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Review Application No.289 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Review Application No.289 of 2024

against

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

&

C.M.P.No.22455 of 2024

in

Review Application No.289 of 2024

M/s.Quick Sort Traders
Rep. by its Prop. D.Venkatesh Kumar
SP 94, SIDCO Industrial Estate
Ambattur, Chennai - 600 058

... Review Petitioner

Vs.

M/s.Kay Jay Forgings Pvt. Ltd.,
Rep. by its DGM Purchase & Admin.,
Mr.Binu John
Registered Office
A-8, Mayapuri Industrial Area, Phase - I
New Dehi - 110 064
Corporate Office
E-2, Phase V Focal Point

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Review Application No.289 of 2024

Ludhiana, Punjab - 141 001

... Respondent

Review Application filed under Order XLVII Rules 1 and 2 read with Section 114 of CPC to review the order dated 02.08.2024 passed in OSA (CAD) No.88 of 2024 & C.M.P.No.16379 of 2024 in O.S.A (CAD) No.88 of 2024 and set aside the order passed in O.A.No.424 of 2024 on 11.07.2024.

For Review Applicant : Mr.P.Thiagarajan

For Respondent : Mr.G.J.Baskar Narayan

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

When the 'Original Side Appeal' ['OSA' for the sake of brevity] mentioned in caption supra was listed before this 'Commercial Appellate Division' ['CAD' for the sake of brevity] on 02.08.2024, the same was disposed of vide an order which reads as follows:

'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
&

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Review Application No.289 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

JUDGMENT

*(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



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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 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:

O.S.A

C.M.P

The applicant may be permitted to withdraw with liberty to file again. Leave application granted.
cm-1 21/8/24
CJL R1/Adh

The applicant may be permitted to withdraw with liberty to file again. Leave application granted.
cm-1 21/8/24
CJL R1/Adh



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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.'*

2. Thereafter, the matter was carried to Hon'ble Supreme Court by way of 'Special Leave Petitions' { 'SLPs' in plural and 'SLP' in singular for the sake of brevity}. Hon'ble Supreme Court disposed of the SLPs by way of an order dated 24.09.2024, which reads as follows:



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ITEM NO.292 COURT NO.1 SECTION XII 353

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).21899/2024

Arising out of impugned final judgment and order dated 11-07-2024 in DA No. 424/2024 passed by the High Court of Judicature at Madras)

vs. QUICK SORT TRADERS Petitioner(s)

VERSUS

vs. ADI IMPEX SERVICES Respondent(s)

(WITH IA No. 215344/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 24-09-2024 This petition was called on for hearing today.

GRAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. R. Balasubramanian, Sr. Adv.
Mr. V. Ramasubramanian, ADR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1 Mr R Balasubramanian, senior counsel appearing on behalf of the petitioner, has submitted that though the prayers in the petition under Section 9 of the Arbitration and Conciliation Act 1996 were only in respect of the alienation of the land, the relief which has been granted is in much wider terms.

2 After arguing the Special Leave Petition for a short while, Mr R Balasubramanian, senior counsel appearing on behalf of the petitioner, seeks the permission of the Court to withdraw the Special Leave Petition in order to enable them to move the High Court in the exercise of its review jurisdiction against the order of the



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Division Bench dated 2 August 2024; it being the case of the petitioner that there are certain inadvertent errors in the factual narration in the order.

- 3 The petition is dismissed as withdrawn with liberty to the petitioner to pursue proceedings in review.
- 4 However, it is clarified that we have not expressed any opinion on the merits of the case.

(SANJAY KUMAR-I)
ADDITIONAL REGISTRAR

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

3. The aforesaid orders made by this CAD and Hon'ble Supreme Court are *tell-tale* and therefore, we are not delving into/dilating on the same.

4. Be that as it may, we deem it appropriate to write that it is clear from Paragraph 3 of the order of Hon'ble Supreme Court that liberty has been granted to the petitioner to pursue the proceedings in review and it is pursuant to such liberty granted by Hon'ble Supreme Court that captioned

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'review application' {'said RA' for the sake of brevity} has been filed.

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5. In the captioned RA, in the earlier listings on 04.10.2024 and 15.10.2024, the following proceedings/orders were made:

Proceedings made on 04.10.2024

Rev. Appln.No.289 of 2024

and C.M.P.No.22455 of 2024
in Rev. Appln.No.289 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Mr.P.Thiagarajan, learned counsel on record for review petitioner is before us.

2. Issue notice regarding admission to respondent returnable by 15.10.2024. Private notice permitted.

3. Learned counsel for review petitioner is permitted to serve on the counsel (Mr.G.J.Baskar Narayanan) who represented respondent before Hon'ble single Judge. To be noted, we are informed that the same counsel is representing respondent before the Arbitral Tribunal also.



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List on 15.10.2024.'

