

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15th DAY OF SEPTEMBER 2021

THE MASTER

A.No.1613 of 2021

in

E.P. 147 of 2018

M/s.IRCON International Limited

(A Government of India Undertaking)

Represented by its Joint General Manager (South),

Ground Floor,

DRM Office building,

South Western Railway,

Adjacent to City Railway station,

Bengaluru-560023.

..Decree Holder

Vs.

1.The Government of Tamil Nadu,

Represented by the Superintending Engineer (H),

SCRD Circle,

MKS Building,

4A, Kanthaswamy Lay Out,

Second Street,

Villupuram-605 002.

..Judgment Debtor

2.The State Bank of India,

Treasury Branch,

Murasoli Buildings,

No.637 Anna Salai,

Chennai 600 006.

..Garnishee

3.The Commissioner of Treasuries and Accounts, (*)

Officers Buildings, Third Floor, Nandanam,

No.571, Anna Salai,

Chennai 600 035.

3rd Respondent/2nd Garnishee impleaded as per order (*)

dt.17.07.2019 made in application No.3713/2019

A.No.1613 of 2021:

M/s.IRCON International Limited
(A Government of India Undertaking)
Rep. by its Joint General Manager (South),
Ground Floor,
DRM Office Building,
Bengaluru-560023.

..Applicant/Decree Holder

Vs.

1.The Government of Tamil Nadu,
Rep. by the Superintending Engineer (H),
SCRD Circle,
MKS Building,
3A, Kanthaswamy Layout,
Second Street,
Villupuram-605 002.

..1st Respondent/Judgment Debtor

2.The State Bank of India,
Treasury Branch,
Murasoli Buildings,
No.637 Anna Salai,
Chennai 600 006.

..2nd Respondent/1st Garnishee

3.The Commissioner of Treasuries and Accounts,
Officers Buildings, Third Floor, Nandanam,
No.571, Anna Salai,
Chennai 600 035.

..3rd Respondent/2nd Garnishee

Application praying that this Hon'ble Court be pleased to amend the above E.P in so far as the amounts from Rs.41,38,75,115/- to Rs.4,39,49,496/- in light of the Order dated 22.01.2020 of Hon'ble High Court, Madras in O.P.No.454 of 2016 for attachment.

This Application coming on this day before this court for hearing, the court made the following orders:-

1. This amendment application has been filed to amend the recovery amount from Rs.41,38,75,115/- to Rs.4,39,49,496/-. The reason stated by the petitioner counsel is that as per order of Hon'ble High Court, Madras in O.P.No.454 of 2018 dated 22.01.2020 sum awarded in arbitral award in favour of decree holder was reduced from Rs.7,08,96,828/- to Rs.1,44,97,719/-. The total sum payable as per order in O.P.No.454 of 2018 is Rs.4,39,49,496/-. Therefore, the claim amount in execution petition has to be amended as Rs.4,39,49,496/-

2. In spite of sufficient opportunities, the respondent/judgment debtor failed to file any counter. Hence it was deemed that there is no counter on the judgment debtor side.

3. Now the point for determination is

i) Whether the claim amount in the execution petition can be amended as prayed for?

4. An execution petition is one which is filed to execute a decree. This execution petition in E.P.No.147 of 2018 is filed by the petitioner to execute the award passed by the Arbitrator in the matter of

Contract Agreement No.13/98-00 dated 25.02.1999 which was passed on 18.05.2016. Against this order, Judgment debtor preferred O.P.No.454 of 2018 and an order was passed by Hon'ble High Court, Madras in that original petition reducing the award amount. The award passed by the arbitrator is merged with the order passed by the Hon'ble High Court in O.P.No.454 of 2018 dated 22.01.2020.

The extracted operative portion of the order is,

“Claim 4 and the award thereon consists of interest for belated payment and the unpaid principal sum of Rs.5,88,277/-. As regards the belated payment of retention money of Rs.47,67,896/-, interest shall be computed thereon at simple interest of 12% per annum from 19.03.2004 till 12.03.2007 and paid. Consequently, from 13.03.2007 onwards, including the Post-Award period, interest will be payable only on the unpaid principal sum of Rs.5,88,277/- at the simple interest rate of 12% per annum. Thus, O.P.No.454 of 2018 is disposed of on the above terms and O.P.No.145 of 2017 is dismissed. No costs.”

5. The applicant has not taken any steps to include the particulars like date of the order, name of the court, what is the principal amount, the period of interest and how he has calculated the claim amount in the execution petition. Without amending the date of the decree, principal amount, the calculation of interest, without showing how he has arrived to a calculation of claim amount as Rs.4,39,49,496/-, the applicant simply wants to amend the claim amount only. The affidavit filed by the petitioner in

support of the petition is also vague.

6. The law is well settled that when a decree is taken in appeal to a higher court, the decree passed in appeal supersedes that of the court below and becomes a decree in the suit itself and thereafter that is the only decree which is capable of execution and the period of limitation would run from the date of that decree.

7. This pending execution petition in E.P.No.147 of 2018 is only to execute the award passed by the arbitrator on 18.05.2016. If the decree holder wants to execute the order passed by Hon'ble High Court in O.P.No.454 of 2018, the petitioner has to go for a fresh execution petition.

8. In fine, this court is not inclined to allow this application. Accordingly, this application is dismissed. Considering the circumstances, there is no order as to costs.

Sd./-MASTER
15/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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JJ 23/09/2021