

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

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CIVIL REVISION PETITION Nos.1235 & 4845 of 2014
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COMMON ORDER : (Per Justice R.Subhash Reddy)

As the issues involved in both these revision petitions are common and as both the petitions are filed by the same parties, they are heard together and are being disposed of by this common order. Facts are taken from C.R.P.No.4845 of 2014.

2. This civil revision petition under Article 227 of the Constitution of India is filed by the petitioner in Arbitration O.P.No.363 of 2012 on the file of XXV-Additional Chief Judge, City Civil Court, Hyderabad, aggrieved by order dated 13.11.2014, passed in I.A.No.2428 of 2014.

3. Necessary facts in brief are that respondent No.1 herein is claimant in Reference Case No.55 of 2007 before the A.P.State Micro and Small Enterprises Facilitation Council, Hyderabad, a body constituted under the provisions of the A.P. Micro, Small and Medium Enterprises Development Act, 2006. The 1st respondent, a small scale industry, is involved in manufacture, supply and installation of communication towers and micro controllers, and is registered with District Industries Centre, R.R. District. The A.P.State Micro and Small Enterprises Facilitation Council, Hyderabad has passed orders dated 11.11.2011, directing the petitioner herein to

pay an amount of Rs.14,90,613/- towards principal and Rs.6,56,817/- towards interest, totaling to Rs.21,47,430/- . Before the said Council, the petitioner herein has filed counter affidavit disputing the locus of Mr.R.Raji Reddy, who represented the 1st respondent before the Council. It is the specific case of petitioner that the 1st respondent M/s.Pragathi Fabricators is the Proprietary Concern of one Manney Subramanyam, as such, Mr.R.Raji Reddy has no locus to represent the said Firm before the Council. The Facilitation Council by award dated 11.11.2011, has allowed the claim by recording a finding that during the course of hearing, the petitioner has not disputed the balance amounts payable to the 1st respondent-claimant.

4. The Award of the Council is challenged by way of petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the petitioner, in O.P.No.363 of 2012. In the said O.P., it is the case of the petitioner that Mr. R.Raji Reddy is not the sole proprietor of M/s.Pragathi Fabricators as claimed by him and the sole proprietor of the said Firm is one Manney Subramanyam, and in support of the same, the petitioner has referred to the Certificate of Registration of M/s.Pragathi Fabricators, dated 11.09.2003, granted by the Ministry of Finance, Department of Revenue, Government of India, which shows that Mr.M.Subramanyam is the sole proprietor of

the said Firm. In the O.P. filed by the petitioner, a detailed counter affidavit is filed by the 1st respondent-claimant. While denying the various allegations made by the petitioner, it is stated in the counter that the office of 1st respondent concern is situated at 20 A & B, Electronics Complex, Kusaiguda, Hyderabad, whereas, the office of Manney Subramanyam is located in Plot No.43, E.C.Extension, ECIL, Kusaiguda, Hyderabad and no transaction has taken place from the address of Mr.Subramanyam in the name of M/s.Pragathi Fabricators and the petitioner has availed the services from the 1st respondent M/s.Pragathi Fabricators through its proprietor Mr.Raji Reddy, as such, he is bound to pay the bills for supplies made by the 1st respondent.

5. In view of the stand of the petitioner in the aforesaid O.P., the 1st respondent has filed I.A.No.2428 of 2014 to receive certain documents which are necessary to decide the disputes raised by the 1st respondent. In the aforesaid interlocutory application, petitioner has filed counter affidavit opposing receipt of documents. It is the case of petitioner that the 1st respondent did not state any reason for not filing such documents earlier and that the provision of law which is referred to in the petition is not applicable for arbitration proceedings. By impugned order, the Civil Court has allowed the petition to receive the additional documents.

6. Heard Sri C.V.Mohan Reddy, learned Senior Counsel appearing for petitioner and Sri B.Nalin Kumar, learned counsel appearing for the 1st respondent.

7. Mainly, it is contended by Sri C.V.Mohan Reddy, learned Senior Counsel that in view of the provision under Section 34(2) of the Arbitration and Conciliation Act, 1996, as the applicant has approached the Court questioning the award on limited grounds available under Section 34(2)(a) and (b), it is not open for the 1st respondent to introduce any new documents to defend the award. It is submitted that only in the event of producing any other evidence by the petitioner, rebuttal is permissible, but as much as the petitioner has not adduced any new evidence, the order passed allowing the application filed by the 1st respondent to receive additional documents, is illegal and arbitrary. Learned counsel, in support of his contentions, has relied on the judgments of Hon'ble Supreme Court in **Fiza Developers & Inter-Trade Private Ltd. v. AMCI (India) Private Ltd. & another**^[1] and in **Venture Global Engineering v. Satyam Computer Services Limited & another**^[2].

