

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

O.S.A.No.150 of 2016
and CMP.No.11003 of 2018

M/s.Oil & Natural Gas Corporation Ltd.,
Thalamuthu Natarajan Buildings,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008. ... Appellant/1st Respondent

Vs

1.M/s.Oren Hydrocarbons Pvt Ltd.
Registered address:
28/2B, Saravana Street, T.Nagar,
Chennai-600 017. 1st Respondent/Appellant

2.ICICI Bank Ltd.,
1st Floor, 110, NH Road,
Nungambakkam, Chennai-600 034. 2nd Respondents/2nd Respondent

Prayer:- Original Side Appeal filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Original Side Rules against the order and decretal order passed by this Court dated 07.04.2016 made in O.A.No.1314 of 2015, Original Application praying that this Hon'ble court be pleased to grant an interim injunction restraining the respondents, their men, agents, or any one acting through or under men, from in any manner encashing the performance bank guarantee No.0009BG00115312 dated 08/03/2012, procured by the applicant and issued in favour of the 1st respondent.

For Petitioner : Mr.M.Vijayan
for M/s.King and Patridge

For Respondents: Mr.Sathish Parasaran
Senior Counsel
for Mr.R.Parthasarathy

JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

The 1st respondent in O.A.No.1314 of 2015 is the appellant.

2. The 1st respondent herein filed O.A.No.1314 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 praying for an order of ad-interim injunction restraining the respondents herein their men, agents, or any one acting through or under them from in any manner encashing the Performance Bank Guarantee dated 08.03.2012, procured by the appellant/1st respondent.

3. The learned Judge, vide impugned order dated 07.04.2016, while granting an order of ad-interim injunction restraining the 1st respondent / appellant from invoking or encashing the performance bank guarantee, also directed the applicant / 1st respondent to keep the bank guarantee alive by periodically renewing the same, during the pendency of the arbitral proceedings.

4. It is also brought to the knowledge of this Court that subsequently Hon'ble Mr.Justice N.V.Balasubramanian, Retired Judge was appointed as Sole Arbitrator and he entered upon reference and passed an award dated 02.05.2018, in and by which, the claimant / 1st respondent, is entitled to a sum of Rs.14,02,575/- towards interest due on delayed payment and also to a sum of Rs.89,64,810.74/- towards shortfall in payment of invoices and further ordered that invocation of Performance Bank Guarantee dated 08.03.2012 by the respondent / appellant herein is not valid and legally enforceable and however, in the light of pendency of the present appeal, has granted liberty to them to approach this Court seeking direction for release of the Performance Bank Guarantee dated 08.03.2012.

5. The learned counsel appearing for the appellant would submit that remedy open to the appellant, if any, is to challenge the legality of the award.

6. Mr.Sathish Parasaran, learned Senior Counsel appearing for the 1st respondent would submit that in the light of the observations made in Paragraph No.11, as well as Paragraph No.VII of the Award, this Court may pass appropriate orders for release of the Performance Bank Guarantee dated 08.03.2012.

7. This Court heard the submissions of the learned counsel appearing for the appellant also.

8. In the light of the said development, nothing remains for further adjudication in this original side appeal and therefore,

this Original Side Appeal is dismissed as having become infructuous. In the light of the Paragraph No.111 and Clause VII Paragraph No.14 (Page No.64 of the Award), there shall be an interim direction directing the 2nd respondent to release the Performance Bank Guarantee dated 08.03.2012 in favour of the 1st respondent / claimant within a period of two weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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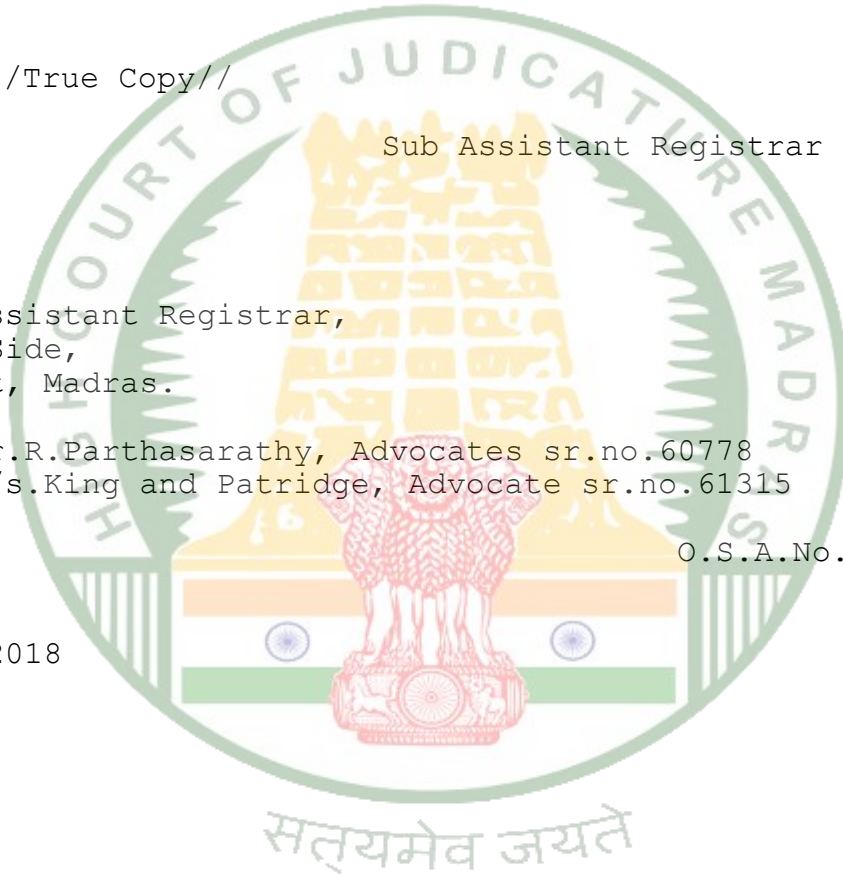
TO:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.R.Parthasarathy, Advocates sr.no.60778
+1cc to M/s.King and Patridge, Advocate sr.no.61315

O.S.A.No.150 of 2016

ad(co)
nr 28/09/2018



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