



E.P.Nos.68 & 69 of 2021

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SENTHILKUMAR RAMAMOORTHY J.,

Olam International Limited (the Award Holder) filed Execution Petition Nos.68 and 69 of 2021 (the Execution Petitions) against Manickavel Edible Oils Private Limited (the Award Debtor in E.P.No.68 of 2021) and Yentop Manickam Edible Oils Private Limited (the Award Debtor in E.P.No.69 of 2021), respectively, for recognition and enforcement of two separate arbitral awards against the respective Award Debtor (collectively the Award Debtors), both dated 04.02.2021, which qualify as foreign awards (the Foreign Awards) as per the Arbitration and Conciliation Act, 1996 (the Arbitration Act).

2. At the pre-numbered stage, the Execution Petitions were listed for maintainability. After considering the objections of the Registry, by order dated 09.12.2021, the objections were overruled and the Registry was directed to number and list the petitions. After the said petitions were numbered and listed, notice was issued to the respondent/Award Debtor. After entering appearance, the Award Debtors challenged the order dated 09.12.2021 before the Division Bench of this Court. The appeals before the



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Division Bench were disposed of by common judgment dated 21.06.2022.

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The operative paragraph of the said judgment is set out below:

"6. Having regard to the submissions made by the learned counsel on either side, without interfering with the common order passed by the learned Single, which are impugned in the above appeals, we make it clear that it is open to the appellants to file a counter raising the issue with regard to maintainability of the Execution Petitions and in the case of such issue is raised in the counter to be filed by the judgment debtors appellants, the learned Single Judge shall decide the same on merits and in accordance with law at the time of deciding the Execution Petitions. The learned counsel appearing for the appellants submitted that the appellants would file their counter within two weeks."

3. By relying upon the leave granted by the Division Bench, the

Award Debtors filed a counter only with regard to the maintainability of the



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Execution Petitions. Rejoinder was filed in response thereto by the Award

Holder.

4. Oral arguments on behalf of the Award Debtors were made by Mr.Suhrith Parthasarathy, learned counsel, and on behalf of the Award Holder by Mr.Amitava Majumdar, learned counsel.

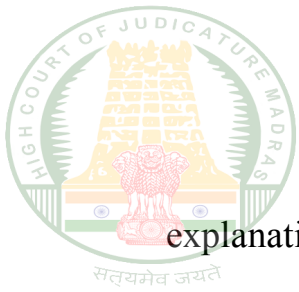
5. The first contention of Mr.Suhrith Parthasarathy was that the registered office of the Award Debtors and their assets are situated in Virudhunagar. According to him, the expression “Court” in Part-II of the Arbitration Act applies to the high court with original or appellate jurisdiction over the relevant award debtor. By that standard, learned counsel contended that this Court does not have original jurisdiction to decide the questions forming the subject matter of the Foreign Awards if the same had been subject matter of a suit in its original civil jurisdiction. In order to substantiate this contention, learned counsel referred to the judgment in *NCC Infrastructure Holdings Limited v. TAQA India Power Ventures Private Limited (NCC Infrastructure)*, Arbitration O.P.Nos.410 and 412 of 2021, Order dated 11.01.2022, 2022 3-L.W.504. With specific



reference to paragraph 15 of the said order, learned counsel pointed out that

the High Court - for purposes of the first limb of the explanation to Section 47 of the Arbitration Act - is the High Court which can issue process for the attachment or sale of the assets of the Award Debtors. As regards the second limb, he submitted that the principal seat would not have appellate jurisdiction in respect of decrees of courts in Virudhunagar and that such appeal would only lie before the Madurai Bench.

6. He also referred to Section 10 of the Commercial Courts Act, 2015, which deals with jurisdiction in respect of arbitration matters, and submitted that the Hon'ble Supreme Court concluded in *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited*, (2021) 7 SCC 1, that the expression "international commercial arbitration" in Section 10 takes within its fold a foreign award. By relying upon the judgment of the Andhra Pradesh High Court in *K.Venkata Subbayya v. District Collector, Chittoor and others*, MANU/AP/0127/1969, he pointed out that there is a difference between the exercise of ordinary original civil jurisdiction under the letters patent and ordinary jurisdiction or extraordinary jurisdiction under statute or the constitution. By virtue of the



explanation to Section 47, he submitted that original jurisdiction was conferred on a specific high court and that the identity of the high court should be determined by following the stipulations in such regard either under the first or second limb of the said explanation. According to Mr.Suhrith Parthasarathy, the only reasonable construction of the explanation would result in original jurisdiction being exercised by the Madurai Bench and not by the Principal Bench of the Madras High Court.

