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O.S.A (CAD) No.88 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.08.2024**

CORAM

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

and

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

**O.S.A (CAD) No.88 of 2024**

**&**

**C.M.P.No.16379 of 2024**

**in**

**O.S.A (CAD) No.88 of 2024**

M/s.Quick Sort Traders

Rep. By its Prop. D.Venkatesh Kumar

SP 94, SIDCO Industrial Estate

Ambattur, Chennai – 600 058

... Appellant

Vs.

M/s.Kay Jay Forgings Pvt Ltd.,

Rep. By its DGM Purchase & Admn.

Mr.Binu John

Registered Office

A-8, Mayapuri Industrial Area,Phase – I

New Delhi – 110 064

Corporate Office

E-2, Phase V Focal Point

Ludhiana, Punjab - 14101

.. Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules read with Section 13 of Commercial Courts Act, 2015 to set side the order passed in O.A.No.424 of 2024 on 11.07.2024.

For Appellant : Mr.P.Thiagarajan



O.S.A (CAD) No.88 of 2024

## **JUDGMENT**

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

Captioned main 'Original Side Appeal' ['OSA' for the sake of brevity], which is an intra-court appeal has been presented in this 'Commercial Appellate Division' ['CAD' for the sake of brevity] on 25.07.2024 under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] read with Section 13(1A) of 'The Commercial Courts Act, 2015 [Act 4 of 2016]' {hereinafter 'CCA' for the sake of brevity} and Order XXXVI Rule 1 of Original Side Rules of Madras High Court. In sum and substance, captioned main OSA is a statutory appeal under Section 37 of A and C Act and the sequitur is, captioned OSA is not under Clause 15 of Letters Patent.

2. Be that as it may, captioned OSA has been filed assailing a common order dated 11.07.2024 made in Section 11 'Arbitration Original Petition' ['Arb.O.P' for the sake of brevity and convenience] as well as in a Section 9 application (O.A.No.424 of 2024). Though captioned OSA is qua Section 9 application as impugned order is a common order and as



O.S.A (CAD) No.88 of 2024

WEB C

issues are dovetailed/inextricably intertwined it is really not possible to jettison the Section 9 part of the order. To put it differently, it is not possible to test the Section 9 order without testing the Section 11 order.

3. As regards, Section 9 application, an intra-court appeal will be available to the appellant under Section 37(1)(b) of A and C Act but that is not the case as regards Section 11 Arb.OP. In other words, the remedy against Section 11 Arb.OP for the appellant is only to approach Hon'ble Supreme Court by resorting to Article 136 of Constitution of India.

4. Faced with the above situation, Mr.P.Thiagarajan, learned counsel on record for the appellant sought leave of this Court to withdraw the captioned OSA and captioned CMP thereat but made a plea to preserve all the rights and contentions of the appellant to assail the aforementioned common order dated 11.07.2024 made by a Hon'ble single Judge of this Court in the Hon'ble Supreme Court, saying so learned counsel has made endorsements in the case file and scanned reproduction of the same are as follows:

The appellant may be permitted to  
withdraw with liberty to file  
again. Leave application granted.  
m-2 2/8/24  
CJL R/H

The appellant may be permitted  
to withdraw with liberty  
to file again. Leave application  
granted. m-2 2/8/24  
CJL R/H



O.S.A (CAD) No.88 of 2024

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5. Learned counsel reiterated the aforementioned endorsement and the aforementioned request. Request acceded to.

6. Ergo, the sequitur is, captioned main OSA and captioned CMP thereat are disposed of as closed/withdrawn preserving all the rights and contentions of the appellant including all the grounds raised in the memorandum of grounds of appeal before us for canvassing the same before Hon'ble Supreme Court. Though obvious, we make it clear that we have not expressed any view or opinion on the merits of the matter. These proceedings and preservation of rights are made in deference to judicial discipline in the hierarchy of Courts. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)  
02.08.2024

Index: Yes/No  
Neutral Citation: Yes/No  
gpa

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



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