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W.A.No.2579 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2579/2022 and CMP.No.20361/2022

1. State Industries Promotion Corporation of Tamil Nadu
Limited rep. by its Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.
 2. Board of Directors
rep. by its Chairman-SIPCOT,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.
- .. Appellants

vs.

1. V.Ayyadurai
 2. The State of Tamil Nadu
rep. by its Principal Secretary to
Public (Law Officers) Department,
Secretariat, Fort St. George,
Chennai-9.
- .. Respondents



W.A.No.2579 of 2022

WEB COPY

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.11.2022 passed in W.P.No.381 of 2021 by a learned Single Judge of this Court.

For Appellants	::	Mrs.Sudharshana Sunder
For 1 st Respondent ::		Mr.V.Ayyaduri,
		Party-in-person
For 2 nd respondent	::	Mrs.R.Anitha, Spl.G.P.

JUDGMENT

(Judgment of the Court was pronounced by the Hon'ble Acting Chief Justice)

This Writ Appeal is directed against the order dated 02.11.2022 passed in W.P.No.381 of 2021 by a learned Single Judge of this Court.

2. Mr.V.Ayyadurai, learned Senior Counsel, having become an Additional Advocate General between 02.08.2016 and 22.12.2017, was engaged by the appellant SIPCOT, a Government of Tamil Nadu Undertaking in an Arbitration Case titled as "M/s.Siemens Limited Vs.



W.A.No.2579 of 2022

WEB COPY

SIPCOT" before a Sole Arbitrator. Since the Siemens Limited challenged the order of SIPCOT cancelling the lease deed and forfeiting of initial deposit and for preventive reliefs besides seeking unconditional approval of the industrial plot, the SIPCOT filed a counter claim for a sum of Rs.19,74,70,000/- towards differential land cost together with sales tax. Finally, an award was passed on 14.07.2017. When the award dated 14.07.2017 was passed, the 1st respondent herein raised his professional fee bill at the rate of 1% of the said counter claim to the tune of Rs.19,74,700/- as per G.O.(Ms.) No.124, Highways and Minor Ports (HN2) Department, dated 30.07.2013. It is the further claim of the writ petitioner that only on the basis of the judicial precedent fixing 1% of the claim amount as professional fee in Arbitration Cases, he has made the said claim. But there was no any reply in spite of number of reminders sent by the writ petitioner. Therefore, he issued a final reminder dated 20.07.2020 claiming his professional fee of Rs.19,74,000/- together with 12% interest from the date of expiry of 6 months of his bill dated 09.05.2017 by annexing a copy of the order passed by this Court dated 11.12.2012 in W.P.Nos.1969, 1970, 3777,



W.A.No.2579 of 2022

WEB COPY

3800, 3801, 3824 and 3826/2012 substantiating his claim of professional fee at the rate of 1% of the claim amount together with 12% interest on the Bill amount. Finding no response for the same also, he has filed a Writ Petition before the learned Single Judge.

3. The prime contentions made by the writ petitioner/1st respondent herein in the writ petition would show that though there was a Government Order in G.O. (Ms) No.339, Public (Law Officers) Department, dated 08.05.2018 placing reliance on Clause 5(1)(a) and (b) thereby fixing the ceiling at Rs.10,00,000/-, when the appellant SIPCOT has accepted 1% of fee of the counter claim, they cannot restrict his entitlement at Rs.10,00,000/-. Finally, on 29.08.2020, the appellant SIPCOT has remitted a sum of Rs.9,25,000/- by NEFT transfer after deducting Rs.75,000/- towards TDS at the rate of 7.5%. When Rs.10,00,000/- only was paid as against his claim for Rs.19,74,700/- together with interest at 12% from 09.11.2017, the writ petitioner has also sent a letter dated 01.09.2020 to the 1st appellant reemphasizing his lawful claim and demanded the balance



W.A.No.2579 of 2022

WEB COPY

amount, but he was visited with the impugned order dated 02.09.2020 stating that the Board of Directors of the SIPCOT/2nd appellant herein in its meeting held on 12.08.2020 restricted his professional fee to Rs.10,00,000/- only based on G.O.(Ms) No.339, Public (Law Officers) Department dated 08.05.2018 placing reliance on clause 5(1)(a) and (b) wherein 1% of the award/decreed subject to the ceiling of Rs.10,00,000/- is fixed as fees per arbitration case. Challenging the same, taking three grounds therein, the Writ Petition has been filed.

