

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM :

The Hon'ble Dr.VINEET KOTHARI, ACTING CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE C.SARAVANAN

O.S.A.Nos.196 of 2019 & CMP No.17818 of 2019 & Sub Appln Nos
(OS) Nos.419 & 420 of 2019 in Cont.Petn.SR.No.68608 of 2019

Kanchipuram Podhu Thozhilalar Sangam
(Regn No.526-KPM)
Rep by its General Secretary
Mr.E. Muthukumar,
No.21B, Vilakkadi Koil Street,
Kanchipuram - 631 501 ... Petitioner

-vs-

1. Hwashin Automotive India Ltd,
Plot F-65A,
SIPCOT Industrial Park,
Irungattukottai,
Sriperumbudur - 602 105
Represented by its Authorised Signatory

2. Chowel India Private Limited,
Having registered Office at
No.129, Mannur Village,
Valarpuram Post,
Sriperumbudur-602105
Represented by its Authorised Signatory .. Respondents

Appeal filed under Order XXXVI Rule (ii) of O.S. Rules read with Clause 15 of Letters Patent against the Order dated 13.06.2019 in A.Nos.3753 of 2019 and thereby direct the 1st respondent to restore the machineries taken from the 2nd respondent premises against the order dated 29.04.2019 passed in A.No.3052 of 2019.

For Appellant : Mr.K.C. Karl Marx

For Respondents : Ms.Inthu Karunakaran

* * * * *

JUDGMENT

(Judgment of the Court was made by
The Hon'ble Acting Chief Justice)

The present appellant viz., Kanchipuram Podhu Thozhilalar Sangam, Trade Union/Workmen has filed the present appeal aggrieved by the Order dated 13.06.2019 in A.No.3753 of 2019 passed by the learned Single Judge disposing of the Application Nos.3052 and 3053 of 2019 under Section 9 of the Arbitration and Conciliation Act, 1996 on a dispute arising between M/s Hwashin Automotive India Ltd/the applicant therein and M/s Chowel India Private Limited, the respondent, under which, the relief claimed by the applicant M/s Hwashin Automotive India Ltd was to restore the possession of Machineries to the applicant on account of completion of the production process by the respondent viz., Chowel India Private Limited. The relevant portion of the Order passed by the learned Single Judge dated 15.04.2019 is quoted below for ready reference:-

" 14. I have considered the said submissions made by the learned Senior Counsel appearing for the applicant and have gone through the averments made in the affidavit filed in support of this application as well as the other documents filed before this Court for perusal.

15. Since there has been an Agreement called Bailment Agreement which was between the applicant and the respondent and the same was terminated by the applicant on 20.03.2019 and there has been a due according to the applicant, to the tune of more than Rs.26 Crores payable by the respondent and the machineries morefully described in the Schedule A and B to the Judges Summon are belong to the HMI, which has been given by the applicant as one of the Vendor of the HMI to the respondent as Sub-Vendor and therefore, insofar as the machineries and mouldings are concerned, since the respondent does not have any right of ownership, except the possessory right and the said possessory right also got terminated by the termination of the

Bailment Agreement on 20.03.2019, this Court feels that, the applicant has made out a prima facie case to have repossession of the machineries, otherwise if ultimately the Arbitator has passed an Award in favour of the applicant, by the time, if the respondent created any third party right over the said machineries and the mouldings and if they are encumbered or sold to the third party, the security over the said machineries created by the applicant on behalf of HMI would get defeated and therefore in order to balance the convenience between the parties and on considering the prima facie case made out by the applicant in this regard, this Court is inclined to pass the following Order:-

(i) That the respondent is hereby restrained from making any encumbrance of creating any third party right over the machineries which are morefully described in the Schedule A & B of the Judge Summons.

(ii) In order to have inventory for the purpose of repossessing the machineries morefully described in the schedule Mr.N. Srinivasan, learned Advocate having Office at No.322, Law Chambers, Madras High Court Buildings, Chennai -600 104 (Mobile No.9444069906) is appointed as Advocate Commissioner, whose initial remuneration is fixed at Rs.1,00,000/-(Rupees One Lakh only), who shall visit the places of the respondents premises and take an inventory of available machineries and also repossess the same and file a report to that effect before this Court.

