

A.No.3139 of 2020
in O.A.No.716 of 2020

P.T.ASHA, J.,

The applicant has filed two applications viz., (a) Garnishee Application No.3139 of 2020 and Original Application No.716 of 2020 restraining the respondent from encashing the Advance Bank Guarantee. The records would show that the applicant and the respondent were interested with the work of setting up a plant for the second respondent in Application No.3139 of 2020 herein after called the Garnishee. In pursuance of the said joint venture, the respondent had invited offers and the applicant was selected for manufacturing service machinery required for the project. On 24.04.2018, a purchase order was received for a total project value of Rs.5,45,00,000/-. As per the conditions of the contract, the applicant was required to furnish the contract bank guarantee and an advance bank guarantee each valued at 10% of the project cost. The same was also furnished by the applicant. Though substantial manufacturing with reference to the project came to be carried out by the applicant for delivery during the period of January 2019 to March 2019, the respondent did not pay the proforma value amount of 60% of the total contract value as agreed between the parties.

2. Therefore, the applicant had invoked the Arbitration Clause and filed an application under Section 9 of the Arbitration and Conciliation Act in O.A.No.1043 of 2019 for an injunction restraining the first respondent from invoking the "contract performance bank guarantee" and the "Advance Bank guarantee". By order dated 22.11.2019, this Court was also pleased to grant an order of interim injunction.

3. Pending the above proceedings, the compromise was entered into between the applicant and the respondent and one of the terms of the agreement was that the applicant should withdraw the proceedings in O.A.No.1043 of 2019 and the respondent would pay the sum of Rs.100.4 lakhs in two instalments. The applicant had withdrawn the original application. However, the applicant would submit that after paying the sum of Rs.45,00,000/- on 29.02.2020, the remaining sum of Rs.61,63,564/- remained unpaid by the first respondent, till date.

4. Consequently, the applicant was constrained to issue a legal notice to the first respondent in Application No.3139 of 2020 and a copy was marked to the Garnishee on 02.11.2020, requesting the

Garnishee to honour their mandate dated 25.11.2019, whereunder they had assured payment of the outstanding by the respondent. To the above notice, the respondent had sent a reply notice dated 04.11.2020 promising to liquidate the outstanding amount of November 2020 and as a pre-condition called upon the applicant to withdraw their legal notice. The applicant responded to the said request and withdrew the legal notice dated 02.11.2020, subject to the respondent making payment of 50% of the outstanding by 20.11.2020 and reminders by dated 30.11.2020. This arrangement was accepted by the respondent vide email communication dated 10.11.2020. Believing the promise, the applicant had also withdrawn the legal notice, however no payment was made and the applicant is put to tremendous hardship. The respondent is now attempting to invoke the bank guarantee. That apart, the Garnishee is due payments to the respondent under the contract. Therefore, the above applications have been filed by the applicant.

5. It is evident that the respondent has not kept up any of its assurances though the applicant had on both occasions honoured the same. Despite the applicant withdrawing the earlier application and

the legal notice, the respondent has not come forward to make the payment. In these circumstances, if the respondent is permitted to encash the bank guarantee it would cause prejudice to the applicants. Further the conduct of the respondent is to say the least elusive. It is also seen that the bank guarantee is due to expire only on 30.11.2021. In these circumstances, there shall be an order of injunction till 21.01.2021 restraining the respondent from revoking the advance bank guarantee issued by ICICI bank value at Rs.47,45,925/-