4. Firstly, it was contended by the learned Counsel for the writ petitioner that when the appellant SIPCOT has accepted 1% fee on the counter claim, after claiming the amount as professional fee in an arbitration case, they cannot restrict the fee claimed by the writ petitioner. Secondly, it was contended that when the appellant has applied the G.O.Ms.No.339 dated 08.05.2018, the same cannot be applied retrospectively with regard to the writ petitioner's claim. Thirdly, when the appellant SIPCOT having engaged the professional services of the writ petitioner, on receipt of the



W.A.No.2579 of 2022

WEB COPY

professional fee bill dated 09.05.2017 within a period of six months, the said bill ought to have been honoured. Without doing so, they straight away remitted the restricted sum of Rs.10,00,000/- to the writ petitioner on 29.08.2020 as against the lawful claim of Rs.19,74,700/- together with 12% interest on the expiry of six months period. Therefore, the approach adopted by the appellant was unfair, untenable and unjustifiable. Considering the peculiar facts and circumstances of the case, the learned Single Judge has come to the conclusion that the issue can immediately be placed before the Board even by way of circulation without waiting for the next board meeting and an approval can be obtained from the Board based on which, the remaining fee claim made by the writ petitioner can be sanctioned at the earliest. Since a finding has been given by the learned Single Judge that the decision taken by the appellants restricting the claim made by the writ petitioner to the extent of Rs.10,00,000/- is absolutely unlawful and arbitrary and therefore, the writ petitioner is entitled to claim the remaining amount of Rs.9,74,700/-, the present writ appeal has been filed.

5. Mrs.Sudharshana Sunder, learned Counsel appearing for the



W.A.No.2579 of 2022

WEB COPY

appellants argued that when there was no any yardstick or parameters fixed by the appellant SIPCOT for fixing the fees payable to the counsels appearing in arbitration cases, the writ petitioner, claiming fee at the rate of 1% on the basis of G.O.Ms.No. 124, Highways and Minor Ports (HN2) Department, dated 30.07.2013 is unacceptable. It is further argued that when the fees payable to the senior counsels appearing on behalf of the SIPCOT are all disbursed on the basis of G.O.Ms.No. 339 dated 08.05.2018, the writ petitioner also ought to have applied the said Government Order issued by the Government of Tamil Nadu for the purpose of claiming the fees for his appearance in the arbitration case. In any event, finally, she has argued that when the writ petitioner has made the claim of 1% on the claim made by the appellant SIPCOT, generally, 1% fee is being fixed only when the proceedings are brought to an end. But in the present case, the writ petitioner has represented the appellant only on three occasions. Therefore, as against the claim of Rs.19,74,700/-, 50% of the claim at the rate of Rs.10,00,000/- has been disbursed. Hence, there cannot be any grievance for the writ petitioner. But this aspect has been overlooked



W.A.No.2579 of 2022

WEB COPY

by the learned Single Judge, she pleaded.

6. We do not find any merits on the said submissions of the learned Counsel for the appellants. It is an admitted case of the appellant SIPCOT that the writ petitioner, being an Additional Advocate General at the relevant point of time and Senior Counsel, it has hired the services of the writ petitioner/1st respondent herein in an arbitration proceedings in M/s.Siemens Limited Vs. SIPCOT to make a counter claim for a sum of Rs.19,74,70,000/- towards differential land cost together with sales tax. Therefore, we are of the view that the writ petitioner is entitled to make the professional bill at the rate of 1% of the said counter claim to the tune of Rs.19,74,700/- as per the G.O.Ms.No. 124, Highways and Minor Ports (HN2) Department, dated 30.07.2013. It is also the claim of the writ petitioner/1st respondent herein that as per the judicial precedent fixing 1% of the claim amount as professional fee even in an arbitration case was also in owe. Therefore, there was no any reply made by the appellant to the number of reminders made by the writ petitioner. Finally, partially



W.A.No.2579 of 2022

WEB COPY

accepting the claim of the writ petitioner, the appellant has also remitted a sum of Rs.9,25,000/- by NEFT transfer to the credit of his bank account after deducting Rs.75,000/- towards TDS at the prevalent rate of 7.5%. Therefore, when the claim made by the writ petitioner for payment of his professional fee was partially accepted and that there was no reply whatsoever given to the writ petitioner refuting his claim, after filing the writ petition before this Court, it is not open to the appellant SIPCOT to deny the said claim without any justification or any reason. It is also made clear that when the writ petitioner has sent his claim for disbursement of his professional fee at the rate of 1% on the basis of G.O.Ms.No. 124, Highways and Minor Ports (HN2) Department, dated 30.07.2013, we do not find any good reason to accept the contentions made by the learned Counsel for the appellants that they are entitled to apply the G.O.Ms.No. 339 dated 08.05.2018, which came into force after the said award came to be passed. In view of all the above, we do not find any error or infirmity in the order passed by the learned Single Judge.



W.A.No.2579 of 2022

WEB COPY

7. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

8. At this stage, since the learned Counsel for the appellants sought for four weeks time to pay the remaining balance amount to the writ petitioner/1st respondent herein, accordingly, four weeks' time is granted.

(T.R.,A.C.J.) (D.K.K, J.)

30.11.2022

Index : Yes/No

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To

The Principal Secretary to Public (Law Officers) Department,
State of Tamil Nadu
Secretariat, Fort St. George,
Chennai-9.



WEB COPY



W.A.No.2579 of 2022

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W.A.No.2579 of 2022

30.11.2022



WEB COPY



W.A.No.2579 of 2022



WEB COPY



W.A.No.2579 of 2022



WEB COPY



W.A.No.2579 of 2022