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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.12.2017

DELIVERED ON : 19.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .Nos.1427 to 1429 of 2016 &
C.M.A. (MD) Nos.333 to 335 of 2017

M/s.Jaya Engineering Works,
A Partnership Firm,
Rep. by its Managing Partner,
K.T.Ramakrishnan,
D.No.36, Developed Plot Estate,
Thuvakudi, Trichy.

... Appellant/1st Respondent
in all CMA's

Vs.

1. Bharat Heavy Electricals Ltd.,
Trichy, Having its Office at
Ancillary Development Department,
Thuvakudi, Trichy - 14.

... 1st Respondent/Petitioner
in all CMA's

2.R.Vittal

... 2nd Respondent/2nd Respondent
in all CMA's

COMMON PRAYER : Civil Miscellaneous Appeal is filed under Section 39 of Arbitration Act, 1940, to set aside the order passed in Arbitration O.P.No.5,6,7,22,23,24 of 2014 respectively dated 24.03.2015 passed by the learned Principal District Judge, Trichy and to set aside the same.

(in all C.M.As.)

For Appellant

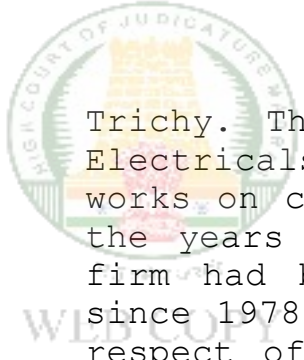
: Mr.C.Jawahar Ravindran

For R-1

: Mr.Raguvaran Gopalan,
for Mr.K.Prabhakar.

C O M M O N J U D G M E N T

The appellant in these appeals is M/s.Jaya Engineering Works,
<https://hcservices.ecourts.gov.in/hcservices/> A Partnership Firm, Represented by its Managing Partner,
Thiru.K.T.Ramakrishnan, D.No.36, Developed Plot Estate, Thuvakudi,



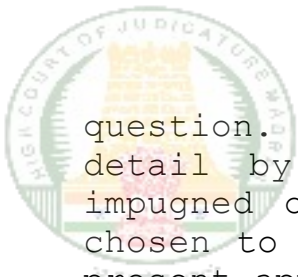
Trichy. The said firm was an ancillary unit under Bharat Heavy Electricals Limited, Trichy. It was involved in doing fabrication works on contract basis with Bharat Heavy Electricals Limited for the years 1989-1990, 1990-1991 and 1991-1992. In fact the said firm had been doing works for Bharat Heavy Electricals Limited since 1978. But dispute arose with regard to the payments made in respect of the aforesaid three years. Therefore, the arbitration proceedings were initiated. The arbitration proceedings after a long and chequered history culminated in an award dated 22.11.2013 in favour of the appellant firm. To set aside the said award, Bharat Heavy Electricals Limited filed Arbitration O.P.Nos.5,6 and 7 of 2014 before the learned Principal District Judge, Thiruchirappalli. The proceedings were under the old Arbitration Act, 1940. Therefore, to pass a decree in terms of the award, the appellant filed Arbitration O.P.Nos.22, 23 and 24 of 2014. The learned Principal District Judge, Thiruchirappalli, by the impugned common order dated 24.03.2015, allowed the applications filed by Bharath Heavy Electricals Limited, Trichy, by setting aside the impugned award and dismissed the applications filed by the appellant firm. Aggrieved by the same, these appeals have been filed.

2. The learned counsel appearing for the appellant reiterated the grounds set out in the grounds of appeal.

3. Per contra, the learned counsel appearing for Bharath Heavy Electricals Limited, wanted this Court to sustain the impugned order passed by the lower Court.

4. This Court considered the rival contentions carefully and also perused the materials on record.

5. It is clear from the evidence available on record that Jaya Engineering Works originally comprised only Thiru.K.T.Ramakrishnan and Mrs.R.Padmavathi, as partners. There was a reconstitution. Four more partners were added to the existing firm. On 26.06.2000, all the six partners transferred all the rights, assets and liabilities in favour of the reconstituted partnership firm, namely, R.V.Enterprises. Both Thiru.K.T.Ramakrishnan and Mrs.R.Padmavathi released their rights vide Release Deed dated 30.09.2000. This has been established with reference to Ex.R.1 and Ex.R.3. Thus from 01.10.2000, the firm Jaya Engineering Works has ceased to exist. Even Plot No.D.36, at Thuvakudi, Trichy, allotted by the Tamil Nadu Small Industries Development Corporation Limited, now stands in favour of R.V.Enterprises. The said plot was originally allotted to Jaya Engineering Works vide Assignment Deed dated 04.04.1989 marked as Ex.R.5. The encumbrance certificate dated 27.10.2009 marked as Ex.R.7 shows that ~~Services Engineering Private Limited~~ now holds the said plot. The partners of R.V.Enterprises vide letter dated 26.08.2002 marked as Ex.R.4 had withdrawn the arbitration demand pertaining to the years in



