

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Miscellaneous Appeal Nos.3542 & 3544 of 2019 &
C.M.P.Nos.20641, 20645, 20671, 20672 of 2019

1. Mr.A.Mohamed Rafique, S/o.Mr.A.Abdul Rahim,
Partner,
M/s.Raku Ice and Cold Store,
No.7/135, Mohamed Sadalipuram,
Thoothukudi - 628 002.
 2. Mr.A. Mohamed Abubacker, S/o.Mr.Abdul Rahim,
Partner,
M/s.Raku Ice and Cold Store,
No.7/135, Mohamed Sadalipuram,
Thoothukudi - 628 002. ... Appellants in both
appeals
- versus
1. Mr.Uthayakumar, S/o.S.Chelliah,
Partner,
M/s.Raku Ice and Cold Store,
No.396/32, Sahayapuram, Lions Town,
Thoothukudi - 628 001.
 2. Mr.C.Thadeyu Johnson, S/o.S.Chelliah,
Partner,
M/s.Raku Ice and Cold Store,
No.396/32, Sahayapuram, Lions Town,
Thoothukudi - 628 001. ... respondents in
both appeals

These appeals filed under section 37(2) (b) of the Arbitration and Conciliation Act, 1996 to set aside the Order dated 07.08.2019 passed in Application Nos.1 and 3 of 2018 in A.F.No.25 of 2018 in O.P.No.962 of 2017 pending disposal of the arbitration proceedings before the Sole Arbitrator.

Application 1/2018 Prayer:- Direction to the respondents to either furnish security for a sum of Rs.4,64,52,172/- or to produce any property of the value of the same, as may be sufficient to satisfy the claim pending disposal of the arbitral proceedings in AF No.25/2018 in op.no.962/2017.

Application 3/2018 Prayer:- Appointing an advocate commissioner to take custody of the two ice plants belonging to partnership firm M/s.Raku Ice and Cold Store situated at:

a.Door No.4E/1 & 4E/2, Therespuram, Thoothukudi 628 001
b.Door No.6/522/3,Ganapathi Nagar,Gomesapuram,Thoothukudi628 001.
including all machinery, implements, vehicles and other movables found therein, by preparing an inventory and lock and the two ice plants and hand over the keys to the Hon'ble Tribunal pending disposal of the arbitral proceedings in AF No.25 of 2018 in OP No.962 of 2017.

For Applicants : Mr.Rathina Asohan

For respondents: Mr.G.Ponmbala Thiagarajan
for Mr.S.Senthil kumar

J U D G E M E N T

These appeals have been filed challenging the dismissal of the applications in A.Nos.1 and 3 of 2018 by the learned arbitrator.

2. The application in A.No.1 of 2018 has been filed to direct the respondents to furnish security for a sum of Rs.4,64,52,172/- or to produce any property of the value of the same, as may be sufficient to satisfy the claim, pending disposal of the arbitration proceedings. The application in A.No.3 of 2018 has been filed for appointment of an Advocate Commissioner to take custody of the two Ice Plants including all the machinery, implements, vehicles and other movables found therein by preparing an inventory and lock the two ice plants and hand over the keys to the tribunal. The learned Arbitrator has rejected the claim of the appellants and dismissed the applications. Challenging the same, the present appeals have been filed.

3. The appeals have been filed on the ground that the respondent is making loss to the partnership business purposely. One factory has already been closed. Even in the reply statement, the respondent has stated that the plants are not profit earning business and the ice blocks are sold at throw away price and only in order to cause further loss to the partnership business, the respondents are not doing the business properly. Therefore, furnish security has to be ordered to protect the interest of the applicants and the Advocate Commissioner has to be appointed to take custody of the two ice plants belonging to the partnership firm.

4. It is the contention of the learned counsel for the respondents that now the arbitration proceedings is in the final stage and only two more witnesses have to be examined on the side of the respondents and one witness on the side of the claimants. Hence, prayed for dismissal of these appeals.

5. In the light of the above submissions, when the materials are perused, it is seen that the dispute between the parties is with regard to the partnership firm. The matter has been referred to the arbitrator to dissolve the partnership firm of the respondents and direct the respondents to render true accounts with statutory compliance with supporting documents for the financial year 2015-16, 2016-2017 and 2017-2018 and also to direct the respondent to deposit a sum of Rs.4,55,52,172/- being the value of the profit earned by the partnership firm and to determine the shares of the claimant and pay a sum of Rs.4,50,000/- being monthly remuneration payable to each of the claimants and also for entire cost of the arbitration.

