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OA No. 652 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

OA No. 652 of 2025

M Kumaresan,
Railway Contractor
242/2 kottaimettupatty,
Bangalore Bypass Road,
Salem 636 455.

Applicant(s)

Vs

1.Southern Railways
Salem Division, DRM Office,
Southern Railways, Sooramangalam,
Salem 636 005.

2.City Union Bank
Brindavan Road,
Fairlands, Salem 636 016.

Respondent(s)

PRAYER Petition filed under Order XIV Rule 8 of the OS Rules r/w Section 9(1)(ii)(d) of the Arbitration and Conciliation Act, 1996, praying to pass an



order of Interim Injunction restraining the 1st Respondent from Invoking/encashing the Bank Guarantee bearing No.0018823PBG025325 dated 28.11.2023 for a sum of Rs.39,36,684/-belonging to the Applicant, pending disposal of the Arbitral dispute.

For Applicant(s): Mr.Thangadurai T

For Respondent(s): Ms.S.Indumathi Ravi
Senior Panel Counsel for R1
R2 - Exparte

ORDER

This application has been filed under Section 9 of the Arbitration and Conciliation Act, seeking for an interim injunction restraining the 1st respondent from invoking/encashing the Bank Guarantee dated 28.11.2023 for a sum of Rs.39,36,684/- belonging to the Applicant, pending the final Arbitral Award.

2.The case of the applicant is that the Southern Railways floated a tender and the applicant was the successful bidder. The Letter of Acceptance was given on 13.11.2023, after which both the parties entered into an Agreement dated



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06.12.2023. The value of the work as per the Letter of Acceptance was nearly 7.87 Crores. The term of the contract was for a period of nine months from the date of Letter of Acceptance.

3.As per the Agreement, the applicant had submitted irrevocable Bank Guarantee for a sum of Rs.39,36,684/- on 28.11.2023, issued by the 2nd respondent Bank.

4.The applicant was expected to rebuild six bridges as per the contract and complete this work within nine months. However, according to the applicant, there was a delay in the arrangement of the drawings and as a result, there was a delay in the work. Considering the same, the 1st respondent also extended the contract upto 31.03.2025 under Clause 17 of GCC. In spite of the extension of time, there was no substantial progress on the part of the 1st respondent in fulfilling the reciprocal obligations. In this regard the applicant submitted a Letter dated 19.02.2025 in which they had stated that they have not



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received the drawings for the remaining bridges and for certain other bridges, permission to commence the work has not been granted. Once again it was brought to the notice of the 1st respondent through letter dated 13.03.2025.

5.The grievance of the applicant is that the 1st respondent, through letter dated 20.03.2025, alleged that there was failure on the part of the applicant in commencing the work. The applicant on receipt this notice, gave a reply on 24.03.2025, stating that the drawings had been received only for certain bridges and once again reiterated that the General Arrangement Drawings for Bridge Nos.27, 37, 38 and 43 have not been issued by the 1st respondent. Without considering the same, the 1st respondent through letter dated 05.05.2025 issued a seven day notice stating that there was no progress in the work. In spite of the reply given by the applicant, the 1st respondent through letter dated 26.06.2025, terminated the Agreement. By the time, the applicant commenced the arbitration proceedings, an attempt was made to invoke the bank guarantee. It is under these circumstances, the present application came to be filed before this Court.



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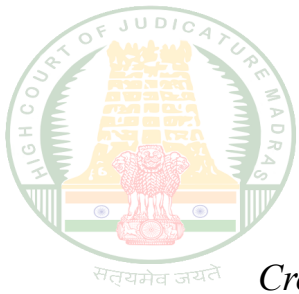
6. When the matter came up for hearing on 01.07.2025, this Court passed the following order:

This application has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking for an order of interim injunction to restrain the 1st respondent from invoking the subject Bank Guarantee furnished by the applicant for a sum of Rs.39,36,684/- towards performance of their obligations under the contract entered into with the respondents.

