

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 16TH DAY OF APRIL 2018

THE HON'BLE MR.JUSTICE N.SATHISHKUMAR

A.No.4269 of 2012

in

A.No.3020 of 2012

in

E.P.No.2965 of 2010

Award/Decree dated (*) 23.10.2008

(*) Amended as per order
dated 25.04.2012 in
A.No. 1817 of 2012

M/s. Tribal Cooperative Marketing Development
Federation of India Ltd.,
3, Siri Institutional Area,
NCUI Building, IInd Floor,
Khelgaon Marg, New Delhi 110 016. :Decree Holder

-Versus-

M/s. South India Shipping &
Export Co. (SISECO), C & F Agent,
Taj Tower, 22-A, Second Line Beach,
Chennai 600 001. :Judgment Debtor

A.No.3020 of 2012:

M/s. South India Shipping &
Export Co. (SISECO), C & F Agent,
rep.by its Managing Partner
22-A, Second Line Beach,
Chennai 600 001. : Applicant/Judgment Debtor

-Vs.-

M/s. Tribal Cooperative Marketing Development
Federation of India Ltd.,
3, Siri Institutional Area,
NCUI Building, IInd Floor,
August Kranti Marg,
New Delhi 110 016. :Respondent/Decree Holder

A.No.4269 of 2012:

M/s. Tribal Cooperative Marketing Development
Federation of India Ltd.,
NCUI Building, 2nd Floor,
3, Siri Institutional Area,
August Kranti Marg,
New Delhi 110 016.

:Applicant

-Versus-

M/s. South India Shipping &
Export Co. (SISECO), C & F Agent,
Agent rep.by its Managing Partner
22-A, Second Line Beach,
Chennai 600 001.

:Respondent

Application praying that this Hon'ble Court be
pleased to set aside the order in A.No.3020 of 2012 in
E.P.No.2965 of 2010 dated 31.07.2012 passed by Hon'ble
Master and direct the Hon'ble Master to proceed with the
E.P.No.2965 of 2010 in accordance with law.

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

This application has been filed as against the order
passed by the learned Master, holding that the award is
not executable as the same is without any basis for
arriving the quantum by expressly detailing all aspects.

2.The order of the learned Master came to be passed
in an application under Section 47 of C.P.C. was taken
out by the Judgment Debtor. The learned Master while
deciding this application, has rejected the claim of the

judgment debtor claiming the equitable set off certain amount. However, the learned Master molded the relief and hold that the award is inexecutable, as the correct calculations for the quantum is not properly given in the award. Against which the present application came to be filed.

3.The learned Additional Solicitor General Mr.G.Rajagopalan, submitted that the award has been reached finality, went up to the Hon'ble Supreme Court and it was upheld by the Hon'ble Supreme Court. Thereafter, the Execution Petition in E.P.No.2965 of 2010 has been filed. The learned Master nullified the award holding that the correct calculations are not done. Such approach of the learned Master is incorrect.

4.It is the further contention of the learned counsel that the set off claimed by the judgment debtor is also cannot be pressed into since no cross appeal is filed. The learned Master has dismissed the claim of the judgment debtor. Hence, submitted that the order passed by the learned Master is not maintainable.

5.The learned Senior Counsel Mr.Satish Parasaran

appearing for the Respondent/ Judgment Debtor submitted that the Decree Holder is entitled to set off to the tune of Rs.28,71,299/- liable to be paid to the Judgment debtor was originally sanctioned by the Central Government by an order dated 30.09.2003. The above amount has not been paid so far. If the above amount is given set off there is no amount payable by the judgment debtor.

6.It is the further contention of the learned Senior counsel for the judgment debtor that the equitable set off is applied to the amount of Rs.28,71,299/- due to him Judgment debtor not liable to pay any amount. Hence he submitted that the learned Master may be directed to take into consideration of the equitable set off and proceed with E.P.No.2965 of 2010.

7.The order of the learned Master is perused. The Master while passing the order under Section 47 of C.P.C. originally filed by the Judgment Debtor questioning the award, molded the relief and held that the award is inexecutable. The learned Master further held that the counter claim of the judgment debtor has also not been proved and the claim of the judgment debtor is rejected.

