

A.No.5566 of 2019
in
A.No.3997 of 2018

PUSHPA SATHYANARAYANA, J.

The applicant-Company has filed this application seeking to permit the applicant to withdraw the Bank Gurantee bearing No.000087FGI800000006, dated 21.05.2018 for a sum of U.S.\$87,981.39 issued by the Indian Bank, Harbour Branch, No.66, Rajaji Salai, Chennai 600 001 and submitted to the Registrar General of this Court pursuant to the order dated 09.05.2018 made in A.No.3997 of 2018 on the file of this Court.

2. The applicant-Company, which is in Singapore, had filed an application earlier in A.No.3997 of 2018 under Section 9 of the Arbitration and Conciliation Act seeking release of the goods in which an order was passed on 09.05.2018 directing the applicant to furnish Bank Guarantee drawn on any nationalised bank in favour of the Registrar General of this Court on or before 20.05.2018. On furnishing the Bank Guarantee, the order passed by the learned Sole Arbitrator in I.A.No.1 of 2018 dated 04.05.2018 shall not be given effect to. It is stated that in compliance of the said order passed by this Court on 09.05.2018, the applicant had furnished a Bank Guarantee to the tune

of U.S.\$87,981.39 issued by the Indian Bank, Singapore Branch through the Indian Bank, Harbour Branch before the Registrar General of this Court. Thereafter, the goods were released vide order dated 11.06.2018. It is now stated that by the applicant that till today, neither any notice regarding the arbitral proceedings by the second respondent was served on them nor the first respondent initiated any arbitral proceedings against the applicant in terms of the arbitration agreement. Hence, the present application is filed seeking release of the Bank Guarantee furnished on 21.05.2018 for a sum of U.S.\$87,981.39 issued by the Indian Bank, Harbour Branch, No.66, Rajaji Salai, Chennai 600 001.

3. Despite service of notice on all the respondents, there is no appearance for the respondents. Hence, this Court had directed an affidavit to be filed by the applicant giving an undertaking. Accordingly, an affidavit of undertaking dated 14.09.2019 is filed by the applicant in which, in para 5, it is stated as follows:

I state that I am filing this affidavit for and on behalf of the Applicant-Company to place on record the undertaking given by the Applicant-Company before this Hon'ble Court that the applicant shall furnish necessary security by way of Bank Guarantee or otherwise to the tune of U.S.\$87,981.39, being the claim made by the 1st respondent, in the event of the 1st respondent commencing Arbitral proceedings as against the Applicant-Company in

future relating to the four contracts dated 12.04.2016, 09.05.2016, 11.05.2016 and 11.05.2016, which is the subject matter of Application No.5566 of 2019.

4. The above said undertaking is recorded. In view of the same, the Bank Guarantee bearing No.000087FGI800000006, dated 21.05.2018 for a sum of U.S.\$87,981.39 issued by the Indian Bank, Harbour Branch, No.66, Rajaji Salai, Chennai 600 001 is directed to be released. The applicant shall furnish the necessary security in the event of the first respondent commencing arbitral proceedings against the applicant-Company in future.

5. Accordingly, this application is allowed.

20.09.2019

rsi

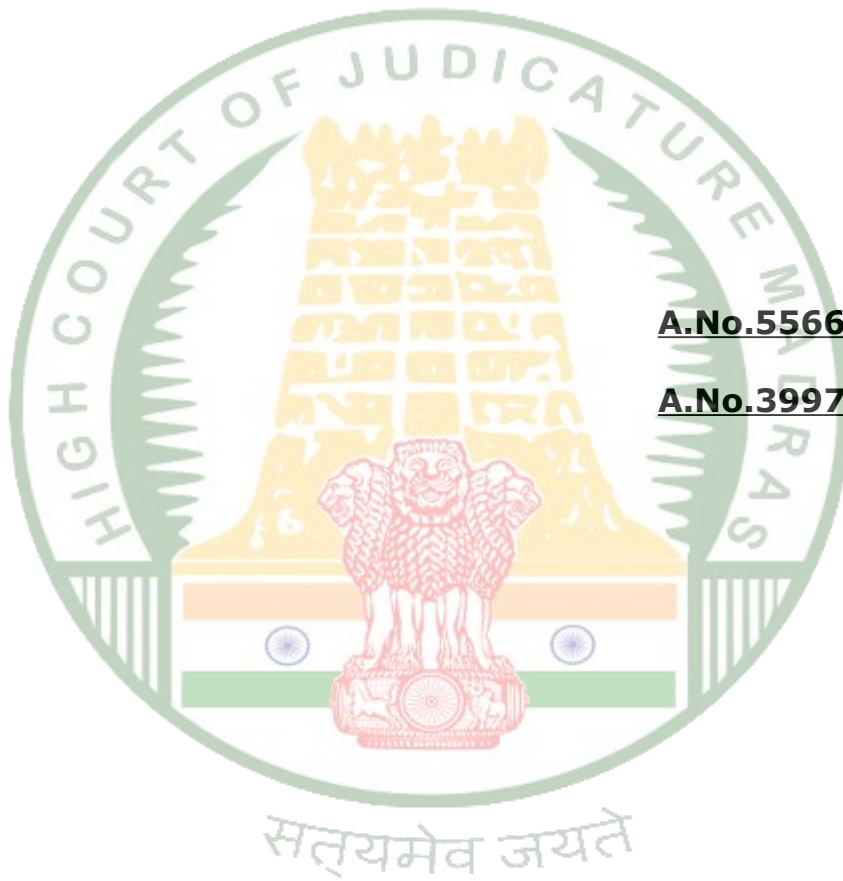
Note: Issue order copy on or before 27.09.2019.

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PUSHPA SATHYANARAYANA, J.

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