IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA(CAD) No. 51 of 2022

Arkay Energy (Rameswaran) Limited
GF 1 A, Prince Villa, 15, Rajamannar Salai,
T.Nagar, Chennai - 600 017.
Currently at
New No.20, Old No.129, Chamiers Road,
Nandanam, Chennai - 600 035.

..Appellant

Vs

1.Tidel Park Limited,
No.4 Rajiv Gandhi Salai, Taramani,
Chennai - 600 113.

2.M/s.Ind Bharath Power Infra Limited,
Plot No.30-A, Road No.1, Film Nagar,
Jubilee Hills, Hyderabad - 500 033.

..Respondents

Prayer: Original Side Appeal filed under Section 13(1) of the Commercial Courts Act, 2015, to set aside the Fair and Decreetal Order dated 20.10.2021 passed in C.S.No. 389 of 2011.

For Appellant: Mr. Anirudh Krishnan

For Respondents: Ms.Jayanthi K.Shah for R1
Mr. Abishek Jenasenan for R2

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

This Original Side Appeal is preferred against the Fair and Decreetal Order dated 20.10.2021 passed in C.S.No. 389 of 2011.

2. The appellant is the 1st defendant in C.S. No.389 of 2011. The 1st respondent herein as plaintiff filed the above suit for recovery of money invested by them in the Second respondent Company, pursuant to the Power Purchase Agreement dated 10.11.2005 with the appellant herein and the Share Holders Agreement dated 10.11.2005 with the appellant and the second respondent.

3. The facts leading to the filing of the above suit are as follows:

3.1. The appellant/first defendant under the Power Purchase Agreement dated 10.11.2005, agreed to supply 21,67,000 units of power every month to the 1st respondent / plaintiff. At no time did the appellant supplied the said quantity of power. From the inception, there was short supply of power varying from 37% to 74%. From April 2008, the 1st respondent/plaintiff did not receive any power from the appellant. The power supply to the 1st respondent/plaintiff was illegally stopped by the appellant/first defendant. The appellant/first defendant, on 25.04.2008 wrote a letter alleging non-payment of bills. In fact, the consumption bills raised by the appellant/first defendant did not match the real consumption and there was discrepancies in calculating the peak hour consumption and night hour consumption rebate. Those were the reasons for withholding the bills. Hence, based on the terms of the agreement in the Power Purchase Agreement dated 10.11.2005, the 1st respondent/plaintiff sought for declaration that the appellant/first defendant is a defaulter in supplying the contracted demand of power, so liable to pay the discount amount of Rs.4,85,32,773/- and interest pendent lite.

3.2. Relying upon the Share Holders Agreement dated 10.11.2005, which permits the 1st respondent /plaintiff to disinvest the shares held in the appellant/first defendant company in the manner prescribed under clause 3 and 4 and the assurance of 16% return for its investment of Rs.90,00,000/- under clause 6, relief of declaration that, the plaintiff is entitled for interest at 16% from the date of investment till realisation, in addition to the value of the shares as per the assessment of the statutory auditor of the first defendant company and consequential reliefs sought.

4. In the written statement filed by the first defendant, which was adopted by the second defendant, it is stated that, as per the scheme of the Share Holders Agreement, the right of first refusal is vest with the second

defendant. The second defendant did not communicate to the plaintiff its interest to buy the shares within 30 days from the date of offer. Therefore, under clause 4 of the Share Holders Agreement, the plaintiff is at liberty to disinvest the shares to any other third party other than the second defendant and its associates. The claim of 16% interest as assured return is not in addition to the price of the shares. After disinvesting the shares either under clause 3 or under clause 4, if the plaintiff is unable to recover the assured return of 16%, only then, the plaintiff will get the right to sue the defendants for the shortfall.

4.1. After three of its captive customers sold their shares to the promoters, the shareholding by the captive customers fall below 26%. As a result, the first defendant company lost the status of "Captive Generating Plant" and the Power Supply Agreement has worked itself out. This change of status was informed to the plaintiff. Under the said circumstances, when the plaintiff offered to sell the shares, the first defendant furnished the auditor's report, with certificate with regard to the value of the shares. The plaintiff, for one reason or the other, never took up the option. The condition precedent for granting 16% return on the investment is based on the compliance of power supply agreement by the plaintiff. The plaintiff has failed to pay its dues for the power supplied and defaulted in making payment citing frivolous reasons. Therefore, the plaintiff is not entitled for the assured 16% returns. The short supply of power was due to reduced supply of gas by GAIL. This fall within the definition of 'force majeure' under Article VIII Clause 2.6 of the Power Supply Agreement. After the termination of Power Supply Agreement on 19.01.2011, the plaintiff is not entitled for any interest on its investment. When there is an option to sell the shares to any third parties, the plaintiff cannot compel the defendants to purchase the shares held. Without exercising the said option, the plaintiff has rushed to the Court, hence the suit is liable to be dismissed.

