

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

O.S.A.No.267 of 2019

and

C.M.P.No.22289 of 2019

Mr.Aboobucker

... Appellant/Appellant

vs.

1.M/s.Larsen & Toubro Ltd.,
PB No.979, Mount Poonamallee Road,
Manapakkam, Chennai-600 089
Rep.by Mr.T.S.Harish,
Head Legal(Middle East)
and Power Agent

2.M/s.Indarya Green Power (P) Ltd.,
No.132, II Floor, Thirumala Complex,
Royapettah High Road,
Royapettah,
Chennai-600 104

... Respondents/Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of O.S.Rules read with Clause 15 of the Letters Patent against order dated 20.08.2019 passed in A.No.5997 of 2019 in O.P.No.642 of 2019.

Application praying that this Hon'ble Court be pleased to stay the operation of the Award dated 12.09.2018 passed by the Hon'ble Arbitral Tribunal pending disposal of the OP.

For Appellant : Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.N.P.Vijay Kumar

For Respondents : Mr.S.Sreesh for R1

JUDGMENT

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

This Original Side Appeal has been filed against the Interlocutory Order passed by the learned Single Judge on 20.08.2019 in Application No.5997 of 2019 in O.P.No.642 of 2019, directing the appellant to deposit a sum of Rs.15 Crores subject to the pendency of the Original Petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, for setting aside of the award.

2.Mr.AR.L.Sundaresan, the learned Senior counsel appearing for the appellant submitted that the appellant is only a Chairman of the second respondent company M/s.Indarya Green Power (P) Ltd., to whom a contract was initially awarded by the first respondent M/s.Larsen & Toubro Ltd., and an advance of Rs.35 Crores was paid to the second respondent/M/s.Indarya Green Power (P) Ltd.,. On account of some dispute, the project could not be completed. Therefore, the first respondent M/s.Larsen & Toubro Ltd., demanded the re-fund of the advance amount of Rs.35 Crores and an award in this regard was passed by the Arbitral Tribunal, on 12.09.2018, which has been challenged by the appellant under Section 34 of the Act.

3.It is submitted that the present appellant was not even a necessary party in the Arbitral Proceedings and there was no Arbitral Clause in the Guarantee Deed executed by the appellant in favour of M/s.Larsen & Toubro Ltd., and no fair opportunity of hearing was given by the Arbitral Tribunal, to the appellant. Therefore, the said condition imposed by the learned Single Judge in the aforesaid impugned Interlocutory Order dated 20.08.2019 is onerous.

4.The learned counsel for the first respondent/M/s.Larsen & Toubro Ltd., Mr.S.Sreesh, however, opposed this submission and urged that the total claim, in execution of the said Arbitral award, is to the extent of Rs.64.15 Crores, including interest, and therefore, the condition imposed by the learned single Judge in the interim order in O.P., under Section 34 of the Act, is justified and it does not require any interference in the present Intra Court Appeal.

5.Having heard the learned counsel for the parties, we find considerable force in the contention raised by the learned

counsel for the first respondent/M/s.Larsen & Toubro Ltd., and it is true that normally, the interlocutory orders would not require any interference by this Court in appellate jurisdiction. However, looking to the nature of the dispute involved and the Original Petition being pending before the learned Single Judge, we direct that instead of Rs.15 Crores (Rupees Fifteen Crores), the present appellant shall deposit a sum of Rs.10 Crores (Rupees Ten Crores only), within a period of three weeks from today, to the credit of O.P.No.642 of 2019, with the Registrar (General) of this Court. We further request the learned single Judge to decide the Original Petition No.642 of 2019 as expeditiously as possible.

6. With the above observations, the Original Side Appeal stands disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

msk

To:

1. The Sub Assistant Registrar,
Original Side,
High Court,
Madras.

Copy to:

1. The Registrar General,
High Court, Madras.

2. The Section Officer,
Accounts Section,
High Court, Madras.

+2cc to Mr.N.P.Vijay Kumar, Advocate sr.87111

O.S.A.No.267 of 2019

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