



W.A.No.1389 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A.No.1389 of 2021

M/s. Himachal Aluminum and Conductors
A Partnership Firm
Rep. by its Partner Sharada Mahjan
GT Road, VPO Mohti (Near Pathankot)
Kangra District
Himachal Pradesh 176 404.

.. Appellant

Vs.

1. The Chairman & Managing Director
Tamil Nadu Generation and Distribution
Corporation Limited
6th Floor, Western Wing
NPKRR Maaligai
144, Anna Salai
Chennai 2.
2. The Superintending Engineer
Tamil Nadu Electricity Board
6th Floor, Western Wing
NPKRR Maaligai, 144, Anna Salai
Chennai 2.



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3. The Chief Manager
Materials Management
6th Floor, Western Wing
NPKRR Maaligai, 144, Anna Salai
Chennai 2.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 21.11.2019 made in W.P.No.8911 of 2014.

For the Appellant : Mr.Leelesh Sundaram
For M/s. Nathan and Associates
For the Respondents : Mr.D.R.Arunkumar

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.Leelesh Sundaram, learned counsel for the appellant and Mr.D.R.Arunkumar, learned counsel for the respondents.

2. Learned counsel for the appellant submits that under a misconception, the proceedings were filed before the learned Single Judge by way of a writ petition bearing No.8911 of 2014. In fact, the appellant ought to have approached the authority under the MSME Act.



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3. Learned counsel for the appellant, on instructions, seeks leave to withdraw the writ petition filed before the learned Single Judge.

4. Learned counsel for the respondents opposes the request made by the appellant and submits that the appellant had filed the writ petition and has suffered adjudication before the learned Single Judge of this court and now cannot be allowed to withdraw the proceedings.

5. The appellant appears to be a small scale industry. The dispute between the parties is arising out of a commercial contract. In a writ petition, the Court, under Article 226 of the Constitution, would not go into the disputed questions of fact. On the one hand, the respondents contend breach of contract on the part of the appellant and on the other hand, the appellant contends non-performance of covenants on the part of the respondents. Disputed questions of fact exist. It cannot be properly decided in the writ petition or in the writ appeal.

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6. In the light of the aforesaid facts, we are inclined to consider the request of the appellant. The appellant is allowed to withdraw W.P.No.8911 of 2014. Inter alia, the order passed by the learned Single Judge of this Court dated 21.11.2019 in W.P.No.8911 of 2014 would also not survive.

7. W.P.No.8911 of 2014, as such, stands dismissed as withdrawn, with liberty to the appellant to avail appropriate remedy as is permissible under law. In that event, all the contentions of the appellant as well as the respondents are kept open. Inter alia, the present appeal also stands disposed of. There will be no order as to costs. Consequently, CMP No.8622 of 2021 is also disposed of.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : Yes/No

Neutral Citation : Yes/No

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