

O.A.Nos.1123 to 1128 of 2019

M.SUNDAR, J.

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

2. Mr.Krishna Srinivas of Mr.S.Ramasubramaniam and Associates (Law Firm) for applicant in all six applications and Mr.V.M.Sivakumar of M/s.Shivakumar and Suresh (Law Firm) for all three respondents in all the six applications are before this Court.

3. Read this in conjunction with and in continuation of earlier proceedings/orders of this Court dated 17.12.2019, 03.01.2020 and 08.01.2020, which read as follows:

'Proceedings dated 17.12.2019

Notice to the respondents returnable by 03.01.2020. Private notice permitted.

2. List on 03.01.2020.

'Proceedings dated 03.01.2020

Mr.K.Balamurali of M/s.Shivakumar & Suresh (Law Firm) who is before this Court submits that he has instructions to file vakalatnama on behalf of all the three respondents in all six applications. Learned counsel undertakes to have the vakalatnama is filed by close of working hours on 06.01.2020.

The third respondent shall file list of work of patients in its case on hand as of 17.12.2019 in the next listing.

List on 08.01.2020.'

'Proceedings dated 08.01.2020

At request of respondent in all six applications list day-after-tomorrow i.e., 10.01.2020.'

4. The aforesaid proceedings/orders give the trajectory thus far qua instant applications on hand.

5. Today, both the aforementioned learned counsel, on instructions from their respective clients, make a request that a sole arbitrator may please be appointed to constitute the Arbitral Tribunal for adjudication of arbitral disputes that have arisen between the parties qua agreement dated 20.04.2016. 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 dispute or disagreement regarding the existence of arbitration agreement between the parties, more importantly, parties have also agreed for appointment of

a sole Arbitrator to 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. Therefore, this Court appoints Hon'ble Mr.Justice K.Chandru (former Judge of this Court) at No.4-B, Kanchana, 78 St. Marys Road, Abiramapuram, Chennai - 18 [Mobile No: 9444390962] as sole Arbitrator for entering upon reference with regard to arbitrable disputes that have arisen between the parties qua agreement dated 20.04.2016 adjudicate upon the same and pass an award in accordance with A and C Act.

7. This takes us to the issue of maintaining status-quo in this matter. Mr.V.M.Sivakumar, learned counsel for respondents filed a list of patients who have given samples qua third respondent for investigation as on 31.12.2019 under a memo dated 09.01.2020 in a sealed envelope and undertook to maintain status-quo (barring the list) for a period of four weeks from today i.e., upto 07.02.2020

8. Though obvious, parties are free to move the Hon'ble Arbitrator under Section 17 of A and C Act for suitable interim order(s). It is also open to the parties to present copies of instant six applications before Hon'ble Arbitrator with a request to treat the same as petitions under Section 17 of A and C Act. More importantly, memo dated 09.01.2020 together with the sealed envelope filed under said memo shall be forwarded to the Hon'ble Arbitrator forthwith by the Registry. This shall be done along with the communication mentioned in the post script to this order.

9. If the parties choose to seek interim order(s) under Sections 17 of A and C Act, either by way of separate applications or in the aforesaid manner, though obvious, it is made clear that Hon'ble Arbitrator will decide the Section 17 plea on its own merits at his discretion *de hors* the common proceedings / common order in instant Section 9 applications.

Instant applications disposed of on above terms.

10.01.2020
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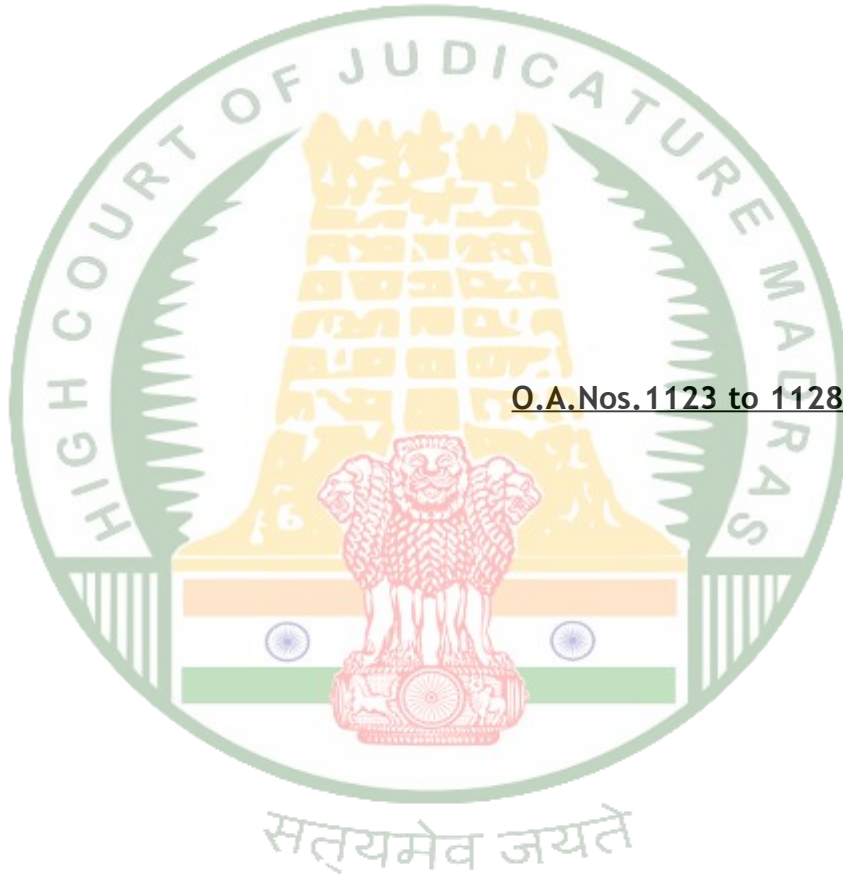
P.S: 1. Registry is directed to communicate this order copy to Hon'ble Mr.Justice K.Chandru (Retd.) (former Judge of this Court) at No.4-B, Kanchana, 78 St. Marys Road, Abiramapuram, Chennai - 18

2. Issue order copy on 13.01.2020

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10.01.2020