

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

CIVIL REVISION PETITION No.938 of 2014

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ORDER : (Per Justice R. Subhash Reddy)

This civil revision petition is filed under Article 227 of the Constitution of India, by the appellant in Arbitration Appeal No.21 of 2014, aggrieved by order dated 05.03.2014, passed by the learned I-Additional Chief Judge, City Civil Court, Secunderabad, dismissing the application filed by the petitioner in I.A.No.507 of 2014.

2. Petitioner is awarded the contract of commercial advertisements through Unipole structured hoardings at Begumpet MMTS station and a letter to that effect was given on 16.02.2012, accepting the tender of the petitioner. Site was handed over to the petitioner on 17.03.2012 and the date of commencement of period of contract was stipulated as 16.03.2012 in the conditions of tender itself. As per the terms and conditions of the tender, it is for the petitioner to obtain all required clearances and permissions from the Greater Hyderabad Municipal Corporation (GHMC) by paying necessary fees. On the ground that the petitioner could not commence the work from 16.03.2012 as the GHMC did not accord permission for erection of Unipole, petitioner has raised dispute by filing O.P.No.135 of 2013 that the

commencement date has to be extended on the ground that the 1st respondent has not disclosed about the policy of GHMC not to allow Unipoles, as such, there is delay in commencing the business and that such period has to be exempted while fixing the commencement date and collecting the term fee as per the contract. On such plea, Arbitrator is appointed and he is directed to complete the proceedings within a period of five months by order of this Court dated 25.10.2013.

3. During the pendency of the arbitration proceedings, the petitioner has filed an application seeking amendment of claim on the ground that GHMC has issued notice dated 23.10.2013, directing to remove the Unipole erected by the petitioner for the purpose of Metro Rail Line. Such application filed by the petitioner for amendment is dismissed by holding that the amendment sought by the applicant is not relevant to resolve the issues under reference and new pleas and new claims altering the nature and scope of the reference cannot be allowed. As against the same, appeal is filed in A.A.No.21 of 2014 and the same is pending. During pendency of proceedings, present application in I.A.No.507 of 2014 is filed seeking to stay the proceedings before the Arbitrator and the same is dismissed by impugned order dated 05.03.2014. As against the same, this revision petition is filed.

4. It is contended by the learned counsel for petitioner

that though the Arbitrator has got ample power to entertain the amendment petition, he has dismissed the same without valid reasons, as such, there are strong grounds to allow the appeal filed in A.A.No.21 of 2014 and if the proceedings are allowed to go on before the Arbitrator, it will prejudice the case of petitioner. The learned counsel, in support of his contentions, has placed reliance on the judgment of Supreme Court in **ITI Ltd. v. Siemens Public Communications Network Ltd.**^[1], wherein, the Hon'ble Supreme Court has held that revision against an order made by the civil Court in first appeal under Section 37 of Arbitration and Conciliation Act, is maintainable. It is further held that merely because second appeal is barred under Section 37(3), remedy of revision would not cease to be available and that although revision is not specifically provided for by the Act, in the absence of any express exclusion of CPC, no inference can be drawn that provisions of CPC would not apply to proceedings arising under the Arbitration and Conciliation Act and revision is maintainable under Section 115 of CPC.

5. In this case, it is clear from the material on record that arbitration proceedings are initiated only with regard to the dispute relating to change of date of commencement of contract. As per the award letter dated 16.02.2012, date of commencement of contract is stipulated as 16.03.2012 and it is also not in dispute that

there is obligation on the part of the Contractor to obtain necessary permissions/clearances from competent authorities to erect Unipoles. On the ground that there was delay in commencing the business and alleging that the policy of GHMC is not notified in the notice for award of tender, petitioner has raised dispute for change of commencement date. The scope of arbitration proceedings is only with regard to change of commencement date. When Arbitrator was proceeding to resolve such dispute, petitioner has filed a petition for amendment to amend his claim based on the notice, dated 23.10.2013 issued by GHMC for removal of Unipole erected. On such notice, when the petitioner has filed amendment petition, it is rejected by the Arbitrator on the ground that such amendment is not permissible as the same is not germane for resolution of issues which fell for consideration under reference. It is well settled that amendments that will not change the nature of claim, can be allowed. The proposed amendment made consequent to issuance of notice, dated 23.10.2013, *prima facie* appears to be a different cause of auction, and hence, such amendment is not permissible. In that view of the matter, there is no need to stay the proceedings before the Arbitrator, more so, when this Court has stipulated time for completion of arbitration proceedings by its order dated 25.10.2013.

6. Coming to the judgment relied on by the learned counsel for petitioner, whether a particular amendment is necessary for resolution of dispute by the Arbitrator, is a matter to be considered having regard to the facts of each case and even assuming that revision is maintainable having regard to the fact situation, the aforesaid judgment relied on by the learned counsel for petitioner will not support the case of petitioner in this case, so as to interfere with the impugned order.

7. For the reasons recorded by the trial Court in the impugned order, this Court finds that there is absolutely no merit in this revision, warranting interference under Article 227 of the Constitution of India. This revision petition is accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

**A.SHANKAR
NARAYANA, J**

22nd June 2015

ajr

[\[1\]](#) (2002) 5 SCC 510