

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 13TH DAY OF NOVEMBER 2018

THE HON'BLE MR. JUSTICE M.SUNDAR

A.No.8600 of 2018

in
C.S.No.740 Of 2018

M/s.M.Nagarajan & Co
A registered Partnership Firm
Rep.by Partners
Mr.M.Nagaraj,
Mr.M.Mohamed Abubakar Siddique
And Mrs.P.Mythili
New door No.75 (Old No.38) 1st Floor
Ganga Reddy Road
Egmore,
Chennai 600 008.

... Applicant/Plaintiff

-Versus-

1.The Chief Engineer
Highways
NABARD & Rural Roads
HRS Campus
Chennai 600 025

2.The Superintend Engineer
Highways
NABARD & Rural Roads
Chengalpattu

3.The Divisional Engineer
Highways
NABARD & Rural Roads
Chengalpattu

... Respondents/Defendants

Application praying that this Hon'ble Court be
pleased to dispense the applicant from issuing Section 80
C.P.C.notice.

This application coming on this day before this court for hearing, the court made the following order:

Sole plaintiff in the main suit is the lone applicant herein. Defendants 1,2 and 3 in the main suit are respondents 1,2 and 3 respectively in the instant application.

2. Parties in the instant application are referred to by their respective ranks in the main suit for the sake of convenience and clarity.

3. Instant application has been filed with a prayer to dispense with issuing of notice under Section 80 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity).

4. It is the case of the plaintiff that they were the successful bidder for a value of over 14.20 Crores for work that is being described as construction of high level bridge across Pulighat Lake in Pulighat Light House Kuppam Road, Thiruvallur. It is also the case of the plaintiff that an agreement in C.R.No.150/2007-08 was entered into on 12.11.2007 and as part of the agreement, two bank guarantees were furnished.

5. Mr. G. Surya Narayanan, learned counsel for plaintiff submits that aforesaid work/project was completed in June 2014 itself and the defect liability period of 12 months also expired on 31.03.2015, but the defendants are not releasing the bank guarantees citing

some audit objections, which according to learned counsel is untenable.

6. In the aforesaid back drop, instant suit has been filed with prayers for i.e., declaration that withholding of bank guarantees by defendants is illegal, for return of Bank Guarantees by the defendants, for a declaration that the Plaintiff is entitled to exemption of excise duty. Besides such declaratory reliefs consequent permanent injunctive relief restraining defendants from encashing or insisting on extension of aforesaid Bank Guarantees has also been sought for.

7. To be noted, two interlocutory applications seeking emergent orders in this regard have also been moved along with the suit, one with a prayer to restrain the defendants from insisting on extension of Bank Guarantees and the other seeking injunction restraining the defendants from invoking the Bank Guarantees.

8. Taking me through the aforesaid scenario, learned counsel submits that it is imperative to obtain urgent and immediate interim reliefs and therefore leave of this Court is necessary for dispensing with service of notice under Section 80 CPC.

9. It is also pointed out by learned counsel for plaintiff that the next extension of bank guarantees is due on 27.11.2018 and therefore, there is an imminent

need to move this suit dispensing with issue of notice under Section 80 CPC.

10. I have perused the plaint and the interlocutory applications including affidavit filed in support of the instant application in the light of the aforesaid submissions made by learned counsel for plaintiff.

11. If notice under Section 80 CPC which mandates two months notice is ordered, it will impede the aforementioned urgency.

In the light of the narrative supra, prayer in the instant application i.e., A.No.8600 of 2018 is acceded to. In other words, instant application is ordered as prayed for.

Sd/.M.S.J

13.11.2018.

//Certified to be a true copy//

Dated this the th day of 2018.

DL/16.11.2018

COURT OFFICER

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