8. Having held, the Master has come to the conclusion that as the calculation is not properly made in the award the same cannot be executed. I am of the view that the order passed by the learned Master cannot be sustained as the award itself clearly states about the nature of the principal amount and the interest liable to be paid and the same is extracted hereunder:

"In view of the observations, I hereby pass an award for recovery of Rs.18,49,000/- (Rupees eighteen lakhs forty nine thousand only) plus Rs.25,99,187/- (Twenty five lakhs ninety nine thousand one hundred and eighty seven only) as interest from the date of filing of the claim i.e. 14.01.1997 to 30.09.2008 calculated @ 12% per annum, thus making it a total of Rs.44,48,187.00 (Rupees forty four lakhs forty eight thousand and one hundred and eighty seven only) from the Respondent i.e. M/s.South Indian Shipping & Export Co. and in favour of the Claimant i.e. M/s.Tribal Cooperation Marketing Development Federation of India Ltd., (TRIFED). The

claimants shall also be entitled to further interest @ 12% per annum on Rs.18,49,000.00 (Rupees eighteen lakhs forty nine thousand from the date of award till date of payment."

9.Hence, it is not fair on the part of the Master to hold that there was no proper calculations arrived in the award. The execution court cannot go beyond decree. The objections with regard to alleged set off claim on merits cannot be considered at that stage. Learned Master having held that the counter claim has not been proved ought not to have gone to the merits of Award. The learned Master is in fact has nullified the award. It has reached the finality up to the Hon'ble Supreme Court. Such order is nothing but perverse in view of this Court. Executing Court cannot go beyond the decree. On the face of the order, I am of the opinion that the learned Master has exceeded his jurisdiction in execution proceeding thereby nullified the order which has reached the finality, went up to the Hon'ble Supreme Court.

10.Hence, the order passed by the learned Master is liable to be interfered with and accordingly the order dated 31.07.2012 passed by the learned Master is set

aside and the E.P.No.2965 of 2010 is restored to file.
The Registry is directed to send the records to the
learned Master on 07.06.2018 for taking further course of
action.

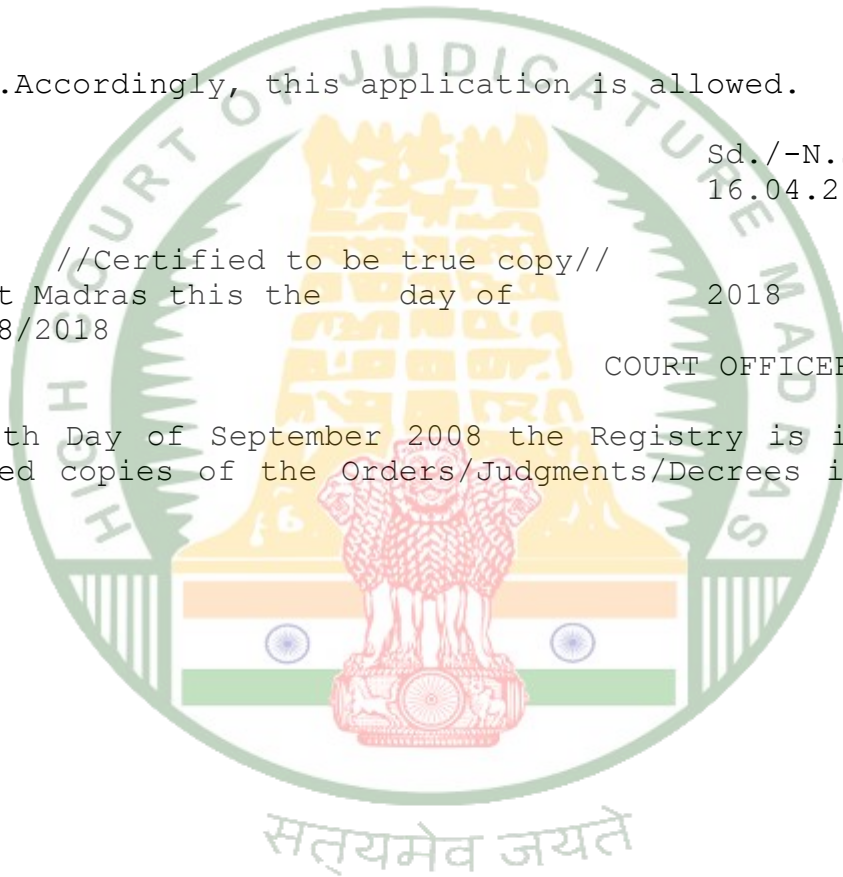
11.Accordingly, this application is allowed.

Sd./-N.S.K.J
16.04.2018

//Certified to be true copy//
Dated at Madras this the day of 2018
JJ 16/08/2018

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing
certified copies of the Orders/Judgments/Decrees in this
format.



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