

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.01.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.A.No.34 of 2020

1. Mohan Raghavendran
2. Uma Mohan

.. Applicants

vs.

1.Sidhesh Vijayakumar
2.Divya Kalyanakrishna
3.Sidhesh Vijayakumar (H.U.F)

.. Respondents

Original Application filed under Section 9 of the Arbitration and Conciliation Act, 1996 and Order XIV Rule 8 of O.S. Rules, to grant an order of interim injunction restraining the respondents, their men, agents, representatives, servants, assigns or persons acting or any one claiming under them from in any manner to harass and torture the applicants by forcing them to part with money and or property by using foul language/muscle power by visiting the home of the applicants.

For Applicants : Mr.Nithyaesh Natraj

For Respondents : Ms.S.Bhagavathy for Mr.G.Ganeshkumar

ORDER

Mr.Nithyaesh Natraj, learned counsel on behalf of two applicants is before this Court. Though the matter is listed under the caption 'MOTION CASES', Ms.S.Bhagavathy, learned counsel is before this Court and learned counsel submits that she has instruction to accept notice on behalf of all the three respondents. Learned counsel submits that Vakalatnama will be filed tomorrow before the close of working hours in the Registry and that the Vakalatnama will be filed by M/s.G.Ganeshkumar, P.G.Rajasri, S.Bhagavathy having address for service at Room No. 115, Door No.9, 1st floor, Kondi chetty street, Parrys, Chennai - 600 001, Mobile: 9884255146. This is recorded. Registry is directed to receive the Vakalatnama tomorrow though instant application is being disposed of today by consent of both sides.

2. In the light of both sides agreeing that a sole arbitrator constituting Arbitral Tribunal may be appointed by this Court, this Court refrains from dilating on facts.

3. There is no dispute about the existence of arbitration agreement between the parties to this application. Both sides very fairly submitted that arbitration agreement between the parties to this application being an

arbitration agreement within the meaning of Section 7 of 'The Arbitration and Conciliation Act, 1996', (Act No. 26 of 1996) (hereinafter referred to as 'A and C Act' for the sake of brevity) is in the form of a covenant in the agreement captioned 'Contract/Agreement of service' dated 08.07.2019 and the relevant clause is clause 7 which reads as follows:

'7. Arbitration clause — Incase of any default/dispute/difference including for recovery of the degradation of capital, the parties can call upon each other for mediation. If the issue is not resolved mutually within 15 days, Parties can call for Arbitration in accordance to the provisions of Arbitration and consideration Act 1996 (and as amended). The sole arbitrator will be appointed by Party A and the venue of arbitration shall be in Chennai, Language shall be in English. The Arbitration award shall be final and binding on the parties. Each party shall prepare and bear the cost equally of the cost of arbitration'.

4. Going by *Duro Felguera SA* principle (reiterated in *Mayavati Trading case*) laid down by Hon'ble Supreme Court in *Duro Felguera, S.A. versus Gangavaram Port Limited* reported in (2017) 9 SCC 729, though those

principles were rendered qua Section 11, in the light of consensus between the parties as there is no disputation or contestation about the existence of arbitration agreement, this Court proceeds to appoint a sole arbitrator at request of both sides, obviously, without expressing any opinion on the merits of the matter and leaving it open to the Arbitral Tribunal to decide the issues between the parties.

5. Mr.R.Srinivas, Advocate, No.10/2, Narayanan street, Mahalingapuram, Chennai - 600 034, (Mobile:9841028008) is appointed as the sole arbitrator to enter upon reference and adjudicate all arbitrable disputes that have arisen between the parties qua aforesaid agreement together with collateral to indemnify contract and agreement of guarantee (all dated 08.07.2019, 06.09.2019 and 18.09.2019 respectively) in accordance with The Madras High Court Arbitration Proceedings Rules, 2017 and The Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017. The arbitration proceedings shall be conducted under the aegis of the Madras High Court Arbitration Centre, Chennai - 600 104.

6. It is open to the applicants to present the copy of this application before learned sole arbitrator with a request to treat the same as an

application under Section 17 of A and C Act. It is open to both parties to seek suitable interim reliefs before learned arbitrator. Original application is disposed of. There shall be no order as to costs.

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Speaking Order/Non-Speaking Order

Index : Yes/No

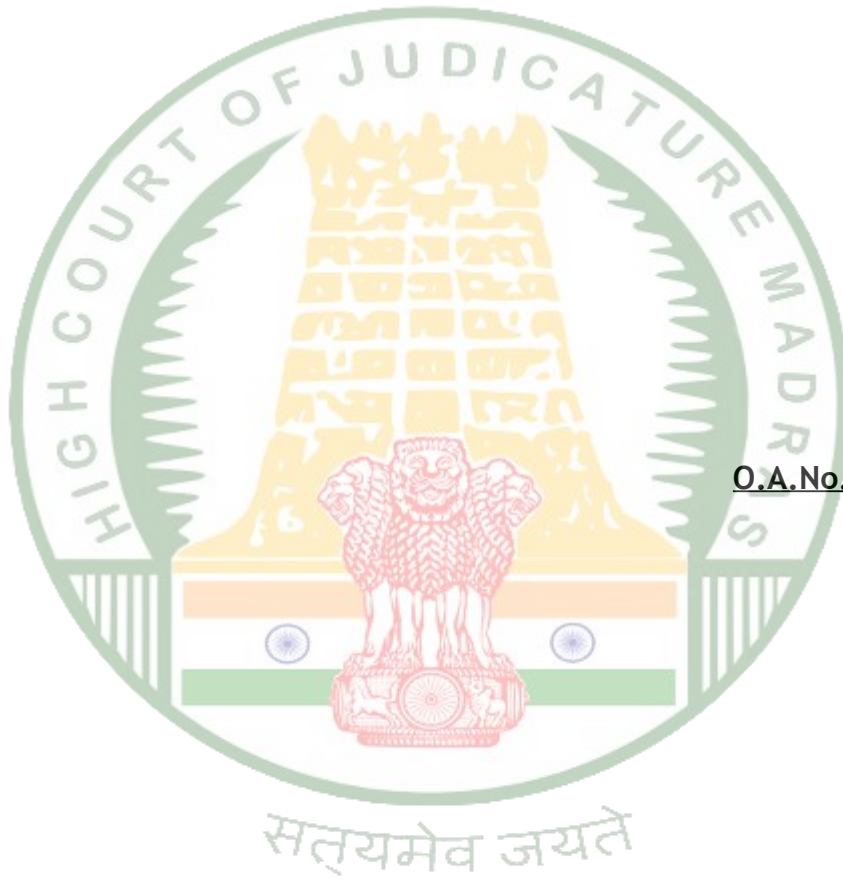
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M.SUNDAR,J.

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