2. The applicant has sought for interim injunction from invoking the subject Bank Guarantee on two grounds :-

- a) Special equity and*
- b) Proportionality.*

3. The applicant claims that out of six bridges for which the contract was awarded to him by the respondents, he has constructed only two bridges partly. The total value of the contract awarded to the applicant is Rs.7.8 Crores. The applicant claims that he has completed work as on date to the value of Rs.1.5



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Crores. According to the applicant, he has been repeatedly requesting the respondents to furnish drawings for all the six bridges. But despite his requests, he claims that only for two bridges, the finalised drawings were given to him and in respect of remaining four bridges, it has not been given. The contract awarded to the applicant is for a period of nine months. The date of the contract is 06.12.2023. By now the period of contract has come to an end. However, the respondents have sent a communication to the applicant on 26.06.2025 informing the applicant that they are terminating the contract, since the applicant has not fulfilled his obligations under the Agreement, dated 20.12.2023.

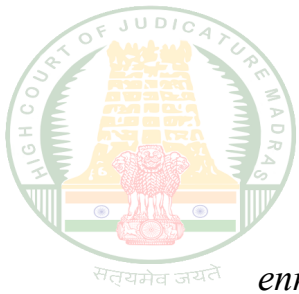
4. However, the contention of the respondents is disputed by the applicant as seen from the affidavit filed in support of this application. The applicant has also filed supporting documents along with this application to substantiate his claim that repeatedly he has been requesting the respondents for providing the finalised drawings to enable him to proceed with the work and to complete construction of all the six bridges, in accordance with the terms and conditions of the Agreement, dated 20.12.2023.



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5. *The learned counsel for the applicant drew the attention of this Court to various documents filed along with this application as well as communications sent by the applicant to the respondents requesting the respondents to provide the finalised drawings for all the six bridges to enable the applicant to proceed with the work. According to the applicant only due to the delay on the part of the respondents in not fulfilling his obligations as per the terms and conditions of the Agreement, dated 20.12.2023, he was unable to perform the work and complete construction of six bridges.*

6. *The learned counsel for the applicant also drew the attention of this Court to the termination letter, dated 26.06.2025 and would submit that the respondents are adequately protected as the security deposit which was given by the applicant for getting the contract, the respondents have forfeited the same and the said security deposit amount is for the same sum of Rs.39,36,684/-. The Bank Guarantee is also for the same amount. Therefore, according to the applicant, if the Performance Bank Guarantee for a sum of Rs.39,36,684/- is encashed as threatened by the respondents in their termination letter, the applicant will be put to irreparable loss and hardship. Further, he has categorically contended that if the said amount is allowed to be encashed, it would amount to unjust*



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enrichment being made by the respondents. Therefore, on the ground of special equities and on the ground of proportionality, this application has been filed seeking for an order of interim injunction to restrain the respondents from invoking the performance Bank Guarantee for a sum of Rs.39,36,684/-.

7. This Court after giving due consideration to the contents of the affidavit filed in support of this application as well as the documents filed along with this application is of the considered view that a prima facie case has been made out by the applicant for the grant of interim injunction as prayed for in this application. The balance of convenience and irreparable hardship has also been established. Accordingly, there shall be an order of interim injunction as prayed for in this application.

8. It is made clear that once the respondents enter appearance in this application, the applicant counsel shall always be ready to argue this application and no adjournment will be granted on any account whatsoever. If any adjournment is sought for, the interim injunction granted today shall not be extended by this Court.



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9. The applicant shall initiate arbitration in accordance with the arbitration agreement contained in the contract, which is the subject matter of dispute between the parties, within a period of 90 days from the date of receipt of a copy of this order. In case, the applicant fails to initiate arbitration within the stipulated time, the order passed by this Court today shall stand automatically vacated.

10. Mr.S. Nelson, learned counsel undertakes to file vakalat on behalf of the 1st respondent.

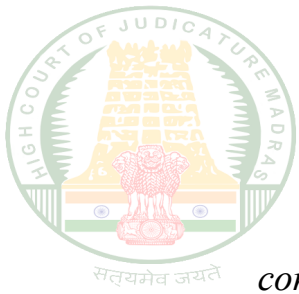
11. Registry is directed to print the name of Mr.S. Nelson as learned counsel for the 1st respondent on the next hearing date.

