

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 26TH DAY OF JUNE 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.NO.1525 OF 2018

IN

C.S.No.256 of 2016

Tamil Nadu Tourism Development Corporation Limited
Tamil Nadu Tourism Complex
No.2, Walajah Road, Near Kalaivanar Arangam
Chennai 600 002

Represented by its General Manager : Plaintiff

-Versus-

1. M/s. Spellbound
No.34, Elliot's Beach Road,
Besant Nagar, Chennai 600 090
Represented by its Proprietor Mr.K.N.Redin

(*) 2. M/s. SaraExpo
No.4/33, 1st Avenue Sastri Nagar,
Adyar, Chennai 600 020
Rep.by its Authorised Signatory
Mr.Mohammad Arshad Ansari : Defendants

(*) 2nd defendant impleaded as per order
dated 11.4.18 in A.No.1524/18 and
order dated 24.07.2018)

A.NO.1525 OF 2018:

M/s. SaraExpo
No.4/33, 1st Avenue Sastri Nagar,
Adyar, Chennai 600 020
Rep.by its Authorised Signatory
Mr.Mohammad Arshad Ansari

...Applicant/Proposed Defendant

-vs-

Tamil Nadu Tourism Development Corporation Limited
Tamil Nadu Tourism Complex
No.2, Walajah Road, Near Kalaivanar Arangam
Chennai 600 002
Represented by its General Manager

...Respondent/Plaintiff

2. M/s. Spellbound
 No.34, Elliot's Beach Road,
 Besant Nagar, Chennai 600 090
 Represented by its Proprietor Mr.K.N.Redin

..Respondent/Defendant

Application praying that this Honble Court be pleased to direct the 1st respondent/plaintiff to forthwith return the bank guarantee bearing No.17150BG000008 dated 13.09.2017 for a sum of Rs.11,81,626/- (Rupees Eleven Lakhs Eighty one thousand Six Hundred and Twenty six only) to the applicant herein by cancelling the charge over the same.

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

This application has been taken by the applicant seeking return of the Bank Guarantee dated 13.09.2017.

The brief facts that led to the application are as follows:-

2. The 1st respondent viz., Tamil Nadu Tourism Development Corporation had given the contract for conducting the Annual Trade fair at Island Grounds to the 2nd respondent. Claiming that the 2nd respondent is liable

to pay a sum of Rs.1,08,40,760/-, the 1st respondent has instituted the present suit in C.S.No.256 of 2016 for recovery against the 2nd respondent.

3. The applicant is a sub-contractor under the 2nd respondent. The goods of the applicant that were lying in the premises were not allowed to be removed by the 1st respondent Corporation, in view of the pendency of the suit. The applicant moved this court by way of a Writ Petition in W.P.No.28455 of 2016 seeking to remove the goods. This court by an order dated 11.09.2017 allowed the applicant to remove its goods on furnishing Bank guarantee for a sum of Rs.11,81,626/- being the value of the goods. While doing so, this Court had observed as follows:-

"7. The learned counsel for the petitioners also submitted that the petitioners are willing to give bank guarantees for the value of the materials mentioned in the Status Reports dated 11.09.2017. Further the learned counsel for the petitioners has submitted that the petitioners may be given liberty to work out their remedies in the Civil Suit filed before this court in C.S.No.256 of 2016.

8. In view of the submissions

made by the learned counsel on either side, the petitioner in W.P.No.28377 of 2016 is directed to give bank guarantee to the tune of Rs.3,69,094/- (Rupees Three Lakhs Sixty nine Thousand and Ninety Four only) in respect of the materials mentioned in W.P.No.28377 of 2016, and the petitioner in W.P.No.28455 of 2016 is directed to give bank guarantee to the tune of Rs.11,81,626/- (Rupees Eleven Lakhs Eighty One Thousand Six Hundred and twenty Six only) in respect of the materials mentioned in W.P.No.28455 of 2016, within three days from the date of receipt of a copy of this order, to the satisfaction of the second respondent and on giving the bank guarantees, the respondents 1 and 2 are directed to return the materials mentioned in W.P.Nos.28377 and 28455 of 2016 to the respective petitioner, within a period of three days from the date of giving the bank guarantees.

9. The bank guarantees to be given by the petitioners should be in force until the petitioners obtain orders in the civil suit filed before this Court in C.S.No.256 of 2016. The bank guarantees should be given intitially for a period of one year and thereafter it shall be extended

until the petitioners obtain orders in the civil suit in C.S.No.256 of 2016.

