

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 28TH DAY OF AUGUST 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.A. Nos.441 & 442 of 2018
and
A.Nos. 6288 and 6289 of 2018

O.A. No.441 of 2018, A.No. 6288 of 2018:-

In the matter of Sec.9 of the
Arbitration and Conciliation
Act 1996

and

In the matter of the Purchase
Contract dated 09.02.2018
No.72198S01 between
M/s.Karthick Gupta Exports &
another and Ecom Agro Trade
Limited, U.K.

M/s.Karthick Gupta Exports,
a partnership Firm, rep. by its
Partner, Mr.S.Muthukumar,
No.99, Main Road, Pudupet,
Thorappadi, Madura, Panruti Taluk-607 108
and now presently address at No.10/11,
V.Andikuppam Village, N.A.L.Perumal Koil Street,
Rajeswari Nagar, Panruti-607 106. ... Applicant

-Versus-

1. M/s.Ecom Agro Trade Limited,
rep. by its Director, Mr.Alec Hayley,
10th Floor, No.55, Old Broad Street,
London-EC2M 1RX, United Kingdom.
2. Blue Leaf Trading Company,
VII/705(A), Choornikara,
Kunathery Jn., Thaikattukara,
Erakulam, Kerala.
3. CMA CGM Agencies Private Limited,
5th Floor, Ajeejay House,
Block A, 15 Pack Street,

Kolkata-700 016.

4. The Chief Commissioner of Custom (Imports),
Custom House, No.15/1, Strand Road,
Near Fairley Place, BBD Bagh,
Kolkata-700 001. ... Respondents

O.A.No.441 of 2018:

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondents 3 & 4 herein from in any manner, releasing the two consignments of raw cashew nuts of Nigeria Origin covered under the Bill of Lading Nos.LGS0132164A consisting of 04 Containers and LGS0132164B consisting of 02 containers to the 1st & 2nd respondents or their men, agents, servants or notified parties upon arrival of the said consignments at the Kolkotta Port, pending disposal of the arbitral proceedings.

A.No. 6288 of 2018:

Application praying that this Hon'ble Court be pleased to extend the order of interim injunction granted in O.A.No.441 of 2018 by this Hon'ble Court on 27.04.2018 and further extended vide order dated 11.07.2018 for a further period of 04 weeks so as to enable the Applicant to commence the Arbitral Proceedings before the Nut Association, United Kingdom.

O.A. No.442 of 2018 and A.No. 6289 of 2018:-

In the matter of Sec.9 of the
Arbitration and Conciliation
Act 1996

and

In the matter of the Purchase
Contract dated 14.02.2018
No.72198S013 between
M/s.Karthick Gupta Exports &
another and Ecom Agro Trade

Limited, U.K.

M/s.Karthick Gupta Exports,
a partnership Firm, rep. by its
Partner, Mr.S.Muthukumar,
No.99, Main Road, Pudupet,
Thorappadi, Madura, Panruti Taluk-607 108
and now presently address at No.10/11,
V.Andikuppam Village, N.A.L.Perumal Koil Street,
Rajeswari Nagar, Panruti-607 106. ... Applicant

-Versus-

1. M/s.Ecom Agro Trade Limited,
rep. by its Director, Mr.Alec Hayley,
10th Floor, No.55, Old Broad Street,
London-EC2M 1RX, United Kingdom.
2. Blue Leaf Trading Company,
VII/705(A), Choornikara,
Kunathery Jn., Thaikkattukara,
Erakulam, Kerala.
3. CMA CGM Agencies Private Limited,
5th Floor, Ajeejay House,
Block A, 15 Park Street,
Kolkata-700 016.
4. The Chief Commissioner of Custom (Imports),
Custom House, No.15/1, Strand Road,
Near Fairley Place, BBD Bagh,
Kolkata-700 001. ... Respondents

O.A.No. 442 of 2018:

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondents 3 & 4 herein from in any manner, releasing the two consignments of raw cashew nuts of Nigeria Origin covered under the Bill of Lading Nos.LGS0132164A consisting of 04 Containers and LGS0132164B consisting of 02 containers to the 1st & 2nd respondents or their men, agents, servants or notified parties upon arrival of the said consignments at the Kolkotta Port, pending disposal of the arbitral proceedings.

Application praying that this Hon'ble Court be pleased to extend the order of interim injunction granted in O.A.No.442 of 2018 by this Hon'ble Court on 27.04.2018 and further extended vide order dated 11.07.2018 for a further period of 04 weeks so as to enable the Applicant to commence the Arbitral Proceedings before the Nut Association, United Kingdom.

These applications coming on this day before this court for hearing the court made the following order:-

On 28.08.2018, orders were passed disposing of the applications with direction. Meanwhile, the applicant and the first respondent have come forward and filed a Joint Memo of compromise and compromised the dispute between them. Order dated 28.08.2018 is hereby recalled and the Joint Memo of compromise is taken on record as the applicant and first respondent have compromised the dispute.