6. The very nature of the claim referred to the learned arbitrator indicates that the main dispute is with regard to the running of the partnership firm. The main relief sought is to dissolve the partnership firm. Therefore, when the issue itself is for dissolution of the firm, the contention of the appellants that substantial amount has to be furnished as a security cannot be countenanced. Further, to seek an Order of attachment and furnishing security, there must be materials to substantiate their claim. Therefore, passing an order of attachment or direction to furnish security is a drastic measure and it cannot be ordered without any materials, since no claim can be secured by way of Orders of this Court. Be that as it may.

7. The very nature of the dispute is with regard to dissolution of the partnership firm. Once the firm is dissolved, the statement of accounts between the partners shall be in the manner under section 48 of the Indian Partnership Act and as such the applicants cannot seek security for the claim made by them. Similarly, till the partnership firm is dissolved, the business of the partnership cannot be interfered. Similarly, the appointment of an Advocate Commissioner also does not arise.

8. The learned arbitrator after considering the entire materials and in fact, appreciated the evidence also to some extent, had dismissed the applications and the appellate Court cannot re-appreciate the entire evidence before the arbitrator. Only the award can be challenged under section 34 of the Arbitration and Conciliation Act. Hence, this Court does not find any materials to interfere with the well reasoned Orders passed by the learned Arbitrator.

9. Accordingly, both the appeals are dismissed. As the mandate of arbitrator is already extended by this Court in A.No.1660 of 2020, the learned arbitrator shall dispose of the proceedings within the time granted by this Court. Consequently, the connected petitions are closed.

Sd/-
Assistant Registrar(CS-III)

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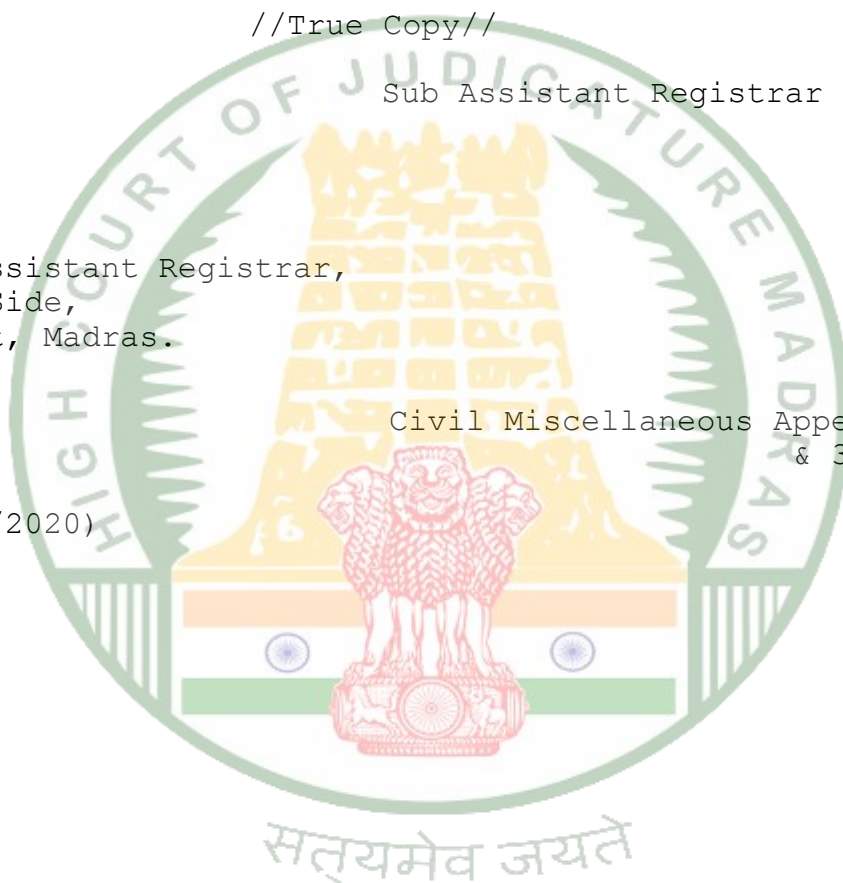
Sub Assistant Registrar

vrc

To:
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

Civil Miscellaneous Appeal Nos.3542
& 3544 of 2019

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