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OSA(CAD) No.44 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A (CAD) No. 44 of 2024

and

C.M.P.No.9572 of 2024 in O.S.A (CAD) No. 44 of 2024

M/s.Shine Plast,
No.82, 2nd Cross, Risaldar Street,
Seshadripuram, Bangalore – 560 020.

.. Appellant

Vs

Tamil Nadu Text Book and Educational
Services Corporation
rep. By its Member Secretary,
No.68, College Road, Chennai – 600 006.

.. Respondent

Original Side Appeal filed under Section 13 of the
Commercial Courts Act, 2015 against the order dated 22.01.2024 in
Arb.O.P.No.(Comm.Div) 20/2023 and O.A.No.76/2023 and Arb.O.P.
(Comm.Div). No.20/2023.

For Appellant :

Mr.S.Mukunth,
Senior Counsel
for Mr.V.L.Akshai Sajin Kumar



OSA(CAD) No.44 of 2024

JUDGMENT

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(Judgment of the Court was delivered by **M.Sundar, J.**)

A common order dated 22.01.2024 has been made by a Hon'ble Single Judge presiding over Commercial Division of this Court. To be noted, this is a common order in O.A. No.76 of 2023 {Application under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' (hereinafter 'A and C Act' for the sake of convenience and clarity)} and Arb. O.P. (Comm.Div.) No.20 of 2023 (petition under Section 11(4) of A and C Act).

2. As against an order of the Commercial Division, granting or refusing to grant a measure in a Section 9 application, an intra-court appeal under Section 37 of A and C Act will lie but as against the order in Arb. O.P., which is under Section 11 of A and C Act, that is not the case. Aggrieved party can only approach Hon'ble Supreme Court under Article 136 of the Constitution of India invoking the residuary powers.

3. The above position was pointed out to Mr.S.Mukunth, learned senior counsel appearing on behalf of Mr.V.L.Akshai Sajin Kumar, learned counsel on record for the appellant.



OSA(CAD) No.44 of 2024

WEB COPY

4. If we say that intra-court appeal against O.A.No.76 of 2023 alone will lie to this Bench and if the appellant approaches Hon'ble Supreme Court as against the appointment of Arbitrator in Arb. O.P. (Comm.Div.) No.20 of 2023, it will lead to a situation where the common order dated 22.01.2024 will be under challenge both before this Court and Hon'ble Supreme Court.

5. Faced with the above situation, learned counsel on record Mr.V.L.Akshai Sajin Kumar sought leave of this Court to withdraw the captioned 'Original Side Appeal' (hereinafter 'OSA' for the sake of brevity) but made a request to preserve all the rights and contentions of the appellant to approach Hon'ble Supreme Court and seek remedy in any manner permissible in law. Mr.V.L.Akshai Sajin Kumar, learned counsel on record for appellant has made endorsements in captioned OSA and captioned 'Civil Miscellaneous Petition' (hereinafter 'CMP' for the sake of brevity) and scanned reproduction of the same are as follows:



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OSA(CAD) No.44 of 2024

Maybe permitted
to withdraw the paper,
with liberty to approach
the Hon'ble Supreme Court
- Aravind
AKS/12/11, SASTIN KANNAN V/L
30/04/2024

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Maybe permitted to
withdraw, with liberty to
approach the Hon'ble
Supreme Court.
- Aravind
AKS/12/11, SASTIN KANNAN V/L
30/4/2024

6. The aforementioned endorsements were reiterated in the hearing.



OSA(CAD) No.44 of 2024

WEB COPY

7. In the light of narrative thus far, captioned OSA and captioned CMP thereat are disposed of as closed/withdrawn *albeit* preserving all the rights and contentions of the appellant in the aforesaid manner. Though obvious, we make it clear that we have not expressed any view or opinion on the merits of the matter. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
30.04.2024

Index:Yes/No
Neutral Citation: Yes/No
mmi

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.



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OSA(CAD) No.44 of 2024

**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

mmi

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