(iii) In order to assist the learned Advocate Commissioner so appointed, Mr.A.V. Arumugam, learned Advocate, having Office at No.322, Law Chambers, Madras High Court Buildings, Chennai - 600 104 is hereby appointed as Additional Advocate Commissioner, whose initial remuneration is fixed at Rs.50,000/-(Rupees Fifty thousand only).

(iv) The learned Advocate Commissioners to execute the warrant, if need be, can take the assistance of the Station House Officer concerned and in this regard, if this Order/warrant issued by this Court is produced by the learned Advocate Commissioners the concerned jurisdictional police officer shall render all assistance and depute necessary police personnel at the requirement of the learned Advocate Commissioners for giving protection in securing the machineries and mouldings and also for the proper execution of the warrant.

16. The learned Advocate Commissioner shall be accompanied by the representative of the applicant, in order to identify the machineries morefully described in the Schedule A and B of the Judge Summons and after completing the task, the machineries either can be repossessed by recording the same by the Advocate Commissioner and keep it at the premises of the respondent or if the applicant is ready and willing to take the repossession of the machineries to their premises, the same can be done accordingly. These directions are issued as an interim measure in this application.

17. Notice to the respondent returnable in two weeks. Private notice is also permitted."

2. Again on 29.04.2019, the learned Single Judge passed another Common order in Application Nos.3052 and 3053 of 2019 and the relevant portion of the order is quoted below for ready reference:-

" 5. On considering the said Memo/report filed by the Advocate Commissioner and the Additional Advocate Commissioner and the copy of the complaint given to the police, this Court is inclined to pass the following Order:

(i) That the Superintendent of Police, Kancheepuram District is hereby directed to

give suitable instructions to the concerned police officer not below the rank of Deputy Superintendent of Police having Jurisdiction over the premises of the respondent, where the Advocate Commissioner and Additional Advocate Commissioner were threatened on 28.04.2019, to investigate the matter and file a detailed report before this Court in this regard. If the investigating Officer to be named by the Superintendent of Police finds any cognizable offence made out, suitable action be taken under the code of Criminal Procedure by the Officer concerned of the police and file a report to that effect also before this Court.

(ii) In the meanwhile, the machineries and the mouldings lying at the premises of the respondent shall not be meddled with or encumbered by the respondent under any mode and also the respondent shall file an affidavit before this Court during the next hearing as to the outstanding payable by the respondent as on today. Post the matter on 03.06.2019."

6. In the meanwhile, it is open to the parties to move this matter in any of the vacation Court, if any contingency or urgency arise. Since the warrant has not been executed, the Advocate Commissioners need not return the same and depending upon the report to be filed by the police as directed above, further orders would be passed by this Court during the next hearing."

3. Application No.3753 of 2019 came to be filed by the present appellant viz., Kanchipuram Podhu Thozhilalar Sangam/Trade Union, seeking impleadment of the proceedings in Application No.3052 of 2019. The learned Single Judge by Order dated 13.06.2019 dismissed the Application No.3753 of 2019. The relevant portion of the Order passed in Application No.3753 of 2019 is extracted hereunder for ready reference:-

"18. From the foregoing discussion, it is clear that in the absence of any privity of contract, much less an agreement with the first respondent in A.No.3753 of 2019, the applicant therein cannot ask for impleadment. Accordingly, A.No.3753 is liable to be dismissed.

19. As stated earlier, already the reliefs sought for by the applicant in A.Nos.3052 and 3053 of 2019 under Section 9 of the Act were granted by this Court and they were complied with."

4. The other Application Nos.3052 and 3053 of 2019, filed under Section 9 of the Arbitration and Conciliation Act, 1996 came to be disposed of on 13.06.2019 and the relief sought for in Application Nos.3052 and 3053 of 2019 were granted by this Court and they were complied with. Aggrieved by the said order of the learned Single Judge, the Workmen/trade union has filed the present appeal before us.

5. Mr.K.C. Karl Marx, learned counsel for the appellant urged that the livelihood of the workmen of the respondent viz., M/s Chowel India Private Limited, depends on the continued existence of the said machineries in the factory premises of the respondent and therefore, they should not be allowed to be removed from the said premises. He drew the attention of this Court by relying the judgment of the Hon'ble Supreme Court in the case of Bharath Sanchar Nigam Ltd vs Siemens Financial Services Ltd reported in 2016 SCC online Bom 5317 and submitted that even a third party can file an appeal against the Arbitration Award if their rights were affected.