7. Mr.Amitava Majumdar, learned counsel, made submissions to the contrary. By referring to Article 214 of the Constitution of India, he submitted that there is only one high court for each state under the constitutional scheme and that the benches of such high court are an integral part of such high court. Therefore, he submitted that the expressions “Court” and “High Court” in the explanation to Section 47 do not deal with or make any distinction between the benches of a high court. In order to buttress this contention, he referred to the Madras High Court(Establishment of Permanent Bench at Madurai) Order, 2004 (the Madurai Bench Order). After inviting my attention to Section 2 thereof, he pointed out that the proviso enables the Chief Justice of the Madras High



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Court to direct that any case or class of cases, arising from the districts in respect of which the Permanent Bench at Madurai shall exercise jurisdiction, shall be heard at Chennai. Thus, he contended that the allocation of work as between the Benches of the Madras High Court is a matter within the discretion of the master of rolls, namely, the Chief Justice. In exercise of such power, the Chief Justice has not nominated Judges to exercise original jurisdiction and power in relation to matters originating from the Districts specified in Section 2 of the order.

8. His next contention was that Section 4 of the Commercial Courts Act enables the chief justice to constitute the commercial division of a high court. He contrasted this Section 3 thereof which empowers the state government to constitute commercial courts in consultation with the respective chief justice. In response to the reliance placed by learned counsel for the Award Debtors on the exercise of jurisdiction in arbitration matters by the Nagpur Bench of the Bombay High Court, by relying on the sitting list of the Nagpur Bench, he pointed out that the Chief Justice of the Bombay High Court had, in exercise of powers as the master of rolls, nominated judges of the Nagpur Bench to hear matters relating to



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arbitration. By contrast, he pointed out that such directions were not issued

as regards the Madurai Bench of this High Court. Likewise, the sitting list

of the Madurai Bench was also relied upon to establish that this Bench does not deal with matters pertaining to the exercise of original jurisdiction.

Learned counsel for the Award Holder also relied upon the judgment of this Court in *K.Sridhar Kumar v. The Union of India and others (Sridhar*

Kumar), 2002 - 1 - L.W. 742, particularly, paragraph 17 thereof, wherein

this Court referred to the judgment of the Hon'ble Supreme Court in *State of*

Maharashtra v. Narayan, AIR 1983 SC 46. In the context of Section 51 of

the States Reorganization Act, 1956, the Hon'ble Supreme Court concluded

that there was no territorial bifurcation of the high court merely because the

chief justice directs judges and division benches to sit at such other places

as directed by the chief justice with the approval of the Governor. He

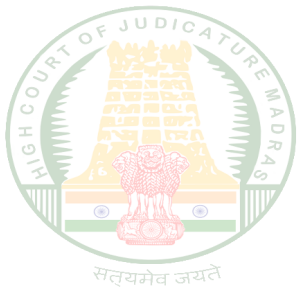
concluded his submissions by referring to the judgment in *M/s.Dynasty*

Developers Private Limited v. Jumbo World Holdings Limited and others,

2008-1-L.W. 557, wherein a Division Bench of this Court concluded that

leave under clause 12 of the Letters Patent is not required in relation to

applications under the Arbitration Act.



9. By way of a brief rejoinder, Mr.Suhrith Parthasarathy

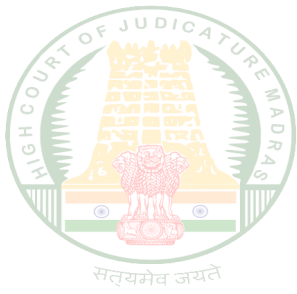
contended that the proviso to Section 2 of the Madurai Bench Order cannot be relied upon because the Chief Justice has not ordered that the Principal Bench shall hear matters relating to the enforcement of foreign awards even if arising from districts allocated to the Madurai Bench thereunder.

10. At the heart of the dispute on maintainability is the interpretation of the explanation in Section 47 of the Arbitration Act. The said explanation is as under:

"Explanation: In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject matter of the arbitral award if the same had been the subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court."