8. On the other hand, it is argued by Sri B.Nalin Kumar, learned counsel for respondent No.1 that as much as the petitioner herein is disputing the authority of Sri Raji Reddy representing M/s.Pragathi Fabricators, the

documents which are sought to be filed along with I.A.No.2428 of 2014 are necessary for resolution of dispute, as such, such documents are rightly allowed to be filed. It is submitted that the documents which are sought to be introduced by obtaining leave of the Court include the copy of Certificate of Registration issued by Commercial Taxes Department, dated 04.02.2005, copy of Service Tax Registration, copy of Registration with Government of Andhra Pradesh Commercial Taxes Department, dated 22.06.2005, copy of certificate issued by Axis Bank, dated 13.09.2012 and the copy of Certificate issued by the Department of Industries, dated 06.09.2012, which amply prove that the proprietor of M/s.Pragathi Fabricators is Mr.Raji Reddy only. It is contended that it is always open for the Arbitral Tribunal to receive necessary documents to decide the dispute raised before it. It is further contended that as much as it is not a case where the civil Court has exercised the jurisdiction not vested in it, these revisions filed under Article 227 of the Constitution are not maintainable. The learned counsel, apart from relying on the judgments relied on by the learned counsel for petitioner, has also placed reliance on a Division Bench judgment of this Court in **M.A.Muneem @ Haji Seth v. Mohd. Abdul Nayeem Zakee & others** ^[3] and on the judgments of Hon'ble Supreme Court in **State of Maharashtra v.**

Hindustan Construction Company Ltd.^[4], in **Srisailam Devastanam v. Bhavani Pramamma & others**^[5] and in **Surya Dev Rai v. Ram Chander Rai & others**^[6].

9. In exercise of powers under Section 82 of the Arbitration and Conciliation Act, 1996, the High Court has framed the Rules titled as “Andhra Pradesh Arbitration Rules, 2000. Rule 12 of the Rules reads as under :

“12. (1) Save as otherwise expressly provided in the Act or these Rules the following provisions of the Code of Civil Procedure, 1908 (V of 1908) shall apply to the proceedings before a Court in so far as they may be applicable thereto; namely;

- (i) Sections 28, 31, 35, 35-A, 35-B, 107, 133, 135, 144, 148-A, 149, 151 & 152 and
- (ii) Orders III, V, VI, IX, XIII, XIV to XIX, XXIV and XLI.

(2) (a) For the purpose of facilitating the application of the provisions referred to under subsection (1) the Court may construe them with such alterations, not affecting the substance, as may be necessary or proper to adapt the matters before it; and

(b) The Court may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if it is satisfied that the interests of the parties will not thereby be prejudiced.”

10. Under Section 34 of the Arbitration and Conciliation Act, an aggrieved party to arbitral award can approach for setting aside the arbitral award. In this case, the award passed by the Facilitation Council is questioned on

various grounds including the ground that Mr.Raji Reddy has no locus to represent M/s.Pragathi Fabricators as its Proprietor. The petitioner herein has also referred to certain documents in the grounds filed before the Civil Court, questioning the award. Such documents were not referred to in the counter affidavit filed before the Council. Therefore, the 1st respondent has sought leave to introduce some documents to disprove the allegation of petitioner that the 1st respondent-Concern is a Proprietary concern of Mr.Raji Reddy only and he is the one to whom orders were placed by the petitioner-Company. Further, from Rule 12 of the Arbitration Rules also, it is clear that certain provisions of the Code of Civil Procedure are made applicable including the provisions under Order 41. It is clear that under Order 41 Rule 27 of CPC, production of additional evidence at appellate stage is also permissible by recording reasons. It is also clear from Rule 12 (2) (b) that the Court is empowered to proceed otherwise than in accordance with the provisions under Rule 12 (1) (i) and (ii), if it is satisfied that the interests of the parties will not thereby be prejudiced.

11. In the judgment in **Fiza Developers'** case (1 supra), the Hon'ble Supreme Court has held that the applications under Section 34 of the Arbitration and Conciliation Act are summary proceedings with provision for objections by the respondent/defendant, followed by an opportunity to

the applicant to prove the existence of any ground under Section 34(2) and the applicant is permitted to file affidavits of his witnesses in proof and the corresponding opportunity is given to the respondent/defendant to place his evidence by affidavit. In **Venture Global Engineering's** case (2 supra), the Hon'ble Supreme Court has held that leave to amend the pleadings can be granted if circumstances of case and interest of justice so warrant. In **State of Maharashtra's** case (4 supra), while dealing with a petition for amendment for incorporation of additional grounds, the Hon'ble Supreme Court has held that the Bar under Section 34(3) is not invariably applicable for filing application for raising additional grounds, but the same would be a matter for consideration in exercise of Court's discretion to grant leave to amend but it does not denude the Court of its power to grant leave if amendment is required in the interest of justice. Further, in **Surya Dev Rai's** case (6 supra), the Hon'ble Supreme Court has considered the scope of the petitions filed under Article 227 of the Constitution of India. In the aforesaid judgment, it is held that the supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate Courts within the bounds of their jurisdiction.

12. From the judgments as referred above, it is clear that it is always open for the Courts to consider the applications filed under Section 34 of the Arbitration and

Conciliation Act, if such applications do not prejudice the claim of other party. In the case on hand, having regard to the grounds raised in the petition filed by the petitioner in O.P.No.363 of 2012, we are of the considered opinion that the documents sought to be introduced in the Court to defend the case, are necessary and will not prejudice the case of petitioner in any way. Further, having regard to the scope of the petitions filed under Article 227 of the Constitution of India as referred to in the judgments above, it is also to be held that by passing the impugned order, the Civil Court has not exceeded the jurisdiction conferred on it, warranting interference in this petition filed under Article 227 of the Constitution of India. In view of the judgments referred above, we are of the view that no case is made out by the petitioner in these revision petitions, warranting interference of this Court.

13. For the aforesaid reasons, both the revision petitions are devoid of merit and are accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

31st August 2015

ajr

[\[1\]](#) (2009) 17 SCC 796
[\[2\]](#) (2010) 8 SCC 660
[\[3\]](#) 2010 (5) ALD 367 (DB)
[\[4\]](#) (2010) 4 SCC 518
[\[5\]](#) AIR 1983 AP 297
[\[6\]](#) (2003) 6 SCC 675