

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 25TH DAY OF APRIL 2019

THE HON'BLE MR. JUSTICE M.SUNDAR

A. No.9432 of 2018

in

O.P. No.232 of 2017

In the matter of Section 34 Arbitration and Conciliation Act, 1996 and In the matter of dispute between M/s.simplex Infrastructures Ltd. and the Tamil Nadu Maritime Board, on the work of rehabilitating the eastern bank of Kaduvaiyar River at Nagapattinam Port by Providing a disaphragm wall to a length of 650m so as to maintain the river depth and to prevent crosion of Easter River Bank Phase II Agt.No.05/SE/TNMB/2007-08.

And

In the matter of the Award dated 21.07.2016 passed by the Hon'ble Arbitrator in the arbitration proceedings between the Petitioner and Respondent

1.The Tamil Nadu Maritime Board,
3rd and 4th Floors,
No.171, South Kesavaperumalpuram,
Greenways Road, R.A.Puram.
Chennai - 600 028

... Applicant/Petitioner

-Versus-

M/s.Simplex Infrastructure Ltd.
No.48, Casa Major Road,
Egmore, Chennai - 600 008

... Respondent/Respondent

Application praying that this Hon'ble Court be pleased to pass an order of stay of the Impugned Award dated 21st July 2016 and the proceedings in E.P.No.103 of 2017.

This application coming on this day before this Court for hearing the Court made the following order:-

Sole petitioner in the main 'Original Petition' ('OP' for brevity) is the sole applicant herein and sole respondent in the main OP is the sole respondent in the instant application. Parties to the instant application shall be referred to by their respective ranks in the main OP for the sake of convenience and clarity. Besides being so referred i.e., by their ranks in the main OP, petitioner, The Tamil Nadu Maritime Board shall be referred to as 'board' and sole respondent, Simplex Infrastructure Limited shall be referred to as 'contractor'.

2. There was a contract between the petitioner board and the respondent contractor being contract dated 26.04.2007 (hereinafter 'said contract' for brevity). Suffice to say that said contract pertains to the work of rehabilitating the eastern bank of Kaduvaiyar river at Nagapattinam Port by providing a diaphragm wall so as to maintain the river depth and to prevent erosion of eastern river bank.

3. Disputes arose between the petitioner board and the respondent contractor pertaining to said contract and the same were dealt with by an 'Arbitral Tribunal' ('AT' for brevity) constituted by a sole Arbitrator, who is a former Judge of this Hon'ble Court.

4. AT passed an arbitral award dated 21.07.2016 (hereinafter 'impugned award' for brevity) which has been called in question/challenge/assailed in the main OP by petitioner board under Section 34 of 'The Arbitration and Conciliation Act, 1996' ('A & C Act' for brevity). As the impugned award is in favour of the respondent contractor, an 'Execution Petition' ('EP' for brevity) being EP.No.103 of 2017 on the file of the learned Master of this Court was launched by the respondent contractor for recovering monies due under the impugned award. Obviously, petitioner board has been arrayed as respondent/judgment-debtor in the said EP.

5. It is under the aforesaid circumstances that the petitioner Board has taken out the instant application i.e., A.No.9432 of 2018 with a prayer for stay of operation of the impugned award and the proceedings in the aforesaid EP. Though caption in the Judge's Summon says that it has been filed under Order XIV Rule 8 (obviously of The Original Side Rules) read with Section 151 of 'The Code of Civil Procedure, 1908' ('CPC' for brevity), considering the

nature of the main OP and the interim prayer herein, it is clearly a prayer under Sub-Section (2) of Section 36 of A & C Act.

6. Therefore, instant application is being treated as one *inter alia* under Section 36(2) of A & C Act.

7. A counter affidavit has been filed by the respondent contractor, resisting the prayer for stay.

8. Mr. M. Sricharan Rangarajan, learned Special Government Pleader for the petitioner Board and Mr. Thriyambak J. Kannan, learned counsel for respondent contractor were before this Court.

9. In the earlier hearings, it was submitted by learned counsel for respondent contractor that in the event of the respondent contractor succeeding in the instant OP, they may ultimately be left high and dry, if they are not able to execute the impugned award and realise monies thereunder. It was also pointed out that in the executing Court, an application in A.No.134 of 2019 has been taken out under Order XXI Rule 41 Sub-Rule (2) of CPC seeking disclosure of assets.

10. Responding to the above, learned State counsel has today filed an affidavit dated 23.04.2019 sworn to by the

Executive Engineer (Civil) of the petitioner board, wherein there is disclosure of two immovable assets. It is also averred in the affidavit that the total value of the immovable assets is Rs.1,32,47,929/- (in other words, little over Rs.1.32 crores), which is clearly well above the quantum of award qua impugned award.

11.To be noted, the most relevant portion of disclosure affidavit filed today is paragraph 5 and the same reads as follows :

5.I submit that the assets of the petitioner herein is as follows :

Details of immovable assets classified under Non-Residential Buildings in the books of accounts as on 31.03.2018 pertaining to Nagapattinam Port

Sl.No.	Description	Value as on 31.03.2018 (Rs.)
1.	Two RCC cargo sheds at Nagapattinam Port	1,32,47,929/-
	Total	1,32,47,929/-

12.Adverting to paragraph 5, learned State counsel on instructions submitted that the aforesaid two immovable assets, will not be alienated, encumbered or dealt with in any other manner till disposal of the instant OP without leave of this Court. It will also be open to the petitioner board to make a prayer for substituting the immovable assets with other forms of security, if the need arises.

13. Responding to this, learned counsel for respondent contractor submitted that as the interest of the respondent contractor is secured qua the aforesaid EP, the EP can remain in abeyance. In other words, by consent of both sides, there will be an order of interim stay as prayed for in the instant application till disposal of the main OP.

14. Be that as it may, in the light of the narrative *supra*, with the consent of both the learned counsel, this Court summoned the case file pertaining to the EP being EP.No.103 of 2017.

15. The aforesaid application for disclosure being A.No.134 of 2019 is before this Court. In the light of the narrative *supra* and in the light of the order that has been passed in instant application A.No.134 of 2019 is also disposed of as closed. To be noted, such a course is being adopted for the purpose of avoiding any ambiguity in the execution proceedings before the learned Master.

16. The EP will go back to the learned Master and will remain in abeyance, subject to the outcome of instant OP. To be noted, this recording of reasons within the meaning of Sub-Section 3 of Section 36 of A & C Act.

17. Instant application is disposed of on above terms.

18. Both counsel are hopeful of expeditious disposal of OP, particularly, in the light of Sub-Section (6) of Section 34 of A & C Act.

19. List the main OP in the second week of June 2019 under the caption 'for arguments'.

Sd/.M.S.J
25.04.2019

//Certified to be a true copy//

Dated this the day of 2019.

TE/10/05/2019

COURT OFFICER

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

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