

O.A.Nos.1086 to 1088 of 2019

M.SUNDAR, J.

At the outset it is made clear that this is a common consent order, which will dispose of these three applications.

2. Mr.H.Karthik Seshadri of M/s.Iyer and Thomas (Law Firm) for the applicant and Mr.Roshan Balasubramaniam, learned counsel representing the counsel on record for respondent are before this Court.

3. Read this in conjunction with and in continuation of earlier proceedings/orders of this Court dated 04.12.2019, 17.12.2019, 03.01.2020 and 07.01.2020, which read as follows:

'Proceedings dated 04.12.2019

This Common Interim Order is made in of all these (3) applications.

2. All these three applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996, pertaining to an Agreement dated 21.02.2018 entered into between the applicant and the respondent wherein Clause 8 is the Arbitration Clause. The epicentre is a termination notice dated 19.11.2019 issued by the respondent terminating the aforesaid agreement.

3. Learned Counsel Mr.H.Karthik Seshadri of M/s.Iyer and

Thomas (Law Firms) on record for the applicant and Mr.Roshan Balasubramanian, learned Counsel representing the counsel on record for respondent are before this Court. To be noted, the respondent in these applications is on caveat.

4. It has been agreed by both sides that status quo as on today qua 21.02.2018 agreement will be maintained till next listing. This order of status quo as on today till next listing is being made by consent by leaving open all questions and contentions of both parties.

5. Both the learned Counsel submit on instructions that applicant and respondent will sit together, discuss and make an earnest effort to explore the possibility of amicably resolving the disputes before next listing which shall be on 17.12.2019.

6. If the meetings/discussions do not culminate in an amicable resolution, the respondent shall bring on record a counter affidavit with supporting documents, if any, before the next listing on 17.12.2019. List these three applications on 17.12.2019.'

(underlining made by this Court to supply emphasis and highlight)

'Proceedings dated 17.12.2019

'Read this in conjunction with and in continuation of earlier proceedings/orders of this Court dated 04.12.2019.

2. It is submitted by both sides that meetings/discussions were held, but the same could not be crystallised into an amicable resolution.

3. It is submitted by learned counsel for applicant in these applications that counter affidavit with supporting documents have been served Yesterday i.e., on 16.12.2019. Saying so, learned counsel for applicant seeks some time to peruse and make submissions.

4. On instructions, counsel for respondent submits that

respondent will continue to maintain status quo as on 04.12.2019 qua
21.02.2018 agreement until further orders.

5. List this matter on 03.01.2020.'

(underlining made by this Court to
supply emphasis and highlight)

'Proceedings dated 03.01.2020

Respondent's counsel is ready. Applicant's counsel seeks a short
accommodation to file rejoinder in the Registry and bring it on Board.

It is agreed that the application can be heard out in the next
listing.

List on 07.01.2020.'

'Proceedings dated 07.01.2020

At request of both sides, list on 09.01.2020.'

4. The aforesaid proceedings/orders give the trajectory of instant
applications on hand.

5. Today both the aforementioned learned counsel, on instructions
from their respective clients, make a request that Hon'ble Mr.Justice
K.Kannan (Retd.,) (former Judge of this Court and Punjab and Haryana High
Court at Chandigarh) at No.3/11, Lakshmi Colony, North Crescent Road,
T.Nagar, Chennai-600 017. Mobile : **97800 08145**, Land line : **044-2815
4145**, may please be appointed as sole Arbitrator to constitute the Arbitral
Tribunal with regard to adjudication of disputes that have arisen between

the parties qua agreement dated 21.02.2018. With regard to appointment of Arbitrator in the light of *Duro Felguera, S.A.* principle [*Duro Felguera, S.A. versus Gangavaram Port Limited* reported in (2017) 9 SCC 729] which was reiterated by Hon'ble Supreme Court in *Mayavati Trading* case [*Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman* reported in (2019) 8 SCC 714] it will suffice if this Court is prima facie satisfied about the existence of an arbitration agreement between the parties. In the instant case, there is no disputation or disagreement regarding the existence of arbitration agreement between the parties, more importantly, parties have also agreed on a sole Arbitrator, who will constitute the Arbitral Tribunal. Nonetheless, for the sake of making this order complete in all aspects of the matter, this Court deems it appropriate to extract relevant paragraph(s) in *Mayavati Trading* and *Duro Felguera, S.A.* judgments. Relevant paragraph in *Mayavati Trading* / *Duro Felguera, S.A.* cases are Paragraph 10 / Paragraphs 47 and 59 respectively, which read as follows:

'Mayavati Trading :

"10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the

examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

'Duro Felguera, S.A.: -

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

'59. The scope of the power under **Section 11** (6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. (supra) and Boghara Polyfab (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in **Section 11** (6A) ought to be respected. '

6. Be that as it may, what is of significance is the undertaking given by both sides to maintain status-quo as of 04.12.2019 qua aforementioned 21.02.2018 agreement, which has been set out in Paragraph 4 of 04.01.2019 proceedings/orders, which has been extracted and reproduced supra. From paragraph 4 of 17.12.2019 proceedings/order (also extracted and reproduced supra), it will be clear that the undertaking was extended until

further orders and therefore, the same is now operating. Both the aforementioned learned counsel submit that aforementioned Hon'ble Arbitrator has agreed to hold the first sitting on Saturday (11.01.2020). Therefore, both the learned counsel agree that the aforementioned undertaking to maintain status-quo vide Paragraph 4 of 04.12.2019 proceedings/order and extended vide paragraph 4 of 17.12.2019 proceedings/order will stand extended till 11.01.2020. This common submission made in unison is recorded.

7. Though obvious, it is made clear that it is open to both sides to present a copy of instant applications before Arbitral Tribunal with a request to treat these applications as applications under Section 17 of A & C Act. If the parties choose to do so (though obvious), Arbitral Tribunal shall decide the same on its own merits and at the discretion of the Hon'ble Arbitrator *de hors* the orders/proceedings in instant applications which have been extracted and reproduced supra.

Instant applications disposed of on above terms.

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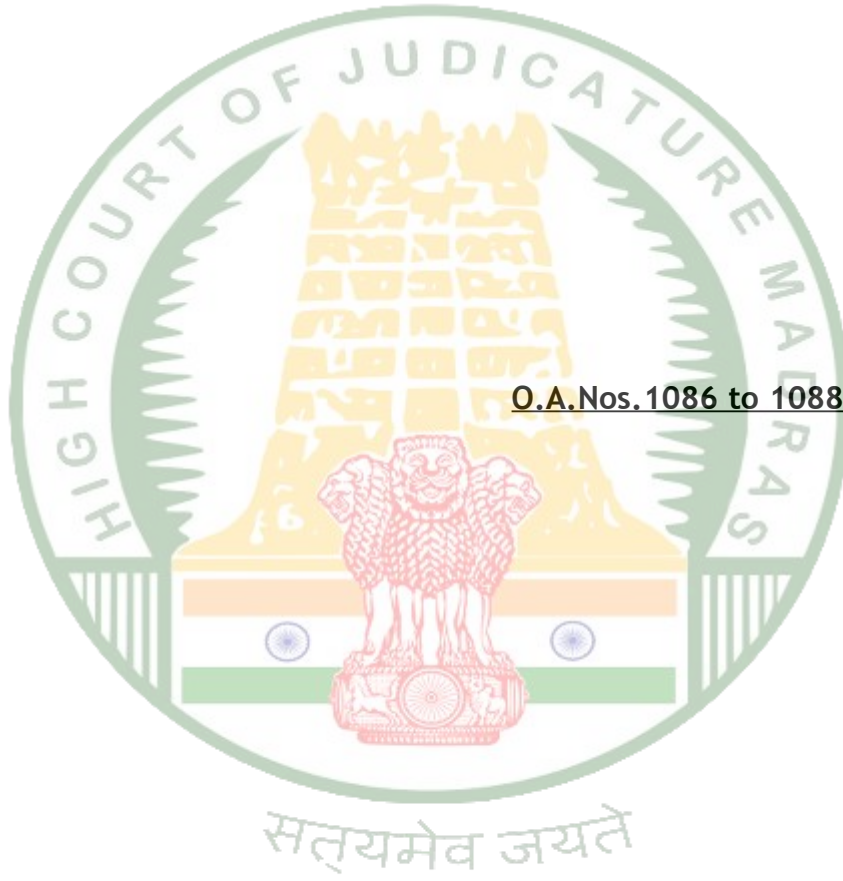
P.S: 1. Registry is directed to communicate this order copy to Hon'ble Mr.Justice K.Kannan (Retd.,) at No.3/11, Lakshmi Colony, North Crescent Road, T.Nagar, Chennai-600 017, Mobile : 97800 08145, Land line : 044-2815 4145, forthwith.

2. Issue order copy on 10.01.2020

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