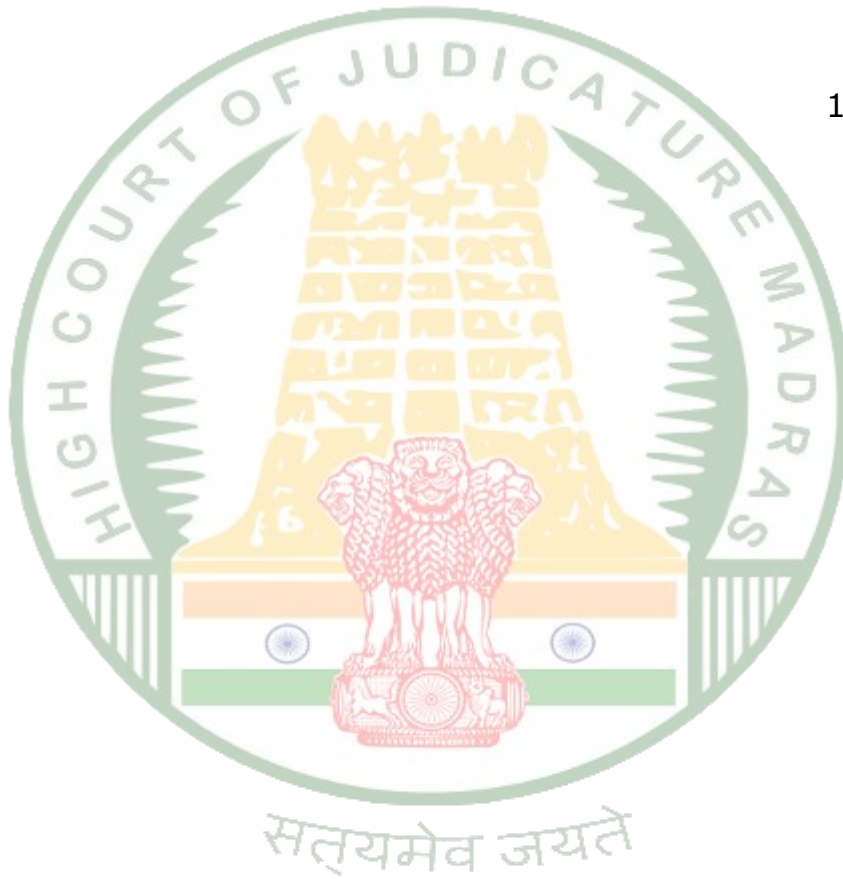
6. M/s.Neyveli Uttar Pradesh Power Limited, the Garnishee/the first respondent in Application No.3139 of 2020 had assured the applicant that they would ensure repayment by the respondent. Therefore, taking into account the fact that the respondent till date has not cleared the outstanding as promised by them and taking into account the minutes of the meeting held on 27.01.2020, there shall be a prohibitory order against the Garnishee from paying the respondent/E.Harley and Company Private Ltd., a sum of Rs.61,63,564/- and consequently, there shall be a direction to the second respondent/Garnishee to deposit the said amount to the credit

of A.No.3139 of 2020. Consequently A.No.3139 of 2020 is closed.

7. Notice in O.A.No.716 of 2020 to the respondent returnable by 21.01.2021. Private notice is also permitted.

18.12.2020

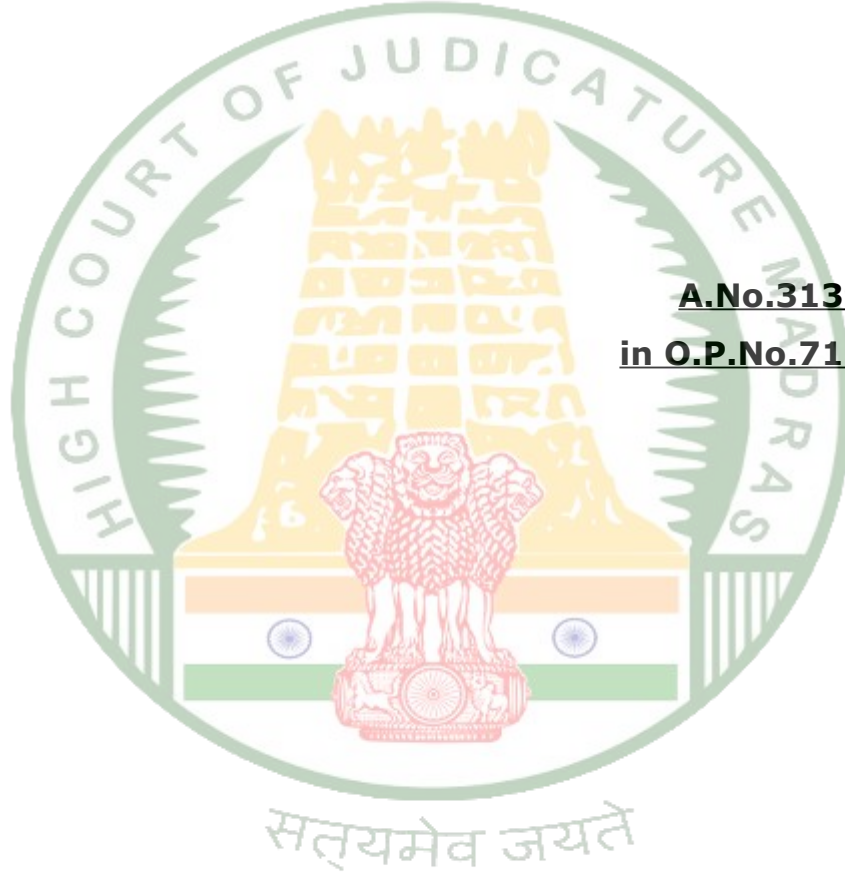
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