

A.Nos. 9475 and 9476 of 2019
in
E.P. No. 165 and 166 of 2018

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SENTHILKUMAR RAMAMOORTHY, J.

Application No.9475 of 2019 is filed in E.P. No. 165 of 2018 to permit the applicant/deGREE holder to withdraw a sum of Rs.6,61,47,199/- along with accrued interest, which was deposited to the credit of E.P. No.165 of 2018.

2. Application No.9476 of 2019 is filed in E.P. No.166 of 2018 to permit the applicant/deGREE holder to withdraw a sum of Rs.12,25,14,253/- along with accrued interest, which was deposited to the credit of E.P. No. 166 of 2018.

3. I heard the learned counsel for the applicant/deGREE holder and the learned counsel for the respondents/judgment debtors.

4. The learned counsel for the applicant submitted that Arbitral awards were pronounced on 08.05.2014 and 13.10.2012 in favour of the applicant but no payments were made, till date, by the respondents towards discharge of the amount payable under the awards. She further submitted that pursuant to the awards, the respondents / judgment debtors filed O.P. No. 764 of 2014 and O.P. No. 545 of 2013 challenging the above mentioned awards and that both these Original Petitions were dismissed, by the common order, dated 30.04.2019.

5. In these circumstances, she submitted that E.P. Nos. 165 and 166 of 2018 were filed. In the said proceedings, the judgment debtors deposited a sum of Rs.6,61,47,199/- to the credit of E.P. No. 165 of 2018 and a sum of Rs.12,25,14,253/ to the credit of E.P. No. 166 of 2018, thereby aggregating to a total amount of Rs.18,86,61,452/-. The present applications are filed for the release of amounts, from and out of the amounts deposited by the judgement debtors. She further submitted that, the applicant is entitled to the entire amount deposited because there is no stay as on date and considerable time has elapsed after the work was completed.

6. In response, the learned counsel for the respondents/ judgment debtors submits that O.S.A. Nos. 247 and 248 of 2019 were filed challenging the orders passed in O.P.Nos.764 of 2014 and 545 of 2013 and that notices were issued in the said O.S.As on 30.09.2019. Therefore, he submits that these applications should not be allowed, at this juncture, pending adjudication of the O.S.As. He also filed a memo dated 21.01.2020 stating that the judgment debtors deposited amounts, in excess of the amounts awarded by the awards of the Arbitral Tribunal in the execution proceedings. Therefore, a calculation sheet was enclosed with the aforesaid memo in respect of the two Arbitral awards.

7. In the said calculation sheet, as regards reference one, the judgment debtors state that the total amount payable, including interest, was Rs.2,88,10,078/-. As regards reference two, the total amount payable was Rs.14,94,59,336/-. On this basis, he submits that the aggregate payable as per the two awards was Rs.17,82,69,414/- and not Rs.18,86,61,452/-, which is the amount deposited by the judgment-debtors.

8. Moreover, he submits that the judgment debtors have a reasonable chance of succeeding in the O.S.As and that therefore these amounts should not be released at this juncture.

9. I considered the submissions of the respective counsel and examined the relevant pleadings and documents. It is the undisputed position that the Arbitral awards were pronounced in favour of the applicant, on 08.05.2014 in one case and on 03.10.2012 in another. It is also the admitted position that the petitions challenging the said Arbitral awards were dismissed by this Court. As against the said orders of dismissal, O.S.A. Nos. 247 and 248 of 2019 have been filed and admittedly there is no stay as on date.

10. Keeping in mind the above facts and circumstances and the need to balance the interests of both sides in an appropriate manner, the applicant is

hereby permitted to withdraw 50% of the amount, which is stated to be payable by the judgment debtors, as on date, as per the arbitral awards.

11. In specific, the judgment debtors have agreed that the amount payable along with interest, as on date, in respect of reference one is Rs.2,88,10,078/- and therefore the applicant is permitted to withdraw 50% of the said sum. Similarly, as regards reference two, it is stated that the amount payable is Rs.14,94,59,336/-. Once again, the applicant is permitted to withdraw 50% of this amount.

12. Accordingly, these applications are disposed of with the following directions:-

(i) The applicant is permitted to withdraw 50% of the sum of Rs.2,88,10,078/- from and out of the amount deposited to the credit of E.P. No. 165 of 2018.

(ii) The applicant is permitted to withdraw 50% of the sum of Rs.14,94,59,336/- from and out of the amount deposited to the credit of E.P. No. 166 of 2018.

(iii) The above amounts shall be released to the applicant within a period of two weeks from the date of receipt of a copy of this order.

22.01.2020

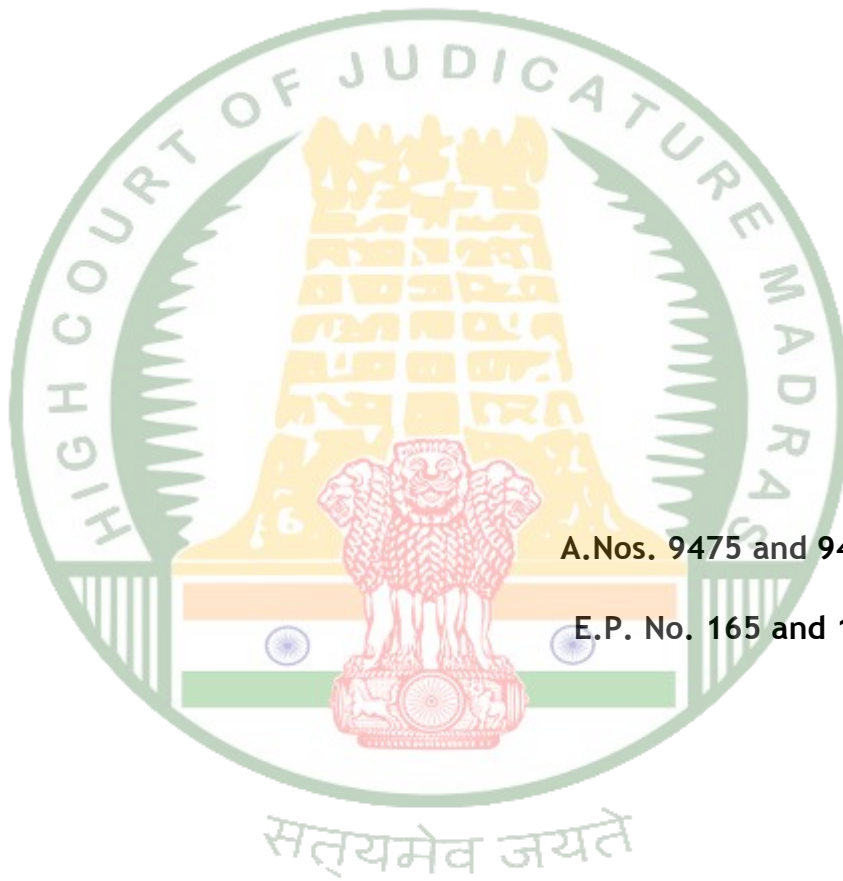
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Note: Issue order copy on 23.01.2020.

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