(2014) 06 MAD CK 0210

In the Madras High Court

Case No : O.S.A. Nos. 60 to 63 of 2014

L. and T. Finance Limited APPELLANT

Vs

J.K.S. Constructions Pvt. Ltd. RESPONDENT

Date of Decision : 12-06-2014

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 34, 9

Citation : (2014) 06 MAD CK 0210

Hon'ble Judges : M. Venugopal, J;M. Jaichandren, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

M. Venugopal, J.—The Appellant/Applicant/Plaintiff has projected the present Original Side Appeals before this Court, as against the Common Order, dated 10.02.2014, in Application Nos. 441, 442, 444 & 445 of 2013, passed by the Learned Single Judge.

2. The Learned Single Judge, on 10.02.2014, while passing the Common Order, in Application Nos. 441, 442, 444 & 445 of 2013 [filed by the Appellant/ Applicant, u/s 9 of the Arbitration and Conciliation Act, 1996, praying for the appointment of Advocate Commissioners to seize and possess the hypothecated equipment and for the issue of a prohibitory order restraining the Garnishees from making payment to the borrower], had, among other things, observed that ''..... While generating income for themselves out of the very same equipment, it is unfair on the part of the respondent to refuse to pay at least some portion of it to the applicant towards the bare minimum of admitted liability. In such circumstances, I have no alternative except to pass a prohibitory order'' and resultantly, dismissed the Applications.

3. According to the learned Senior Counsel for the Appellant/Applicant, the machineries in issue were hypothecated in favour of the Appellant/Applicant/ Plaintiff by the Respondent and in fact, the Respondent had committed default in

payment of instalments.

4. The Learned Senior Counsel for the Appellant/Applicant refers to the letter dated 03.07.2013 of the Respondent, in and by which, the Respondent/ Defendant had agreed to pay the outstanding payment in all their contracts for a sum of Rs. 1,43,42,840/- on or before 15.07.2013 and issued SBI DD bearing No. 000338 for a sum of Rs. 20,00,000/- and issued another Cheque bearing No. 120734 for Rs. 17,16,482/- and further undertook to pay the balance outstanding payment of Rs. 1,05,00,000/- and issued two post dated cheques for the same.

5. The Learned Senior Counsel for the Appellant/Applicant, by placing reliance on the aforesaid letter of the Respondent/Defendant dated 03.07.2013, forcefully contends that the Respondent/Defendant had undertaken to honour the cheques on due date given therein, failing which, the Appellant/Applicant may proceed with all legal actions, including execution of Advocate Commissioner warrant and thus undertook to clear all the future instalments on due date as per respective agreements without fail.

6. The Learned Senior Counsel for the Appellant/Applicant submits that no amount is secured and in fact, the Respondent/Defendant had admitted his liability in regard the outstanding amount due to be paid to the Appellant/ Applicant/Plaintiff and in fact, in A. No. 5712 of 2013, the Learned Single Judge, on 10.02.2014, passed an order directing the Garnishees viz., the Respondents 2 to 6 therein, to bring into Court, the amounts, if any, due and payable by them to the 1st Respondent, to the extent of the admitted liability of Rs. 1,07,51,115/-, within a period of one week from today etc.

7. At this stage, the Learned Senior Counsel for the Appellant/Applicant/Plaintiff brings it to the notice of this Court that the Garnishee said that there is no money available.

8. That apart, the Learned Senior Counsel for the Appellant/Applicant submits that the Arbitration Award, in respect of 4 loan agreements, was passed on 03.07.2013 and in fact, the Application Nos. 441, 442, 444 and 445 and 5712 of 2013, the order was passed on 10.02.2014.

9. It is the primordial submission of the Learned Senior Counsel for the Appellant/ Applicant that the Appellant/Applicant/Plaintiff is entitled to get the relief for appointment of Advocate Commissioners to seize and possess the hypothecated equipment.

10. Also, the Learned Senior Counsel for the Appellant brings it to the notice of this Court that the Appellant/Plaintiff has identified the buyers and informs that the Appellant/Applicant/Plaintiff would not sell the hypothecated machineries/ equipments without the permission of the Court.

11. Per contra, it is the submission of the Learned Counsel for the Respondent/ Defendant that the Respondent/Defendant had filed Petition u/s 34 of the

Arbitration and Conciliation Act, 1996, being aggrieved against the Award dated 03.07.2013 and submits that the Respondent/Defendant has valid defence in regard to the maintainability of the Applications inasmuch as they are no measures of interim protection covered in terms of the ingredients of Section 9 of the Act.

12. At this stage of the hearing, the Respondent/Defendant is ready and willing to handover the machineries concerned in O.S.A. Nos. 60 to 62 of 2014 to the Appellant/Applicant/Plaintiff. The details of Machineries and the amount due, according to the Respondent/Defendant, are as follows:

Sl.No.

O.S.A.No.

MACHINERY

AMOUNT DUE

Rs.

1.

60 of 2014

i)PENTA 1000 TS Concrete Batching and Mixing Plant

ii) 2011 Model 1 No: Allen Triple Roller Tube Paver Model 150

51,44,192/-

2.

61 of 2014

Bitumen Sprayer Plant and Machinery with its accessories

29,77,577/-

3.

62 of 2014

2010 Model Vibratory Compactor L&T Case Model 752

5,69,470/-

13. According to the Learned Counsel for the Appellant/Applicant, the Respondent/Defendant is due and liable to pay nearly Rs. 4 Crores under 4 contracts and even after securing the Award, the Appellant/Applicant/Plaintiff is not in a position to realise its legitimate due amount to be paid by the Respondent/Defendant.

14. On a careful consideration of respective stand taken by the parties, this Court, without traversing upon the merits of the matter and also taking note of a

primordial fact that the Respondent/Defendant is ready and willing to hand over the machineries concerned in O.S.A. Nos. 60 to 62 of 2014 (arising out of A. Nos. 441, 442 and 444 of 2013) to the Appellant/Applicant/Plaintiff, in furtherance of substantial cause of Justice and on balance, directs the Respondent/Defendant to hand over/entrust the custody of the machineries concerned, as stated supra, to the Appellant/Plaintiff''s Authorised Representative, on or before 16.06.2014, at a place and time to be specified by the Appellant/Applicant/Plaintiff, without fail.

15. With the aforesaid observations and directions, O.S.A. Nos. 60 to 62 stand disposed of. No costs.

16. In so far as the machinery viz., 1 No. 2011 Model Puzzolana 200 TPH Crusher Plant, relating to O.S.A. No. 63 of 2014 [arising out of A. No. 445 of 2013] is concerned, the Learned Counsel for the Respondent/Defendant submits that the Respondent/Defendant is to make use of the said machinery for its business activities and to raise in earnings. As such, it cannot part with the same for the present. However, the stand of the Respondent/Defendant in this regard is not accepted by the Appellant/Plaintiff. Hence, the O.S.A. No. 63 of 2014 is directed to be listed for full-fledged hearing separately.

