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A.No. 7278 of 2017

in

A.No.4846 of 2017

in

E.P.No.7 of 2017

in

Arbitration Award Case No.M & SEFC/CBER/11/2016

E.P.No.7 OF 2017 & A.No.7278 OF 2017

P.Ponram,
Managing Partner,
Unicon Engineers,
513/A/6 Bharathi Road,
Chinnavedampatti,
Coimbatore-641 049.

...Applicant/Petitioner/
Decree-holder claimant
(A.No.7278 OF 2017)

-Versus-

The Manager (Materials),
M/s.Tamil Nadu Cements Corporation Ltd.,
L.L.A.Building II Floor,
735, Anna Salai,
Chennai-600 002.

... Respondent/ Respondent
Judgment-Debtor
(A.No.7278 OF 2017)

A.No.4846 of 2017

The Manager (Materials),
M/s.Tamil Nadu Cements Corporation Ltd.,
L.L.A.Building II Floor,
735, Anna Salai,
Chennai-600 002.

... Applicant/Respondent
-Vs.-

P.Ponram,
Managing Partner,
Unicon Engineers,
513/A/6 Bharti Road,
Chinnavedampatty,
Coimbatore-641 049.

..Respondent/Decree Holder

A.No.7278 of 2017

Application praying that this Hon'ble Court be pleased to set aside the order dt. 10.10.2017 in A.No.4846/2017 in E.P.No.7 of 2017 in Arbitral award case No.M & SEFC/CBER/11/2016, passed by the Hon'ble Master, High Court Madras.

This Application coming on this day before this Court for hearing The court made the following order:

This application has been filed challenging the order passed by the learned Master in A.No.4846 of 2017 dated 10.10.2017.

2. A.No.4846 of 2017 had been filed by the Judgment debtor in E.P.No.7 of 2017. This application had been filed under section 47 of the Code of Civil Procedure. The learned Master by an order dated 10.10.2017 had concluded the order by finally stating "Accordingly, this application is held as not maintainable". The learned Master had not answered the issues raised and had not held whether the application is allowed or dismissed. It must be kept in mind under section 47 of the Code of Civil Procedure, all questions which arise between the parties have to be decided by the executing Court and consequently there was a burden caused on the learned Master as an Officer deciding execution petitions to give a judicial orders, on all the applications filed before him particularly an application filed under section 47 of the Code of Civil Procedure.

3. Consequently, the matter has to be necessarily remitted back to the learned Master with directions to decide afresh the issues raised by the applicant in A.No.4846 of 2017 and pass a judicial pronouncement either allowed the application or dismissing the application. Holding the application is not maintainable would not serve the ends of the Justice.

4. Consequently, the order passed in A.No.4846 of 2017 dated 10.10.2017 by the learned Master is set aside and the said application is once again remitted back to the learned Master. The matter has to be posted before the learned Master for the hearing on 29.01.2018.

5. The learned Master is directed to decide the issue within a period of two months, namely, on or before 28.03.2018.

6. Consequently, A.No.7278 of 2017 is allowed with the above observations.

Sd./-C.V.K.J
22/01/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER(O.S.)

jj 09/03/18

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