12. Notice to the 2nd respondent, returnable by 22.07.2025. Private notice is also permitted.

13. Post the matter on 22.07.2025.

7. When the matter came up for hearing on 01.09.2025, this Court passed the following order:

It is brought to the notice of this Court that the interim order



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continues and the trigger notice dated 03.07.2025 has been issued.

The first respondent will have to provide the panel of arbitrators.

2. In view of the above, the learned Senior Panel Counsel for the first respondent shall provide the panel of arbitrators. This will enable this Court to refer the matter to arbitration by giving liberty to both sides to proceed further with the interim measure under Section 17 of the Act.

3. Post this case under the caption 'for orders' on 15.09.2025.

8.The matter once again came up for hearing on 15.09.2025 and the learned Central Government Standing Counsel appearing on behalf of the Southern Railway sought for some time to provide the panel of Arbitrators. Accordingly, the matter was adjourned and listed for hearing today.

9.When the matter was taken up for hearing today, the learned Central Government Standing Counsel submitted that no panel of arbitrators is available and requested this Court to appoint an Arbitrator. The learned Central



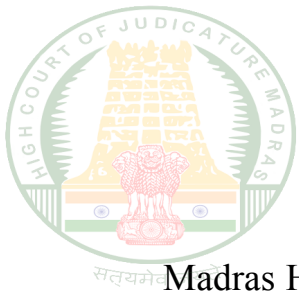
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Government Standing Counsel further submitted that the period of bank guarantee is coming to an end in December 2025 and hence, the applicant must be directed to renew the bank guarantee and keep it alive till the completion of the arbitration proceedings.

10. In the considered view of this Court, there is already an interim order granted in favour of the applicant and it is continuing till date. Hence, it is high time that the parties start the arbitration process in order to resolve the dispute at the earliest.

11. In view of the above, this Court is inclined to appoint a sole Arbitrator.

Mr.E.Om Prakash, learned Senior Advocate, Door No.67, AH 93, NH Block, 3rd Street, Shanthi Colony, Anna Nagar, Chennai 600 040 [Mobile: 9444045745] is appointed as sole Arbitrator. The sole Arbitrator is requested to enter upon reference, adjudicate upon arbitrable disputes that have arisen between the parties. The Arbitrator shall hold sittings in the 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) as per



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Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

12.The interim order passed by this Court will continue and after the learned Arbitrator enters reference, it will be left open to the parties to move an application under Section 17 of the Act and seek for the appropriate interim remedy.

13.This application is disposed of in the above terms. No Costs.

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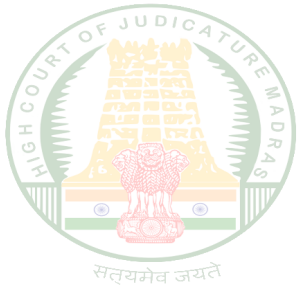
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1.Southern Railways

Salem Division, DRM Office,
Southern Railways, Sooramangalam,
Salem 636 005.

2.City Union Bank

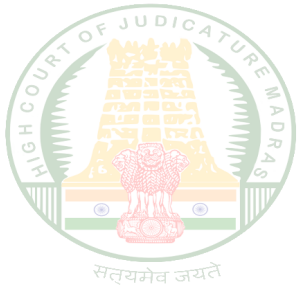
Brindavan Road,
Fairlands, Salem 636 016.

3.Mr.E.Om Prakash,

Senior Advocate,
Door No.67, AH 93, NH Block,
3rd Street, Shanthi Colony,
Anna Nagar,
Chennai 600 040
Mobile: 9444045745

4.The Director

Tamil Nadu Mediation and Conciliation
Centre-cum-Ex-Officio Member
Madras High Court Arbitration Centre
Chennai - 104.



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N.ANAND VENKATESH J.

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