5. Based on the materials, the learned Single Judge decreed the suit by holding that, if the terms of agreement are interpreted strictly and the relief sought, the Suit is liable to be dismissed. The learned Single Judge further held that, if the suit is dismissed for mis~joinder of cause of action and misconception of fact, with liberty to file fresh suit, it will put the parties to square one and perpetuate the litigation and that being a Public Sector Company, the delay in decision making had already cost heavily to the parties and hence to mitigate and to meet the ends of justice, the relief sought in the suit is moulded and the suit was allowed on the below terms:~

(a). It is declared that the value of the 1st defendant Company share as Rs.19.05 per share as on 04.02.2010 as per the Chartered Accountant Certificate dated 04.02.2010 furnished by the 1st defendant (Ex.P.18).

(b). The 1st defendant is directed to buy back the 90,000 shares from the plaintiff on payment of Rs.19.05/- per share along with interest at the rate of 12% from 04.02.2010 till the date of filing the suit. Thereafter, at the rate of 9%

per annum from the date of suit, till the date of decree and 16% per annum from the date of decree till the date of realisation. In case, the decree amount and other monetary benefits gained put together fall short of the assured return of 16% per annum, the plaintiff is at liberty to file fresh suit for the shortfall if any, within a period of 3 years from the date of the decree.

6. Aggrieved over the same, the 1st defendant / M/s. Arkay Energy (Rameswaran) Limited, has preferred the present appeal

7. Mr. Anirudh Krishnan, learned counsel appearing for the appellant would submit that the learned Single Judge has rendered a decision against a well settled principle cum maxim, i.e., *aequitas sequitur legem* which means equity follows law and that equity adopts and follows the rule of law in all cases to which those rules may in terms be applicable. Thus, equity cannot be used to defeat the purpose of law but to fulfil it, to supplement it, to explain it. The peculiarity in the present case is that the learned Single Judge having accepted the case put forth by the appellant, holds that the suit ought to be dismissed, but uses equity to go beyond what has been prayed for by the 1st respondent and had granted reliefs on the basis of equity without proper justification. He would submit that it is settled law that when there is a conflict between law and equity, it is the law which has to prevail, in accordance with the Latin maxim "dura lex sed lex" which means "the law is hard, but it is the law" and that Equity and law

are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. Therefore, It is contended that the obligation of the High Court to decide the matters before it in accordance with law. If the law was in favour of the appellant before it, it was obliged to make an order in favour of the appellant. Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law. In support of his contentions, he relied on the following judgments.

1. *G. Ramaswamy v. The Taluk Excise Officer (Writ Appeal No.60 of 1999)*
2. *P.M. Latha and Ors v. State of Kerala and ors reported in (2003) SCC (LS) 339.*
3. *Raghunath Rai Bareja and Ors. v. Punjab National Bank and Ors reported in 2007 (5) CTC 642*
4. *Council for Indian School Certificate Examination v. Isha Mittal and Ors reported in (2000) 7 SCC 521.*
5. *Sharma and Associates Contractors (P) Ltd., v. Progressive Constructions Ltd., reported in (2017) 5 SCC 743.*
6. *Alopi Parshad and Sons Ltd., v. Union of India reported in 1960 SCC Online SC 13.*
7. *Larsen and Toubro Limited v. Mohan Lal Harbans Lal Bhayana reported in (2015) 2 SCC 461.*

8. On the other hand, Ms. Jayanthi K. Shah, learned counsel appearing for the 1st respondent/plaintiff would submit that the Share Holders Agreement dated 10.11.2005 (SHA) is to record the terms and conditions of the investment. The investment itself was made only on 05.12.2005. The SHA is, therefore, not a contract to but and sell securities and hence is not a "derivative". The shares in the appellant company were subscribed pursuant to the SHA. There is no underlying or pre-existing security. Further the SHA did not have a pre fixed amount / price and even according to the appellant and the 2nd respondent, there was no enforceable obligation on them to buy the shares. The SHA thus lacked every characteristic of a derivative / forwarded contract. The Securities Contract (Regulation) Act, 1956 (SCRA) applied only to contracts for buying and selling of securities. The phrase "Contract" in "SCRA" means "a contract for or relating to the purchase or sale of securities". However, on the plain terms and effect of the SHA, it was never a contract for buying and selling securities. Further the Act prohibited contracts for buying and selling securities in the circumstances given in Sections 13, 14 and 16. Further the Act allowed transactions in spot contract (Section 18) and in futures contracts (Section 18A). The SHA thus never came within the ambit of SCRA or the regulations issued thereunder. She would further submit that, in P.13 letter dated 05.11.2008, the 2nd respondent had offered to purchase the shares along with interest and by

letter dated 13.11.2009 (P.15), the 1st respondent/plaintiff accepted the offer. The 2nd respondent, thereafter, also acted upon the acceptance by preparing and forwarding an auditor's valuation and that in terms of clause VI.5 the rights accrued survive the termination of the agreement. She would further submit that the contention of the appellant that the 1st respondent/plaintiff ought to have exercised the alternate option of selling the shares to third parties is unsustainable in terms of clause 3 and 4 of SHA. In the facts of this case, the 2nd respondent made the offer and the 1st respondent/plaintiff accepted the same. The 2nd respondent also acted upon the acceptance. Thus, there was no refusal on the part of the 2nd respondent to compel the 1st respondent / plaintiff to explore the option of selling the share to third parties. The learned Single judge has gone into all these aspects and rightly decreed the suit in favour of the 1st respondent, which warrants any interference by this Court.