The above explanation was introduced by way of Act 3 of 2016. Prior thereto, the explanation to Section 47 was as under:

"Explanation: In this section and all the following sections of this Chapter, "court" means the



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principal civil court of original jurisdiction in a district, and includes the High Court in exercise of the ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject matter of a suit, but does not include any civil court of grade inferior to such principal civil court, or any court of small causes."

11. On examining the explanation as it stood prior to Act 3 of 2016, it is clear that jurisdiction for purposes of Part-II of the Arbitration Act was conferred on the principal civil court of original jurisdiction in a district. In order to identify the relevant principal civil court of original jurisdiction in a district, the criterion specified was that such principal civil court of original jurisdiction should have jurisdiction over the subject matter of the award if the same had been subject matter of a suit. In *Brace Transport Corporation of Monrovia and Bermuda v. Orient Middle East Lines Ltd.(Brace Transport)*, AIR 1994 SC 1715, the Hon'ble Supreme Court held that the expression "subject matter of the award" would mean money if the award is for payment of money by the award debtor to the award holder. In effect, the principal civil court within whose jurisdiction



the award debtor resides or carries on business or has assets was required to be identified and approached for enforcement.

12. By Act 3 of 2016, the explanation was amended by conferring jurisdiction only on high courts for purposes of Part-II of the Arbitration Act. Once jurisdiction was confined to high courts, three theoretical possibilities arise. The first being that the high court in the relevant state, within whose territorial limits the award debtor carries on business or resides or has assets, does exercise original jurisdiction. The second being that the high court concerned does not exercise original jurisdiction. The third being that the high court concerned exercises original jurisdiction but the award debtor and its assets are outside the territorial limits for the purpose of exercising original jurisdiction. The explanation had to reckon with and provide for all three possibilities so as to enable the relevant high court to exercise jurisdiction. For that purpose, the second limb of the explanation was introduced. By the second limb, jurisdiction was also vested on the high court having appellate jurisdiction over decrees of courts subordinate to such high court. Thus, the obvious intention of the amendment was to confer jurisdiction on the relevant high court in any of



the three scenarios discussed above. In the first scenario, jurisdiction would be exercised under the first limb to the explanation, whereas, in the second and third scenarios, under the second limb.

13. The explanation in Section 47 deals with the meaning of the word “Court” in Part-II of the Arbitration Act. While dealing with the meaning of the expression “Court”, the explanation provides that it will be “the High Court”. The explanation also provides the criteria to identify the high court. Because Parliament was cognizant of the fact that the assets of the relevant award debtor may not be situated within the original jurisdiction of the high court in a state, the second limb was introduced. As a consequence, with reference to an award debtor, it becomes possible to identify the relevant high court either on the basis of such high court having original jurisdiction over the subject matter of the award or having appellate jurisdiction over decrees passed by courts subordinate to such high court. Put differently, in all three scenarios described in the preceding paragraph, the relevant high court *qua* the award debtor would have jurisdiction under either the first or second limb of the explanation. When applied to the facts of this case, the Award Debtors contend that they carry on business at Virudhunagar and that all their assets are situated there. If the said

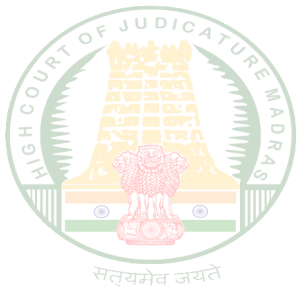


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contention of the Award Debtors is assumed to be correct, this Court would not qualify as “the High Court” as per the first limb of the explanation in Section 47, but would qualify as per the second limb of the explanation to Section 47.

