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A.No.6381 of 2023 in
C.S. (Com.Div) .No.227 of 2023

Application No.6381 of 2023
in
C.S.(Com.Div).No.227 of 2023

C.SARAVANAN, J.

This application has been filed by the applicant to vacate the interim order passed by this Court on 04.10.2023 in A.No.5126 of 2023 in C.S.(Com.Div).No.227 of 2023.

2.The applicant herein is the defendant in the above suit. The above suit has been filed by the respondent / plaintiff to recover a sum of Rs.2,38,90,054/- together with further interest at 18% per annum on the principle amount due for a sum of Rs.2,12,40,000/-.

3.The above amounts are allegedly due from the applicant herein to the respondent pursuant to 18 invoices raised by the respondent on the applicant herein pursuant to work order dated 08.11.2021. As per the aforesaid work order, the applicant herein took a Flat Top Barge for Ramvilli projet site where the work is said to have been awarded by the applicant by the Ministry of Defence, Government of India.



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4.The work order was initially for a period of 12 months extendible as per the site requirement with actual requirement for 2 to 3 years depending upon the work involved. Earlier same Barge was taken on a lease from the 1st respondent company on 09.11.2019 for a period of 24 months.

5.Admittedly, there are no amounts due under the aforesaid work order dated 09.11.2019. It is the case of the applicant that the Application No.5126 of 2023 for prohibitory order was not maintainable as it is filed under Order XXI Rule 46 of CPC, 1908.

6.That apart, it is submitted that even if there is a typographical error in the Judge's Summons filed in support of A.No.5126 of 2023, the averments in the affidavit do not satisfy the requirement of Order XXXVIII Rule 5 of CPC, 1908.

7.In this connection, the learned counsel for the applicant in A.No.6381 of 2023 has placed reliance on the decision of the Hon'ble Supreme Court in **Raman Tech. & Process Engg. Co. and another Vs. Solanki Traders**, (2008) 2 SCC 302. That apart, it is submitted that the



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respondent has filed the above suit contrary to Section 12A of the Commercial Courts Act, 2015.

8.In this connection, a reference was also made to the decision of this Court in **Arvind Gupta Vs. Punjab National Bank and another** in C.S.(Com.Div.) No.216 of 2022 decided on 10.11.2022. It is therefore submitted that the prohibitory order passed by this Court on 04.10.2023 is therefore deserves to be vacated and the suit is liable to be dismissed.

9.Defending the order passed on 04.10.2023, the learned counsel for the respondent / plaintiff submits that there is no merits in the present application. It is submitted that the typographical mistake in the Judge's Summons filed in support of A.No.5126 of 2023 is not fatal to A.No.5126 of 2023 and therefore such specious arguments is to be disregarded.

10.That apart, it is submitted that the amounts due under the work order dated 08.11.2021 under 18 invoices raised are remaining unpaid and there are indications that the respondent will be unable to repay the amounts. It is submitted that even if the respondent / plaintiff



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succeeds in the suit, the applicant / defendant is in arrears to the Government of India, Ministry of Defence, with whom the respondent had a contract for construction of Inner and Outer Harbours along the East Coast of India under “Project Varsha”.

11.In this connection, a reference was made to the decision of the Delhi High Court in **Navayuga-Van Oord JV Vs. Union of India through Ministry of Defence**, 2022 SCC Online Del 1901, initiated by the applicant herein against the Union of India. The order passed on 30.06.2022 in O.M.P.(I) (COMM).208/2022 was reported in 2022 SCC Online Del 1901.

12.That apart, it is submitted that the Hon'ble Supreme Court in **Yamini Manohar Vs. T.K.D.Keerthi**, 2023 SCC Online SC 1382 has clarified the legal position as far as order under Section 12A of the Commercial Courts Act, 2015.

13.It is submitted that the decision of the Delhi High Court in **Yamini Manohar Vs. T.K.D.Keerthi**, which was appealed before the Hon'ble Supreme Court has laid down the position that the expression



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contemplates that the plaintiff is the sole determinant of the pleadings in the suit and urgent interim relief in section 12(1) of the Commercial Courts Act, 2015 can only be determined by the plaintiff. It is therefore submitted that since the plaintiff is the sole determinant, therefore the suit which was instituted validly cannot be scuttled by rejecting the plaint.

14.It is submitted that the applications were filed not only for injunction also for appointment of an Advocate Commissioner in A.No.5126 of 2023 and also for prohibitory order in A.No.5126 of 2023.

15.It is therefore submitted that the present application to vacate prohibitory order is liable to be dismissed.

16.I have considered the arguments advanced by the learned counsel for the applicant and the learned counsel for the respondent.

17.Although the plaint and the application filed in support of prohibitory order under Order XXXVIII Rule 5 of CPC, 1908 do not disclose the ingredients contemplated under Order XXXVIII Rule 5 of CPC, 1908, the documents that are before this Court indicate that the



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applicant herein may not only defeat the rights of the respondent / plaintiff herein, but also the rights of the Ministry of Defence, which had awarded the contract to the applicant / defendant for which the respondent / plaintiff Barge was leased out by the applicant herein.

18.That apart, the amounts are due under the various invoices raised. The applicant / respondent has not clearly stated as to how the amounts are not payable to the respondent / plaintiff on the invoices. Therefore, this application to vacate the prohibitory order is liable to be dismissed and accordingly this application stands dismissed.

19.If the payments are made directly to the applicant / defendant by the Garnishee, there is possibility of the respondent / plaintiff not getting any amount. Therefore, there is no merits in the contention raised for lifting the prohibitory order dated 04.10.2023.

20.Consequently, there shall be a consequential direction to the Garnishee to file an affidavit giving particulars of the amount lying with them.



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21.List C.S.(Com.Div.)No.227 of 2023 for filing affidavit on

31.01.2024.

02.01.2024

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