

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24 / 08 / 2020

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

APPLICATION NO.9493 OF 2018

M/s.Suryadev Alloys and Power Pvt. Ltd.,
Rep. By its Managing Director
Mukesh Agarwal
No.497 & 498, ISANA Building, 8th Floor,
Poonamallee High Road, Arumbakkam,
Chennai – 600 109. ... Petitioner

Vs.

M/s.East Coast Constructions & Industries Ltd.,
Rep. By its Director
Buhari Buildings, No.4, Moores Road,
Chennai – 600 006. ... Respondent

PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 9(a)(e) of Arbitration and Conciliation Act, 1996, to appoint an Advocate Commissioner to take possession of the Plant and Machineries and Shuttering materials morefully mentioned in the Judges Summons with the aid and advise of the applicant's Engineers / Consultants, keep the same in a yard to be designated by the Advocate Commissioner or the application and sell the same by public auction / e-auction by issuance of advertisement or otherwise and remit the sale proceeds to the applicant or to deposit the same in Court pending disposal of the Arbitration proceeding.

For Petitioner : Mr.A.Abdul Hameed
for M/s.AAV Partners

For Respondent : Ms.P.J.Rekha

ORDER

The applicant is the judgment debtor in view of the arbitral award passed in October 2018. As per the award, the applicant / judgment debtor is liable to pay around Rs.6 Crores and entitled to receive a sum of Rs.90,36,127/-.

2. It appears that the respondent / decree holder after obtaining the award has left the Steel and Power Plant with the plant and machinery lying at the site of the applicant. The value of the plant and machinery according to the applicant is Rs.4,51,75,947/-. Since it will loose its value and are causing hindrance to the operations of the applicant, the applicant sought for appointment of Advocate Commissioner to take possession of the of the same and keep it in a yard and sell the same by public auction / e-auction and remit the sale proceeds either to the applicant or to deposit the same in Court.

3. This Court on 06.12.2018 appointed Advocate Commissioner and the Advocate Commissioner also submitted his report.

4. At this juncture, the respondent appeared before this Court and would contend that the application itself is not maintainable. The said amount of Rs.90,00,000/- payable to the applicant can be set off from the award amount to be recovered from him. In the guise of protecting the materials, the applicant, who is the judgment debtor, is trying to sell the plant and machineries unilaterally. Therefore, protection can be given only to the respondent / decree holder and not to the applicant / judgment debtor. Therefore, the respondent seeks dismissal of the application.

5. I have considered the submissions made on either side and perused the materials available on record.

6. Admittedly, the respondent is the decree holder and he is entitled to recover the amount from the applicant. If at all the applicant

prefers an appeal against the award, he has to secure protection before the said Court and not by way of filing application under Section 9 of the Arbitration and Conciliation Act, 1996. However, it is seen from the Advocate Commissioner's report that there are lot of items available at the site. Making use of the Advocate Commissioner's report, the respondent / decree holder can sell it by way of public auction and set off the sale proceeds to the award amount. However, this Court is not inclined to pass further orders to sell the plant and machineries found in the Advocate Commissioner's report. The parties can approach the Appellate Court for getting appropriate remedies.

7. With these observations, the application in A.No.9493 of 2018 is disposed of.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
TK

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M.GOVINDARAJ, J.

TK



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