IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/9/2020

C O R A M

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.A.No.379 of 2020
a n d
A.No.1875 of 2020

R.K.Ganapathi Chettiar ... Applicant

Vs

1. Komatha Impex Private Limited

2. State Bank of India
   rep. By its Branch Manager
   Guindy Branch
   Chennai. ... Respondents

Prayer: Petition filed under Order XIV Rule 8 of Original Side Rules read with Section 9 (ii) (a) (e) of the Arbitration and Conciliation Act, 1996.

For applicant ... Mr.Ravikumar Paul
Senior Counsel
for Mr.Ramesh Ganapathy

For respondents ... Mr.Dhanaram Ramachandran

COMMON ORDER

Original Application No.379 of 2020 has been filed to grant an order of injunction restraining the first respondent, its Directors, employees or anyone acting on their behalf from selling, transferring or in any manner dealing with the goods viz., unsalted Creamy Butter carried under Bill of Lading Nos.AKL000452300 AKL000452200 both dated 3/8/2020 and ACD048497 dated 10/8/2020, at present in Chennai Port, to anyone other than the applicant pending final adjudication of the disputes between the applicant and the first respondent through arbitration.

2. A.No.1875 of 2020 has been filed to direct the first respondent to furnish security for the amount of Rs.4,86,41,925/- paid by the applicant for the said consignments within a date set by this Court failing which to order attachment of the monies lying in Account No.32665506819 of the first respondent in State Bank of India, First Line Beach Road Branch (IFSC Code SBIN0004804) Chennai to the

extent of the said sum of Rs.4,86,41,925/- pending resolution of the disputes through arbitration.

3. It is the case of the applicant that first respondent, who is distributor in India for the products of Fonterra Limited, a well known manufacturer of butter and dairy products. The applicant has started to purchase the butter through the first respondent, who imported the same as their Indian distributor on a regular basis. Accordingly, applicant has placed the purchase orders. When the goods have been dispatched to India, first respondent had sent e-mail, dated 28/8/2020 with three revised commercial invoices claiming additional amount for the original invoices, under the pretext that as requested by the applicant, the invoices have been sent, when no such request was ever made by the applicant. Therefore, it is the contention that goods have been lying in the Port Trust and if the same would be allowed to be transferred or sold by first respondent, applicant would be put to irreparable loss and hardship.

4. Since the applicant has made out a prima facie case and balance of convenience in his favour, vide order, dated 4/9/2020, interim injunction was granted till 14/9/2020.

5. On an earlier occasion, learned counsel appearing for the appellant submitted that a sum of Rs.1,00,000/- per day is charged as demurrage charges for the consignments. By way of reply, learned counsel appearing for the first respondent submitted that in the event the Court finds fault on the part of the first respondent, the above cost will be paid. Submission of the learned counsel appearing for the first respondent was recorded on 15/9/2020.

6. Today, when the matter was taken up for hearing, through Video Conferencing, learned counsel appearing for the applicant submitted that Bank is still retaining the documents with them.

7. Learned counsel appearing for the first respondent would submit that original documents concerning the goods are still under the

symbolic custody of Fonterra Ingredients and actual custody of the second respondent. Second respondent will not release the documents unless directed so by Fonterra Ingredients which in turn makes Fonterra Ingredients the rightful owner of the goods as on date.

8. From the materials available on record, it could be seen that the entire amount of Rs.4,86,41,925/- have been paid and the same was acknowledged by the first respondent. Thereafter, the first respondent has raised amounts under the same invoices and claimed different amounts.

9. Objection of the learned counsel that arbitration agreement cannot be pressed into service, and in fact, the main objection of the learned counsel that original agreement has not signed by the first respondent. Therefore, there cannot be any arbitral agreement. Such contention cannot be countenanced. The very draft itself is sent by the first respondent for obtaining the signature of the applicant. After signing the agreement was sent back.

10. Learned counsel for the first respondent submitted that if applicant is willing to waive the demurrage charges and detention charges. Their client is prepared to handover IC and the learned counsel appearing for the applicant submitted on instructions from their client, they also agreed for the same. Such a view of the matter, applicant is permitted to take the goods from the Port. First respondent should facilitate the release of such goods. Second respondent Bank also directed to deliver all the documents to applicant or Port authorities, as the case may be.

11. In such a view of the matter, applicant shall waive the demur rage and detention charges. Both parties have submitted that they have no claim against each other. Learned counsel for the respondent also submitted that they will give the SLP details to the applicant. The said submissions are recorded.

12. Accordingly, **Original Application No.379 of 2020 and A.No.1875 of 2020 are disposed of.**

30/9/2020

mvs.

N.SATHISH KUMAR,J

mvs.

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30/9/2020