2. The terms of compromise are as follows:

(a) The 1st respondent has agreed to pay and the applicant has agreed to receive a sum of USD 22,000 (Twenty Two thousand US Dollars) in full and final settlement of all their respective claims against one another in respect of the Purchase Contract No.72198S010 dated 09.02.2018 and Purchase Contract No.72198S013 dated 12.02.2018 for the supply of raw cashew nuts and in consideration of the applicant obtaining all necessary orders from this Hon'ble Court releasing the two consignments of raw cashew nuts of Nigeria Origin covered under the Bill of Lading Nos.LGS0132164A consisting of 04 Containers and LGS0132164B consisting of 02 containers lying in the Kolkotta Port as set out below;

(b) The 1st respondent shall pay the settlement amount of USD 22,000 (Twenty Two thousand US Dollars) to the applicant through bank remittance at the banking details to be supplied by the applicant to the 1st respondent in writing and shall further furnish a copy of the swift advice to the Hon'ble High Court, Madras and the applicant after the applicant and the 1st respondent execute this Memorandum of Compromise and the same is duly filed before the Hon'ble High Court, Madras;

(c) The applicant hereby gives their consent and "No Objection" for the Hon'ble High Court, Madras passing necessary orders releasing the two consignments of raw cashew nuts of Nigeria Origin covered under the Bill of Lading Nos.LGS0132164A consisting of 04 Containers and LGS0132164B consisting of 02 containers lying in the Kolkotta Port without the 1st respondent furnishing the bank guarantee as directed by the Hon'ble High Court vide its order dated 28.08.2018, upon the 1st respondent producing the Swift Advice referred to above in proof of remittance of the settlement amount before the Hon'ble High Court, Madras and the applicant;

(d) The applicant and the 1st respondent hereby admit and acknowledge to each other that all their respective claims against each other in respect of the Purchase Contract No.72198S010 dated 09.02.2018 and Purchase Contract No.72198A013 dated 12.02.2018 shall stand fully and finally settled upon receipt of the settlement amount of USD 22,000 (Twenty Two thousand US Dollars) in full and this Hon'ble Court releasing the two consignments of raw cashew nuts of Nigeria Origin covered under the Bill of Lading Nos.LGS0132164A consisting of 04 Containers and LGS0132164B consisting of 02 containers lying in the Kolkotta Port, and upon such full and final settlement, the applicant and the 1st respondent shall not make any further claim/s against each other and they shall discontinue each and all claims brought against each other in respect of Purchase Contract No.72198S010 dated 09.02.2018 and Purchase Contract No.72198S013 dated 12.02.2018;

(e) The parties shall promptly take all necessary and reasonable steps to give effect to the terms of these Terms of Compromise;

(f) In the event of this settlement in these Terms of Compromise failing for any reason whatsoever, the applicant shall forthwith and without deduction refund to the 1st respondent the Settlement Amount received by the applicant pursuant to these Terms of Compromise and it shall be open to the parties hereto to pursue the legal remedies available to them under Purchase Contract No.72198S010 dated 09.02.2018 and Purchase Contract No.72198S013 dated 12.02.2018 as if this Joint Memorandum of Compromise had not been entered into.

(g) Nothing in this Joint Memorandum of Compromise is to be taken as any admission of liability or wrongdoing of any kind on the part of either/both the applicant and/or the 1st respondent and/or any other person or entity.

3. The Joint Memorandum of Compromise shall form part and parcel of this order. The above applications shall stand disposed in terms of the above Memorandum of Understanding.

4. The third respondent claims to have incurred demurrage and detention charges amounting to Rs.31,80,582.62/- as on 07.09.2018. Therefore, the third respondent seeks for appropriate observations to preserve its right to recover the same.

5. The rights of the third respondent to claim appropriate relief will not be curtailed either by the

observations /order passed in this proceeding or the Memorandum of Understanding. The third respondent may work out its remedy under law.

6. With the above observations, these applications stand disposed.

Sd/-C.S.N.J

07.09.2018

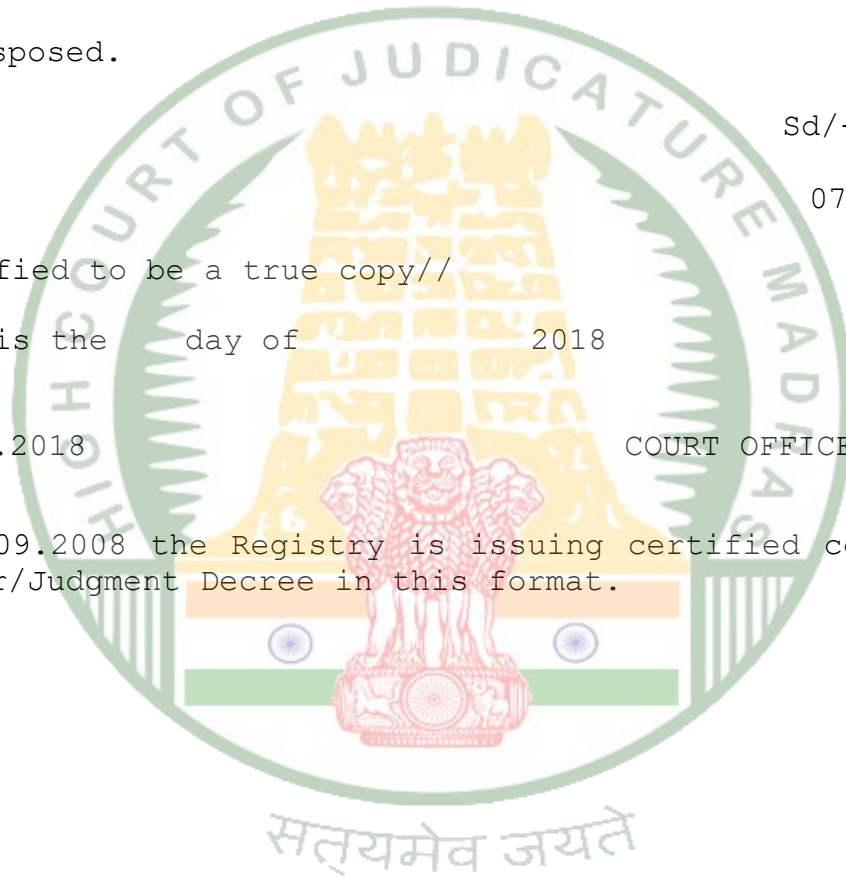
//Certified to be a true copy//

Dated this the day of 2018

JJ 12.09.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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