

ITEM NO.2

COURT NO.2

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
IA 5/2011 in CIVIL APPEAL NO. 4227 OF 2011

M/S ABHIYAAN LOGISTICS

Appellant (s)

VERSUS

VODAFONE ESSAR SPACETEL LTD.

Respondent(s)

(for directions and Office Report)
WITH Conmt.Pet.(C)No.332 of 2011 in C.A.No.4227 of 2011

Date: 10/08/2011 This Petition was called on for hearing today.

CORAM :

- HON'BLE MR. JUSTICE ALTAMAS KABIR
- HON'BLE MR. JUSTICE CYRIAC JOSEPH
- HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Mr. Ravindra Shrivastava, Sr. Adv.
/non-applicant in Mr. Arjun Garg, Adv.
Mr. Nishant Jain, Adv.
IA5 & petitioner Mr. Anup Jain, Adv.
In Conmt.Pet. Ms. A. Verma, Adv.
Mr. Devendra Patel, Adv.

For Respondent(s)
Dr. A.M. Singhvi, Sr. Adv.
Mr. Manu Nair, Adv.
Mr. Kirat Singh Nagra, Adv.
Mr. Adit S.Pujari, Adv.
for M/S Suresh A. Shroff & Co.,Adv.

UPON hearing counsel the Court made the following
O R D E R

I.A.5 of 2011, has been filed by the
respondent/applicant, inter alia, for the following
directions:-

IA5 IN C.A.4227/11 Applicant "(i) direct the Non-
to forthwith/

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immediately comply with the
directions contained in the order
dated 10.05.2011 in
C.A.No.4227/11;

(ii) direct the Non-
applicant to immediately release
goods of the Applicant stored at
its warehouses upon payment of
the aforesaid additional amount
of Rs.2,50,00,000/-, subject to
statutory deductions;

(iii) appoint a Court

Commissioner to, in the presence of the authorized representatives of the Applicant and the Non-Applicant, inspect the goods and prepare an inventory of the list of goods to be handed over to the Applicant; and

(iv) pass any such further orders/directions which this Hon'ble Court may deem fit and proper in the interest of justice."

2. On 10th May, 2011, while disposing of C.A.No.4227 of 2011, arising out of SLP(C)No.12025 of 2011, we had indicated that the same was directed against the judgment and order dated 13th April, 2011, passed by the Madhya Pradesh High Court at Jabalpur in Arbitration Appeal No.10 of 2011, filed by the appellant under Section 37 of IA5 IN C.A.4227/11

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the Arbitration and Conciliation Act, 1996

(hereinafter referred to as 'the Act'). The said

appeal had been filed against an order passed by

the Eleventh Additional District Judge (Fast Track

Court)Bhopal(M.P.), in Arbitration Case No.03 of

2011, under Section 9 of the Act. By such order,

the trial court had directed that upon payment of `

Two Crores and furnishing a Bank Guarantee of ` Six

Crores, thereby securing the claim of the appellant

amounting to ` Eight Crores, the goods which were

lying in the warehouses of the appellant should be

released in favour of the respondent. Pursuant to

the said direction, sum of ` Two Crores had been

paid and a Bank Guarantee of ` Six Crores in terms

of the order had been furnished.

3. We had modified the order of the High Court

to the extent that in addition to payment of ` Two

Crores, the respondent/applicant would pay a

further sum of ` 2.5 Crores within two weeks from

the date of the order and upon such payment, the

respondent would be entitled to remove the goods in question from the warehouses of the appellant. Consequently, the Bank Guarantee for ` Six Crores was reduced to ` 3.5 Crores.

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4. The present application, as indicated hereinabove, has been filed on account of the fact that the goods have not been released despite the aforesaid order.

5. According to Mr. Shrivastava, learned senior advocate appearing for the appellant, the said order covered only the warehouse of the appellant at Mandideep in Bhopal, whereas the goods of the respondent/applicant are lying not only at the Mandideep warehouse but also at the warehouse of the appellant at Raipur, and that if the goods at Raipur are also to be released, the respondent/applicant should be directed to pay an additional amount of ` 1.20 Crores towards dues allegedly payable in respect of the warehouse at Raipur.

6. It may be indicated that in the meantime, a former Judge of this Court has been appointed as Arbitrator to decide on the disputes relating to the amount as claimed by the appellant and the matter is pending before him.

7. Yet another question has been raised regarding the deduction of TDS from the amount required to be paid. These are matters which are to be decided by the learned Arbitrator and at present we are only concerned with the release of

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the goods at both the warehouses at Bhopal and Raipur, subject to payment of the warehousing dues

of the appellant.

8. Accordingly, in the light of the order passed by us on 10th May, 2011, we direct that on payment of a further sum of ` One Crore and upon furnishing fresh Bank Guarantee on the reduced amount of sum of ` 3.5 Crores, the appellant shall release to the respondent/applicant its goods lying at both the warehouses at Bhopal and Raipur. At this juncture, we may also record the submission made on behalf of the respondent No.1/applicant that several items are missing from both the warehouses. We are not inclined to go into the said question, since the disputes are pending decision before the learned Arbitrator.

9. In order to effectively implement these directions, we appoint Mr. J.S. Parmar, learned advocate, as Commissioner in whose presence the payments are to be made by way of Demand Draft(s) or Bankers cheque(s). The goods are to be handed over by the appellant to the respondent No.1/applicant in the presence of the Commissioner, both at Bhopal as well as at Raipur. The Commissioner shall prepare an inventory of the goods which are handed over to the respondent No.1/

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applicant from both the warehouses, and, thereafter, submit a report to this Court. The Commissioner shall be paid remuneration for Bhopal @ Rs.10,000/- per day and for Raipur @ Rs.15,000/- per day and all other expenses to be paid on actual basis. Both the parties shall share the expenses, including the remuneration of the Commissioner for the work to be undertaken by him, equally.

10. Let this matter stand over till 28th September, 2011, for the present to await the

report of the Commissioner.

11. Having regard to the order which we have passed today, the contempt proceedings in Contempt Petition No.332 of 2011 in C.A.No.4227 of 2011, are dropped.

12. The payment made in terms of this order is without prejudice to the rights and contentions of the parties before the learned Arbitrator, who will be free to decide the questions before him, in accordance with law.

(Sheetal Dhingra)
COURT MASTER

(Juginder Kaur)
Assistant Registrar