



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Seventh day of July Two Thousand Twenty One

PRESENT

THE HON`BLE MR JUSTICE M. SUNDAR

CMP.No.10571 of 2021

IN SA.NO.185 of 2021

M/S.ASWINI AUTOMOBILES [PETITIONER]
REP BY ITS PARTNER RAHUL AGARWAL,
NEW NO.401, OLD NO.292, MOUNT ROAD,
TEYNAMPET, CHENNAI- 600 018.

Vs

1 M/S. BHARAT PETROLEUM CORPORATION LTD., [RESPONDENTS]
REP BY ITS SENIOR MANAGER -
LEGAL (SOUTH) HAVING ITS OFFICE AT
NO.1, RANGANATHAN GARDENS,
OFF 11 TH MAIN ROAD,
ANNA ANGAR, CHENNAI 600 040.

2 M/S. BHARAT PETROLEUM CORPORATION LTD.,,
REP BY ITS TERRITORY MANAGER (RETAIL)
HAIVNG ITS OFFICE AT
NO.35, VAIDYANATHAN ST,
TONDIARPET, CHENNAI 600 081.

3 M/S. ATM CONSTRUCTIONS (P) LTD,
REP BY ITS CHAIRMAN, MR. C.M. IBRAHIM,
HAVING ITS OFFICE AT NO.288, LLOYDS ROAD,
ROYAPETTAH, CHENNAI 600 014.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to implead the petitioner/3rd party herein to the above Second appeal and pass such other suitable orders.(In CMP.No.10571/2021)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.S.S.RAJESH, Advocate for the petitioner and of MR.KRISHNA SRINIVAS, Advocate for M/S.S.RAMASUBRAMANIAM, & ASSOSICATES, for the Respondents 1 and 2 and of MR.P.BALACHANDRAN, ADVOCATE for the 3rd Respondent, the court made the following



Read this in conjunction with and in continuation of earlier proceedings made in main Second Appeal and C.M.P.No.3758 of 2021 in the listing on 14.07.2021 and main Second Appeal and C.M.P.Nos.3758 and 10571 of 2021 in the listing on 22.07.2021, which read as follows:

'Proceedings made on 14.07.2021

Mr.Krishna Srinivasan of M/s.S.Ramasubraminam Associates (Law Firm) for the appellants and Mr.R.Balachanderan, learned counsel for lone respondent are before this virtual Court.

2. Adverting to earlier proceedings made in previous listing on 23.06.2021, this Court is informed by aforementioned two learned counsel that intra Court Appeals in OSA.Nos. 5, 6 and 7 of 2021 arising out of orders made in interlocutory applications in CS.No.62 of 2020 being a suit for damages filed by lessor, came up before a Hon'ble Division Bench on 09.07.2021, there is a possibility of the matter heading towards arbitration and it is submitted by both sides that as of now arbitration may not include captioned Second Appeal part of the lis, but the proceedings/orders of Hon'ble Division Bench are not before this Court. This Court is also informed that the intra Court appeals are scheduled to come up before Hon'ble Division Bench next on 19.07.2021. Therefore, this Court, as a matter of judicial discipline deems it appropriate to adjourn this matter to a date post 19.07.2021 and await orders of Hon'ble Division Bench.

3. Be that as it may, Mr.R.C.Paul Kanagaraj, learned counsel, who is before this virtual Court submits that his client has taken out a 'Civil Miscellaneous Petition' ['CMP' for the sake of brevity] being CMP.No.10571 of 2021 seeking impleadment in captioned Second Appeal. Party seeking to implead itself is dealer qua petrol pump is his say. Though CMP.No.10571 of 2021 has been placed before this Court, it is not shown in the cause list. Registry to show CMP No.10571 of 2021 in the cause list in the next listing.

4. Read these proceedings in conjunction with and in continuation of previous proceedings made in the previous listing on 23.06.2021.

5. In the light of the narrative thus far, list this matter under the same caption on 22.07.2021.

6. In the interregnum, it is open to the parties to file counter affidavit in the implead CMP being CMP.No.10571 of 2021.'

'Proceedings made on 22.07.2021

Ms.Geethi Ara, learned counsel of M/s.S.Ramasubraminam Associates (Law Firm) for the appellants, Mr.R.Balachanderan, learned counsel for lone respondent and Mr.S.S.Rajesh, learned



2. Adverting to earlier proceedings made in previous listing on 14.07.2021, learned counsel for appellant and sole respondent in captioned main Second Appeal submit that they have circulated order of Hon'ble Division Bench dated 19.07.2021 in OSA(CAD).Nos.5, 6 and 7 of 2021. The same has been placed before this Court.

(a) *there is no arbitration,*

(c) there is no impediment in this Court hearing out the captioned Second Appeal.

5. Implead CMP being CMP.No.10571 of 2021 has to be decided. Learned counsel for respondents 1 and 2 in the implead CMP i.e., 'Bharat Petroleum Corporation Limited' ['BPCL'] submits on instructions from BPCL that respondents 1 and 2 are not opposing the implead CMP. Respondent no.3 in the implead CMP i.e., 'A.T.M. Constructions (P) Limited' ['ATM'], which is the lone respondent in the captioned main Second Appeal has filed a detailed counter affidavit and ATM is opposing the implead prayer.

List on Tuesday (27.07.2021).'

3. Today Mr.Krishna Srinivasan, learned counsel of M/s. S.Ramasubramaniam & Associates (Law Firm) for the appellants and Mr.R.Balachandran, learned counsel for lone respondent and Mr.S.S.Rajesh, learned counsel on record for petitioner in captioned C.M.P.No.10571 of 2021 are before this Virtual Court.

<https://hcservices.eccourts.gov/hcservices/hcservices.do>



counsel abridges the prayer in the captioned CMP and submits that he is not insisting on being impleaded as a party to the captioned second appeal. The abridged prayer is to the effect that it will suffice if he is given audience in the main second appeal as an intervenor. This stated position of the petitioner is recorded. More importantly, Mr.R.Balachandran, learned counsel for lone respondent in main second appeal (3rd respondent in captioned CMP) also submits, on instructions, that his client ATM does not oppose this request of the petitioner to be heard as an intervenor. To be noted, the same short forms used in the earlier proceedings are being used in this order also. As far as appellants in the main second appeal (respondents 1 and 2 in CMP) are concerned, it has already been recorded that they are not filing a counter and they are not opposing the captioned CMP and therefore, learned counsel very fairly submits that he really has no say in the matter as far as captioned CMP is concerned.

5. In the light of the consensus/consent, captioned CMP is disposed of by this consent order holding that petitioner in captioned CMP namely M/s.Aswini Automobiles, represented by its Partner Rahul Agarwal shall be heard as an intervenor in the main second appeal.

6. This draws the curtains on the captioned CMP.

Captioned CMP disposed of in aforesaid manner and there shall be no order as to costs.

-sd/-

27/07/2021

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE III ASSISTANT JUDGE,
CITY CIVIL COURT, CHENNAI.



2 THE XVIII ADDITIONAL JUDGE,
CITY CIVIL COURT, CHENNAI.

WEB COPY

Order
in
CMP.No.10571/2021
in
SA.No.185/2021

Date :27/07/2021

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PM (02/08/2021)