Proceedings made on 15.10.2024:

Rev. Appln.No.289 of 2024

and

C.M.P.No.22455 of 2024

in

Rev.Appln.No.289 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 04.10.2024 which reads as follows:

'Rev. Appln.No.289 of 2024

and C.M.P.No.22455 of 2024

in Rev. Appln.No.289 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Mr.P.Thiagarajan, learned counsel on record for review petitioner is before us.

2. Issue notice regarding admission to respondent returnable by 15.10.2024. Private notice permitted.

3. Learned counsel for review petitioner is permitted to serve



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on the counsel (Mr.G.J.Baskar Narayanan) who represented respondent before Hon'ble single Judge. To be noted, we are informed that the same counsel is representing respondent before the Arbitral Tribunal also.

List on 15.10.2024.'

2. Today, Mr.P.Thiagarajan, learned counsel on record for review petitioner is before us.

3. A counsel has logged in, in the name of Mr.G.J.Baskar Narayanan but the counsel is having difficulty at the far end with audio. Learned counsel confirms that from his end Court is both visible and audible by showing a thumbs up sign when requested to do so.

4. Therefore, with the intention of giving an opportunity to respondent and learned counsel for respondent, list this matter again tomorrow.

List tomorrow. List on 16.10.2024.'

6. As 16.10.2024 was declared as a holiday owing to prediction of inclement weather, the matter is before us today.

7. Today, Mr.P.Thiagarajan, learned counsel for review applicant and Mr.G.J.Baskar Narayan (Enrollment No.2514/1999), learned counsel with address for service at No.315/152, II Floor, Thambu Chetty Steet, Chennai - 600 001 (Mob: 98413 70370) for sole respondent are before us.



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8. The main RA was taken up with the consent of both sides.

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9. Both learned counsel consented to have the application under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity], more particularly prayer in O.A.No.424 of 2024 heard out as a Section 17 application before the Arbitral Tribunal. To be noted, the Arbitral Tribunal is constituted by a 'sole Arbitrator, who is a former Hon'ble Judge of this Court, namely Hon'ble Mr. Justice T.Ravindran (Retd.), residing at New No.27, Old No.12, 3rd Avenue, Indira Nagar, Adyar, Chennai - 600 020, E-mail: ravindran.judge@gmail.com, Mob: 9941350926 and 9444399700' {hereinafter 'said AT' for the sake of convenience and 'AT' denotes 'Arbitral Tribunal'}.

10. This CAD is informed by both sides that pleadings are complete in the main arbitration and the arbitration is now underway before said AT. Both sides consented for having Section 9 prayer to be heard out as Section 17 application before the said AT.

11. We ascertained the convenience of Hon'ble sole Arbitrator through the learned Director of 'Madras High Court Arbitration Centre



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under the aegis of this Court' (MHCAC). We are informed by the Director of MHCAC that it was ascertained that Hon'ble Arbitrator (said AT) is ready to sit on 19.10.2024 at 03.00 pm.

12. Captioned RA is a review application and a review application can be entertained in cases of (a) discovery of a new and important matter which was not within the knowledge of one of the parties or could not be produced, (b) mistake or error apparent on the face of the record, and (c) for any other sufficient reason.

13. We are entertaining and passing orders in the captioned RA on the ground of 'any other sufficient reason' and pursuant to paragraph 3 of order of Hon'ble Supreme Court dated 24.09.2024 which gives review applicant the liberty to pursue proceedings in review. In other words, this order is being made owing to consent and order of Hon'ble Supreme Court and therefore, it will not serve as a precedent as regards review applications.

14. Therefore, the following order is passed:

(a) Said AT i.e., Hon'ble Mr.Justice T.Ravindran, learned sole Arbitrator shall sit at MHCAC on 19.10.2024 (Saturday) at 03.00pm;



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(b) Said AT shall take up the pleadings in O.A.No.424 of 2024 as a Section 17 application and deal with the same on its own merits and in accordance with law. When we write that said AT shall hear the matter as a Section 17 application on its own merits and in accordance with law, we make it clear that it is *de hors* the judicial order i.e., order dated 11.07.2024 made in O.A.No.424 of 2024 by the Hon'ble single Judge and to facilitate this, the order of the Hon'ble single Judge will stand effaced / set aside on or from 19.10.2024;

(c) We make it clear that we have not expressed any view or opinion on the order of Hon'ble single Judge while effacing / setting aside the same as it is for the limited purpose of facilitating said AT to hear the application as a Section 17 application;

(d) We have respectfully adhered to the order of Hon'ble Supreme Court granting leave to the review petitioner to pursue the proceedings in review, which means that the review petition can encompass such an order;



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Captioned review application and Civil Miscellaneous Petition

thereat are disposed of in the aforesaid manner with the aforesaid consent directives / observations. There shall be no order as to costs.

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

17.10.2024

gpa

P.S. I: *Upload forthwith*

P.S.II : *All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*



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M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

gpa

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17.10.2024