6. On the other hand, the learned counsel for the respondents submitted that the workmen have no locus-standi to file the present appeal, as they are neither parties to the Agreement, in question, nor parties to the Arbitration Proceedings and merely because they file an impleading application, which came to be rejected, it does not give them right to assail the order of the learned Single Judge, under which, the machineries were handed over to the respondent. Whatever is their claim against the present employer M/s Chowel India Private Limited, they are free to agitate against the respondent in accordance with law. The learned counsel relied on a judgment of the Hon'ble Supreme Court in the case of Firm Ashok Traders vs Gurumukh Das Saluja reported in (2004) 3 SCC

155 and National Textile Workers Union vs P.R. Ramakrishnan reported in (1983) 1 SCC 228.

7. Having regard to the submissions made by the learned counsel on either side and perusing the materials available on record, we are satisfied that the present appeal, filed by the workmen, not only lacks locus-standi, but also has otherwise become infructuous.

8. The dispute, which is the subject matter of the pending Arbitration Proceedings, is between the parties to the Agreement viz.,
M/s Hwashin Automotive India Ltd and M/s Chowel India Private Limited. The workers have no pre-emptive rights over the machineries.

9. Be that as it may, in any case, as per the Order of this Court, since the machineries have already been removed under the supervision of an Advocate Commissioner and even sent out of the premises of M/s Chowel India Private Limited, the present appeal, filed by the workmen, has become infructuous.

10. Therefore, we find no merit in the present appeal. Accordingly, the Original Side Appeal is dismissed. No costs.

11. In view of the order passed in the Appeal, the Contempt Petition and the sub applications are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

sr

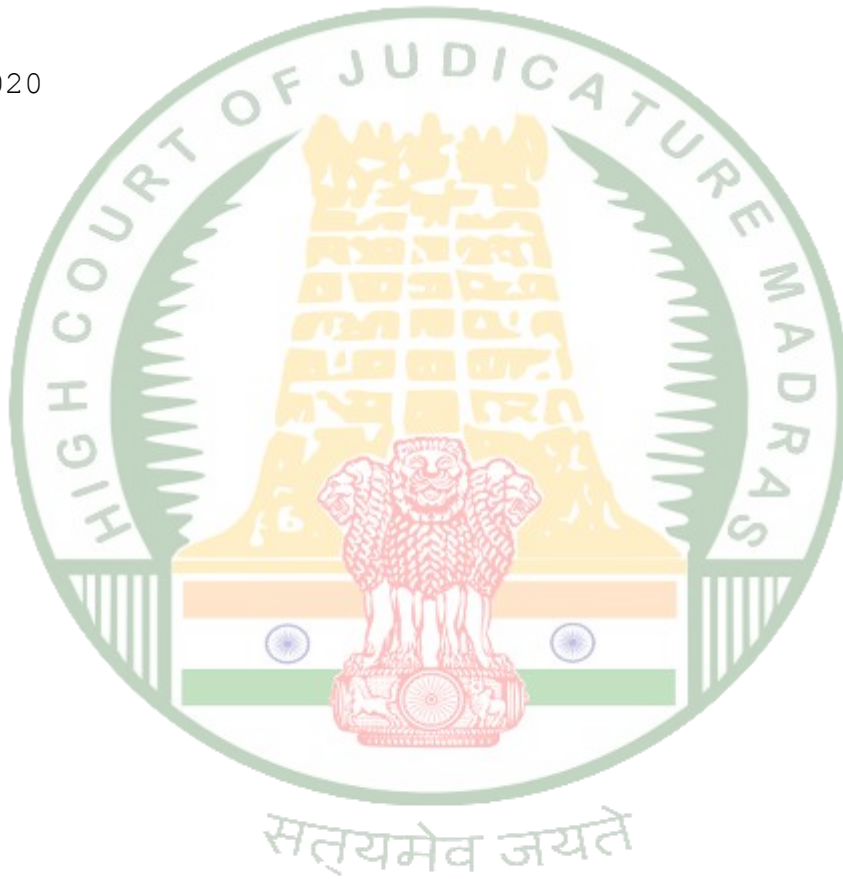
To

The Sub Assistant Registrar,
(Original Side),
High Court,
Madras

+1 cc to Mr.P.Rajkumar Advocate sr89317
+1 cc to Mr.Inthu Karunakaran Advocate sr88983
+1 cc to Mr.K.C.Karl Marx Advocate sr88935

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