

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL MISCELLANEOUS APPEAL No.1044 OF 2011

JUDGMENT:(per Hon'ble Sri Justice K.C. Bhanu)

This Civil Miscellaneous Appeal, under Section 34(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), is filed challenging the docket Order, dated 07.07.2010 in A.O.P.No.... of 2010 passed by the District Judge, Chittoor, which was filed challenging the *ex parte* award, dated 26.12.2009, in A.R.C.No.6 of 2009 passed by the Sole Arbitrator, Hyderabad.

2. On presentation of the aforesaid Original Petition, Court below returned the petition with the following objections:

"Returned on 21.4.2010:

1. How this Court has got jurisdiction to entertain this appeal when the Award is passed sole Arbitrator at Hyderabad.
2. Provision of law under which this appeal is maintainable should be correctly mentioned, since Sec.37(b) referred is not applicable to this case; since petition u/sec.34 is not refused but returned, that too by Arbitrator and not the Court.
3. Provision under which C.F. is paid to be noted.
4. Section 5 Limitation Act petition is also returned with objection and the said objection to be complied.
Time: 7 days.

Sd/- District Judge.
21/4/2010."

Those objections have been complied with and the petition was re-presented on 27.04.2010 stating as follows:

"Represented on 27.4.2010:

1. The entire transactions relating to the loan is took place at Thirupathi and both the parties are

residing at Thirupati. Hence this Hon'ble Court got jurisdiction. Apart from this, the respondent has also filed A.O.P.No.221/2009 on the file of this Court and got protection order by mentioned the Award No.6/2009. Now the appeal also filed against the same Arbitration Award No.6/2009.

2. The correct provision of law is mentioned.
3. As per G.O.Ms.No.117 of 2007, dated 7.9.2007, the Court fee is paid (copy enclosed).
4. Query No.4 complied.

Sd/- Advocate for the appellant"

Again, it was returned with the following objections:

"Returned on 29.05.2010:

How appeal is maintainable u/sec.34(3) of Arbitration and Conciliation Act should be explained.

Time: 7 days.

Sd/- District Judge, dt.29.5.2010"

The same was re-presented on 02.06.2010 stating as follows:

"Represented:-

As per Section 34 of Arbitration and Conciliation Act, application has to file to set aside the Award. Hence, necessary correct has made in this petition and as per citation reported in AIR 2004 RAJASTHAN page-66, the District is got jurisdiction to set aside the award. Hence, it is re-presented with necessary corrections.

The citation is enclosed:

As per the Court fee. As per amended G.O.117 of 2007, the C.F. is paid.

The G.O. enclosed:

If the office is not satisfied, please call this matter on the Bench.

Sd/- Advocate for petitioner, 2/6/2010."

Again, the petition was returned saying that how the Court has got jurisdiction to entertain the O.P., which reads as follows:

"Returned on 07.07.2010:

It may be stated how this Court has got jurisdiction to entertain the O.P.

Time: 7 days.

Sd/- District Judge, 7/7/2010.”

3. Heard both sides.

4. The re-presentation, dated 27.04.2010 goes to show that the entire transaction relating to taking of the loan has taken place at Tirupathi and both the parties are residing at Tirupati, therefore, the District Court, Chittoor has got jurisdiction.

5. As the Arbitration Original Petition has not filed within three months from the date of service of copy of award, in terms of Section 34(3) of the Act, there is a delay. But, the Arbitration Original Petition was filed within one month from the expiry of three months period.

6. Therefore, the learned District Judge, Chittoor is directed to number the petition filed under Section 5 of the Limitation Act, 1963 read with Section 34(3) of the Act. If the petitioner is prevented by sufficient reason from filing the appeal and has shown sufficient cause, then number the Arbitration Original Petition and take appropriate decision in accordance with law. The said exercise shall be completed within a period of six (06) weeks from the date of receipt of a copy of this judgment.

7. Accordingly, the Civil Miscellaneous Appeal is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE K.C. BHANU

JUSTICE M.SEETHARAMA MURTI

Date:24.02.2015

Note: Registry is directed to return the original papers/documents to the appellants, after duly substituting them with certified copies.

(B/O)

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