14. The contention of learned counsel for the Award Debtors that only the Madurai Bench should exercise jurisdiction is misconceived because the said contention proceeds on the basis that the explanation in Section 47 is intended to identify the relevant bench of the high court that would exercise jurisdiction. The explanation uses the expression “High Court” and not bench of a high court. More importantly, the said contention is completely contrary to the Madurai Bench Order. Section 2 thereof is significant in this regard and is set out in entirety:

"2. Establishment of permanent Bench of the Madras High Court at Madurai – There shall be established a permanent Bench of the Madras High Court at Madurai, and such Judges of the Madras High Court, being not less than five in number, as the Chief Justice of that High Court may,



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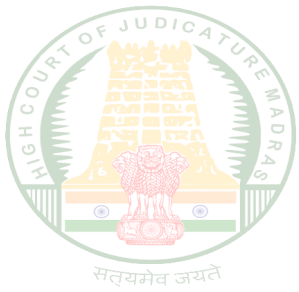
from time-to-time nominate, shall sit at Madurai in order to exercise the jurisdiction and powers for the time being vested in that High Court in respect of cases arising in the districts of Kanyakumari, Tirnelveli, Tuticorin, Madurai, Dindugal, Ramanathapuram, Virudhunagar, Sivaganga, Pudukottai, Thanjavur, Nagapattinam, Tiruchirapalli, Perambalur and Karur in the State of Tamil Nadu. *Provided* that the Chief Justice of that High Court may, in his discretion, order that any case or class of cases arising in such district shall be heard at Chennai.” (emphasis added).

15. Section 2 provides for the establishment of a permanent bench of the Madras High Court at Madurai. It further provides that the Chief Justice shall nominate not less than five Judges of the Madras High Court to sit at Madurai. It also provides that the said nominated Judges shall exercise the jurisdiction and powers for the time being vested in that High Court in respect of cases arising in the districts specified in Section 2. From



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the above, there is no doubt that there is only one Madras High Court. The said Madras High Court functions both at the Principal Seat in Chennai and at the Madurai Bench in Madurai. For purposes of functioning through the Madurai Bench, which is a permanent bench, the Chief Justice has been empowered to nominate not less than five Judges of the Madras High Court to exercise jurisdiction and power. The jurisdiction and power to be exercised by such nominated judges are the jurisdiction and power vested in the Madras High Court. Thus, the conclusion that emerges is that the Madras High Court is unitary. Jurisdiction is vested in the Madras High Court either under the Constitution of India, the Letters Patent or applicable statutes. As regards specific districts, in exercise of powers as the master of rolls, the Chief Justice allocated matters arising from those districts and pertaining to the exercise of extraordinary jurisdiction under Article 226, appellate jurisdiction and criminal jurisdiction to the nominated Judges of the Madras High Court constituting the Permanent Bench of the Madras High Court at Madurai.



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16. On this issue, the judgment of this Court in **Sridhar Kumar** is relevant. In paragraph 17 thereof, the following observation from the judgment of the Bombay High Court was extracted and the same reads as under:

"Legally, the position is quite clear. Under Section 51(3) of the States Reorganization Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay. All that happens is that the Chief Justice, under the powers given to him under the Letters Patent distributes the work to various Judges and various Divisional Benches, and acting under that power he distributes certain work to the Judges sitting at Nagpur."

Thus, in the context of the Madurai Bench Order constituting the permanent bench, the jurisdiction vested in the High Court is allocated to nominated Judges of the Madras High Court, who sit at the Madurai Bench. As regards the enforcement of foreign awards, such allocation has not been made by the



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Chief Justice as master of rolls to nominated Judges of the Madras High

Court at the Madurai Bench. In the said facts and circumstances, these

Execution Petitions are clearly maintainable before the Principal Seat of this

Court. Hence, the objections raised by the Award Debtors with regard to the

maintainability of the Execution Petitions are rejected. As a corollary, the

Award Debtors are directed to file a counter on the merits of the Execution

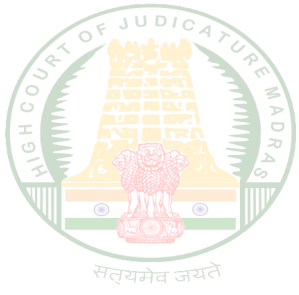
Petitions. List the Execution Petitions on 10.11.2022.

19.10.2022

Index : Yes

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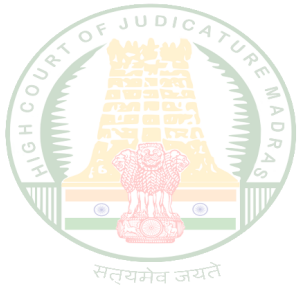


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SENTHILKUMAR RAMAMOORTHY, J.

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Pre-Delivery Common Order
in
E.P. Nos.68 & 69 of 2021



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19.10.2022