question. These aspects have been dealt with in considerable detail by the lower Court in paragraph Nos.9 and 10 of the impugned order. It clearly shows that a non existing firm has chosen to continue the arbitration proceedings and also filed the present appeals.

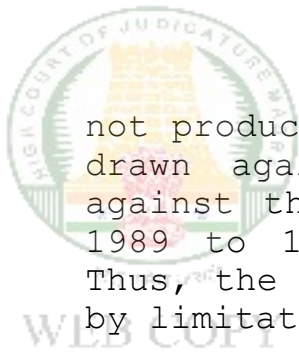
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6. The learned counsel appearing for the appellant contended that as per the Division Bench Judgment of this Court reported in **(2010) 4 C.T.C. 58 (Shree Gomathy Shankar Transports V. The State of Karnataka)** even after dissolution of firm, partners of firm are called partners and the present proceedings are maintainable and it is well within their right to continue the proceedings for the purpose of realizing their claims.

7. This Court is unable to agree with the said submissions of the appellant's counsel. It is not as if Jaya Engineering Works got dissolved and that the subject proceedings are only to realize the assets due to the dissolved firm. On the other hand, there was a reconstitution of Jaya Engineering Works and it has been renamed as R.V.Enterprises. The original partners, namely, Thiru.K.T.Ramakrishnan and Mrs.R.Padmavathi are no more partners of the firm. They have no legal existence. Therefore, they have no *locus standi* what so ever to institute any claim proceedings against Bharat Heavy Electricals Limited.

8. This is all the more so, because the reconstituted firm has issued a specific communication withdrawing the demands that are the subject matters of these proceedings. The learned Principal District Judge, Thiruchirappalli, was therefore absolutely justified in holding that the claim proceedings are not maintainable. This Court has to necessarily confirm the said reasoning as well as the finding. The appeals deserve to be dismissed for yet another reason. The claimant had admitted that Bharat Heavy Electricals Limited made payment to the firm as per the contract rate. But the claimant was not satisfied with the same. His claim was based on the "BPE Guidelines". According to the claimant, he had done extra work and therefore claimed extra rate.

9. The Arbitrator applying the principle of Quantum Meruit had allowed the claim. But as rightly contended by the learned counsel for Bharat Heavy Electricals Limited and as correctly found by the Court below where there is a contract between the parties covering certain transaction, the principle of Quantum Meruit could not apply. The stand of Bharat Heavy Electricals Limited has been consistent right from the beginning. Their contention is that they had paid as per the contract rate. The dispute has arisen, because the claimant claimed over and above the contract rate. The Court below also found that the claimant had not discharged the burden cast on him. Since the claimant did



not produce the bank statement, adverse inference was also rightly drawn against him. There is one more circumstance that goes against the claimant. The dispute pertained to the period from 1989 to 1992. The claim itself was made only on 09.01.1995. Thus, the claims in respect of the first two years are also barred by limitation.

10. Since it has been convincingly established that the claims were settled as per the terms of the contract and since the claim was time barred and since the claimant does not have any legal existence as such, the Court below came to the conclusion that the award passed by the Arbitrator was otherwise invalid. This Court is of the view that the said award was rightly set aside. There is no error in the impugned order dated 24.03.2015, warranting interference in exercise of the appellate jurisdiction of this Court. Hence, all the Civil Miscellaneous Appeals stand dismissed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. Bharat Heavy Electricals Ltd.,
Trichy, Having its Office at
Ancillary Development Department,
Thuvakudi, Trichy - 14.

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+ 3 ccs TO Mr.K.Prabhakar , Advocate in SR No. 69005,69008,69009

pmu
AE/SKN RSK/SAR1/02.07.2018/4P/7C

COMMON ORDER

MADE IN

C.M.A. (MD) .Nos.1427 to 1429 of 2016 &
C.M.A. (MD) Nos.333 to 335 of 2017
19.06.2018