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OSA(CAD).No.163 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

OSA(CAD).No.163 of 2023

and

C.M.P.No.28246 of 2023

1.Twarit Consultancy Services Private Limited,
a company registered in India, having its
address at 14, Tiruvallur Street, Rangarajapuram,
Kodambakkam, Chennai, Tamil Nadu, India.

2.SEPC Limited (formerly Shriram EPC Limited),
a company registered in India, having
its address at 4th Floor, Bascon Futura SV IT Park,
Venkatanarayana Road, Parthasarathy Puram,
T.Nagar, Chennai, Tamil Nadu - 600017.

...Appellants

Vs.

1.GPI (India) Ltd.,
a company registered in India, having its
address at c/o SGG Fund Services (Mauritius) Ltd.,
33, Edith Cavell Street, Port Louis, Mauritius.
Represented by its Authorised Signatory,
Mr.Abhinav Jain

2.GPE JV1 Ltd.,
a company registered in India, having its
address at c/o SGG Fund Services (Mauritius) Ltd.,
33, Edith Cavell Street, Port Louis, Mauritius.
Represented by its Authorised Signatory,
Mr.Abhinav Jain.



3. Gaja Trustee Company Private Limited,
a company incorporated in India, having its
corporate address at 1402, Tower 2B, One World Centre,
Senapati Bapat Marg, Lower Parel, Mumbai - 400013.
Trustee of Gaja Capital Fund-1, A SEBI Registered Venture
Capital Fund Registered as Venture Capital Fund under SEBI
(Venture Capital Fund Regulations, 1996. Represented by its
Authorized Signatory Mr. Abhinav Jain

...Respondents

Prayer: Original Side Appeal filed under 13(1)A of the Commercial Courts Act, 2015 r/w. Order XXXVI Rule 9 of the Original Side Rules, against the order dated 22.11.2023 made in E.P.No.92 of 2023.

For Appellants : Mr. R. Murari, Senior Counsel
for Ms. Preeti Mohan

For Respondents : Mr. M. Sricharan Rangarajan
Senior Counsel for Mr. Gowtham Kumar

J U D G M E N T

(Judgment of the Court was made by R. SUBRAMANIAN, J.)

The instant appeal challenges the order passed by the learned single Judge in execution proceedings where an international award was put in execution.

2. The learned Judge had while directing the judgment debtor / appellant herein, who had suffered the award to deposit a sum of



Rs.5,00,00,00,000/- within two weeks from the date of the order i.e., 22.11.2023, went on to observe that failing deposit, orders will be passed for taking coercive action including putting the principal officer of the respondent in prison. on being quizzed about the maintainability of the appeal, since the order passed does not come within the first proviso to Section 13(1) of the Commercial Courts Act, 2015, Mr.R.Murari, learned Senior Counsel for the appellants would submit that since the order amounts to detention in a civil prison, the appeal would lie as it is an order appealable under Section 104(h) of the Code of Civil Procedure.

3.Mr.Murari, learned Senior Counsel would invite us to read proviso to Section 13 of the Commercial Courts Act 2016, Order 43 and Section 104 of the Code of Civil Procedure, 1908 together to conclude that an appeal against an order provided under Section 104 (f) would also fall within the proviso to Section 13(1) of the Commercial Courts Act.

4.Contending contra, Mr.M.Sricharan Rangarajan, learned Senior counsel for the respondents would submit that the order under appeal is not an order of arrest or detention, it only talks about the consequence of non-



deposit and the appellants cannot be permitted to challenge this order on an assumption that it contemplates arrest or detention on a future date. We have given our anxious consideration to the rival contentions.

5.No doubt, Section 104(1)(h) of the Code of Civil Procedure makes an order directing arrest or detention of a person in a civil prison, excepting where such arrest or detention is in execution of a decree, appealable. There are two hurdles ahead of the appellant in maintaining this appeal. The first one is that there is no order directing arrest or detention passed as of today. The second one is, even assuming that the order under challenge is an order for arrest or detention, it having been made in an execution proceedings is except from the purview of Sub-section 104(1)(h) of the Code of Civil Procedure. Therefore, the instant appeal is not maintainable.

6.However, Mr.R.Murari would express an apprehension that since the amount has not been deposited as directed by the executing court an order for arrest or detention would follow. We do not think so. It will be open to the appellant to place contend that the appellant should be heard before passing an order of arrest or detention and we are sure that the



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executing court, being single judge of this Court, will definitely hear the appellant before passing any order. The appeal is therefore, dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed. The money lying in the credit of OSA will stand transferred to Execution Petition.

(R.S.M., J.) (R.S.V., J.)
16.02.2024

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Internet:Yes

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Nuetral Citation :No



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