"

4. It would also be relevant to point out at this juncture that by way of interim order passed in the applications in A.No.2283 and 2284 of 2016 this court had directed the 2nd respondent to furnish Bank guarantee to the tune of suit claim i.e., Rs.1,08,40,760/-, apart from directing the 1st respondent to deposit a sum of Rs.30,00,000/-.

5. It is not disputed by the learned counsel appearing for the parties that while the 1st respondent has complied with the order, the 2nd respondent had not furnished the Bank Guarantee. An appeal was filed against the order questioning the direction to furnish Bank Guarantee and the same was withdrawn. It is at this juncture, the applicant has come forward with the present application seeking direction to return the Bank Guarantee furnished by it.

6. This application is being opposed by the 1st respondent Tamil Nadu Tourism Development Corporation contending that it will lose the security if the Bank Guarantee is allowed to be withdrawn.

7. The fact that the applicant has been given liberty to workout its right in the suit viz., C.S.No.256 of 2016, would not give a right to the applicant to seek withdrawal of the Bank Guarantee. The applicant has already filed a suit in C.S.No.5 of 2018 seeking damages against the 1st respondent Corporation and the 2nd respondent which is said to be pending.

8. In view of the same, I do not think that the applicant is entitled for return of the Bank guarantee. The Bank Guarantee was directed to be furnished with a view to protect the interest of the Tamil Nadu Tourism Development Corporation. Admittedly, the applicant, on furnishing the Bank Guarantee had removed the goods that belonged to it. After having removed the goods upon furnishing Bank Guarantee, it is not open to the applicant to seek return of the Bank Guarantee which would render the 1st respondent Corporation without any security in the even of success in the suit.

9. I therefore find no justifiable cause to allow the applicant to withdraw the Bank Guarantee. Hence, this application is **dismissed**.

10. It is rather surprising that the Tamil Nadu Tourism Development Corporation had not taken any action to enforce the interim order by which the 2nd respondent was directed to furnish Bank Guarantee for Rs.1,08,40,760/- even after the expiry of nearly 2½ years.

sd/-R.S.M.J

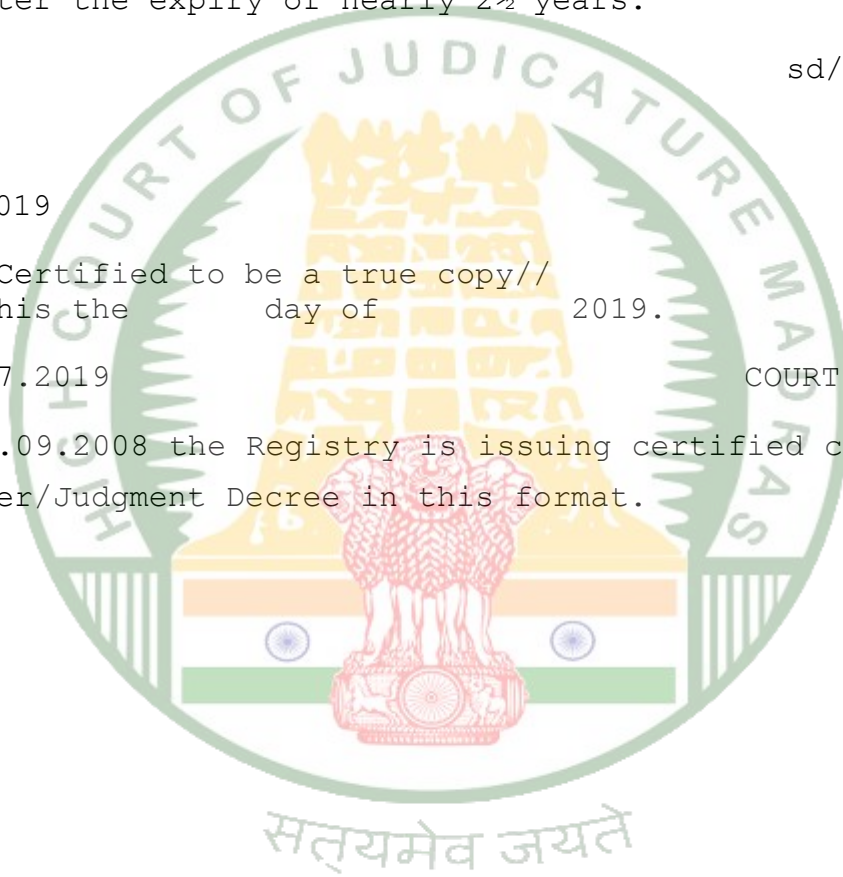
26.06.2019

//Certified to be a true copy//
Dated this the day of 2019.

R.s/2.07.2019

COURT OFFICER

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



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