

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 8TH DAY OF JULY 2022

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

A.No.1119 of 2022

in

C.S. No.140 of 2019

In the matter of

Agreement No. 3/2008-9 Dated
30.06.2008

M/s.NAPC Limited,
a company incorporated under the Companies Act, 1956,
having its registered office at
Apex Plaza, 6th Floor,
No.3, Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

... Applicant / Plaintiff

VS.

1.The Executive Director,
Tamil Nadu Road Infrastructure Development Corporation
4th Floor, LLA building, 735,
Anna Salai,
Chennai – 600 002.

2. The Engineer
Tamil Nadu Road Infrastructure Development Corporation
4th Floor, LLA building, 735,
Anna Salai,
Chennai – 600 002.

... Respondents / Defendants

Application praying that this Hon'ble Court be pleased to grant

the Applicant the relief of appointment of Commissioner to record the

evidence of all witnesses of both parties in a time bound manner.

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

This application is presented by the plaintiff for appointment of a commissioner to record the evidence of all the witnesses.

2. The application is opposed by the defendant on the ground that evidence may be recorded before one of the learned Additional Masters in a time bound manner. Indeed, learned counsel for the defendant points out that the evidence of P.W.1 was recorded within a reasonable time frame through learned Additional Master No.III.

3. Learned counsel for the plaintiff contends that P.W.2 is not currently an employee of the plaintiff and, therefore, he may not be available for an extended period of time for the purposes of examination. Likewise, it is stated that P.W.3 (who was earlier proposed to be examined as P.W.5 as per the plaintiff's memo) is an independent expert and may not be able to make himself available for an extended period for examination. Therefore, it is requested that the evidence of P.W.2 and P.W.3 may be recorded through a Commissioner. As regards P.W.2, it is stated that the witness would be available for examination from the week beginning 18th of July 2022. Learned counsel for the defendant states that he would require about three weeks to cross examine P.W.2.

4. Upon considering the above submissions and by taking into account the fact that this is a complex construction dispute, the documentation is voluminous and extensive oral evidence may also be required, the request of the plaintiff is accepted only insofar as P.W.2 and

P.W.3 are concerned. This is subject to the plaintiff bearing the entire expenses in such regard. Accordingly, this application is disposed of by appointing Mr.Ganesh Chandru, Advocate, Mobile No.9717118642, as the Commissioner to record the evidence of P.W.2 and P.W.3. The deposition shall be recorded in the Madras High Court Arbitration Centre so as to ensure that the relevant records are not taken out of the premises of the High Court.

5. The proof affidavit of P.W.2 shall be served on the defendant on or before 15.07.2022 and that of P.W.3 on or before 29.07.2022. The examination of P.W.2 and P.W.3 shall be commenced and concluded between 18.07.2022 and 30.08.2022.

6. List the matter before this Court on 05.09.2022.

Sd./-SKRJ.

08/07/2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

EVK 12/07/2022