9. Heard on both sides. Records perused.

10. The disputes arise out of a Shareholders' Agreement dated 10.11.2005 (SHA"). The SHA records that pursuant to a captive generation scheme, the first Respondent invested in 9,00,000 shares at Rs. 10/- each in the Appellant. The exit mechanism is provided in clauses 3, 4 and 6 of the SHA. Clause 3 of the SHA provides for the right of first refusal to the second Respondent, which is the parent company and majority shareholder of the Appellant. Further, Clause

3 also provides for a method of valuation of the shares for exercising the Right of First Refusal ("ROFR") - one of the methods was based on "assessed value of shares as determined by Auditors" of the Appellant. Clause 3 also provides that if the ROFR was not exercised within 30 days of the offer by the second Respondent, the first Respondent would have the right to sell the shares to any third-party. Clause 4 of the SHA provides the first Respondent to disinvest the shares into any other third party other than the second Respondent. Clause 6 was also the subject matter of dispute and provided the first Respondent with an assured return of 16% per annum.

10.1. The parties were negotiating to provide an exit to the first Respondent. While so, the Appellant offered to buy back the shares of the first Respondent, and the valuation of the shares suggested by a chartered accountant nominated by the Appellant was at Rs 19.05/- per share. Numerous correspondences were exchanged between the parties during the period 23.11.2009 and 22.03.2011, in relation to whether the chartered accountant must be the statutory auditor of the Appellant. Meanwhile, the buyback did not go through, and in this background the first Respondent filed the suit seeking prayers for effectively enforcing Clauses 3 and 6 of SHA.

10.2. A perusal of the Impugned Judgment and Decree would indicate that all findings are in favour of the Appellant. The contention of the first Respondent that the value of exit must be assessed only by the statutory auditor and not by any other chartered accountant is incorrect. Clause 3 of SHA does not compel the Appellant or the 2nd Respondent to buy back the shares. The Impugned Judgment and Decree held that ROFR is an optional right of the 2nd Respondent . Since the first Respondent failed to accept the price of Rs. 19.05/- per share as suggested by the Appellant, consequently it cannot insist on 13.5% compound interest and/or a 16% p.a. Return on Investment. The first Respondent cannot both seek a preliminary decree of declaration that the second Respondent must purchase the whole of the shares as per the value fixed by the statutory auditor, and claim an assured return of 16% p.a. Prayer to declare interest at the rate of 16% p.a. on the investment of Rs. 90 lakhs is not maintainable since assured returns is not the same as interest. Hence, the consequential direction to pay Rs.77,79,945/-,as interest on the investment, as 16% interest on the investment is also not maintainable. The contention that interest at 16% p.a. be granted, was also rejected in the Impugned Judgement and Decree The Court cannot compel the second Respondent to purchase the shares from the first Respondent and it is always open to the first Respondent to exercise its rights under the SHA, and sell the shares to any third party, when the ROFR was not exercised within 30 days from the date of offer. The learned Single Judge also observed that if the terms of agreement are interpreted strictly and the relief sought, the Suit is liable to be dismissed. However, despite all the above observations, solely on the basis of equity, the Learned Single Judge granted the relief to the plaintiff as stated supra.

11. The learned Single Judge, having held that if the terms of agreement are interpreted strictly and the relief sought, the suit is liable to be dismissed, ought not to have directed the appellant herein to buy back the shares on payment of Rs.19.05 per share along with interest. A Court can mould a relief based on the principles of equity and substantial justice. When strict enforcement of the original claim becomes unfair, futile, or obsolete, Courts frequently modify or shape a remedy to fit the changed circumstances and prevent further litigation. However, the Court cannot completely invent a relief out of thin air. There must be underlying pleadings and established facts that justify the alternative. As rightly pointed out by the learned counsel for the appellant equity cannot be used to defeat the purpose of law but to fulfil it, to supplement it, to explain it. It is settled law that when there is a conflict between law and equity, it is the law which has to prevail. Hence, the fair and decreetal judgment dated 20.10.2021passed in C.S. No.389 of 2011 is liable to be set aside.

12. In the result, **OSA(CAD) No. 51 of 2022** is allowed. No costs. the fair and decreetal judgment dated 20.10.2021passed in C.S. No.389 of 2011 is set aside.

(P.V.,J.) **(K.G.T.,J.)**

10-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BGA

To
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No.4 Rajiv Gandhi Salai, Taramani,
Chennai - 600 113.
2.M/s.Ind Bharath Power Infra Limited
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