



WEB COPY

C.M.P(MD)



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Sixteenth day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
and
The Hon`ble Mrs.Justice S.SRIMATHY

C.M.P(MD)No.4569 of 2022
in
CMA(MD)Nos.462 & 463 of 2021

M/S.FLEMINGO DUTY FREE SHOP(P) LTD,
D-73/1, TTC INDUSTRIAL AREA, MIDC
TURBHE, NAVI MUMBAI 400 075,
REPRESENTED BY ITS GENERAL MANAGER
AND AUTHORISED SIGNATORY

... PETITIONER / RESPONDENT

Vs

V.O.CHIDAMBARANAR PORT TRUST
ADMINISTRATIVE OFFICE AT
HARBOUR ESTATE
BHARATHI NAGAR,
TUTICORIN 628004
TAMILNADU.

... RESPONDENT / APPELLANT

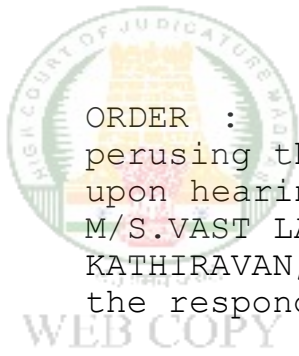
Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to permit the Petitioners / Respondents to withdraw the sum of Rs. 5,21,55,781/- (Rupees Five crore twenty one lakh fifty five thousand, seven hundred and eighty one only) deposited by the Respondent / Appellant pursuant to the interim order dated 08.04.2022 of this Honourable Court in C.M.P (MD) No. 4036 of 2021.

Prayer in CMA(MD). 462/ 2021 :

To set aside the order passed by the Honourable Principal District Judge, Thoothukudi in Ar.O.P No.173 of 2016 dated 12.09.2019 confirming and modifying the award dated 18.12.2014 passed by the learned Arbitration Tribunal and to set aside the same.

Prayer in CMA(MD). 463/ 2021 :

To call for the records relating to the impugned order passed by the Honourable Principal District Judge, Thoothukudi in Ar.OP No.143 of 2015 dated 12.09.2019 confirming the Award dated 18.12.2014 passed by the learned Arbitration Tribunal with regard to the rejection of counter claim and to set aside the same.



ORDER : This petition coming up for orders on this day, on perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.C.MANISHANKAR, Standing Counsel for M/S.VAST LAW ASSOCIATES, Advocate for the petitioner and of MR.VEERA KATHIRAVAN, Standing Counsel for MR.A.ARIVUCHANDRAN, Advocate for the respondent, the court made the following order:-

[Order of the Court made by **S.S.SUNDAR, J.**]

This petition is filed to permit the petitioner to withdraw a sum of Rs.5,21,55,781/-, which was deposited by the respondent/appellant pursuant to the interim order granted by this Court, dated 08.04.2022.

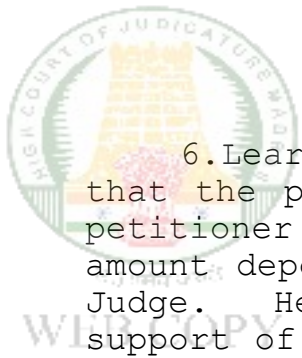
Brief facts that are necessary for the disposal of this petition are as follows:

2.The petitioner and respondent entered into a licence agreement, dated 20.05.2011 for operating ferry service between Tuticorin Port and Colombo Port. It is admitted that the petitioner did not operate the ferry service due to various reasons and the matter was referred to Arbitration. The Arbitration Tribunal by an award, dated 18.12.2014 directed the respondent/appellant to refund the bank guarantee of Rs.6.84 crores encashed by the respondent along with interest.

3.It is admitted that the petitioner as well as the respondent filed appeals before the Principal District Court, challenging the award of Arbitration Tribunal. By a common judgment, dated 12.09.2019, the learned Principal District Judge, allowed the appeal filed by the petitioner and dismissed the appeal filed by the respondent. Aggrieved by the same, the above appeals have been preferred by the respondent herein.

4.While granting interim stay during the pendency of the appeals, this Court imposed a condition that the respondent/appellant should deposit 1/3rd of the award amount with interest due as on 08.04.2022 within a period of eight weeks from 08.04.2022. It is admitted that in compliance of the aforesaid direction of this Court, the respondent has deposited a sum of Rs.5,21,55,781/- before the Principal District Judge, Tuticorin, wherein, Execution Petition filed by the petitioner is pending. Pending appeal, the petitioner has now filed the above petition to permit them to withdraw the amount which was already deposited by the respondent.

5.Learned Senior Counsel for the petitioner states that the amount deposited by the respondent is just 1/3rd amount payable to the petitioner as per the judgment of learned Principal District Judge, Tuticorin.



6.Learned Additional Advocate General, on instructions, submits that the petitioner has no means to repay the amount, in case the petitioner is found to be ineligible for any amount out of the amount deposited as per the judgment of learned Principal District Judge. He refers to paragraph 6 of the affidavit filed in the support of this petition, wherein, the petitioner has admitted that the petitioner's business has seen a crisis, pursuant to the impact of COVID-19 and that the petitioner's business became commercially unviable at several locations.

7.This Court, after going through the affidavit and the counter affidavit, is of the view that the petitioner can be permitted to withdraw the amount, which is lying to the credit of the proceedings before the learned Principal District Judge, provided sufficient security is offered to enable the appellant to get back the amount, in case the appeals are decided in favour of the appellant. The learned Senior Counsel for the petitioner has no serious objection for furnishing bank guarantee as security, in case, the money has to be returned by the petitioner.

8.Hence, this petition is allowed and the petitioner is permitted to withdraw a sum of Rs.5,21,55,781/-, which was deposited pursuant to the interim order, dated 08.04.2022 in C.M.P.(MD)No.4036 of 2022 on condition that the petitioner shall furnish a bank guarantee for the entire value. Upon furnishing bank guarantee, as stated above, the petitioner's application before the District Court concerned for withdrawal shall be allowed. In case the disposal of these appeals is prolonged, the petitioner shall renew the bank guarantee to be in force till the disposal of the main appeals.

9.Post the matter main appeals during the 3rd week of September 2022.

sd/-

16/08/2022

/ TRUE COPY /

/08/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE PRINCIPAL DISTRICT JUDGE, THOOTHUKUDI.

+1 CC to M/s.A.ARIVUCHANDRAN, Advocate (SR-8670[I] dated 18/08/2022)

+1 CC to M/s.VAST LAW ASSOCIATES, Advocate (SR-8727[I] dated 18/08/2022)

ORDER IN

C.M.P(MD)No.4569 of 2022

in

CMA(MD)No.462 & 463 of 2021

Date :16/08/2022

MK/VR/SAR.II/23.08.2022/2P/4C

<https://www.mhc.tn.gov.in/judis>