

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

ORIGINAL PETITION No. 2 of 2014

ORDER:

This petition is filed under Sections 14 to 17 of the Indian Arbitration Act, 1940 (for short 'the Act') seeking to make the award of the 5th respondent dated 02.01.2014 a rule of the Court, pass a decree in terms of the award and grant interest at 18% p.a. on the principal sum as adjudged in the award from the date of the decree till the date of realization.

The case of the petitioner is that he has entered into an agreement with the 3rd respondent under an Agreement No.L.S.A.B.No.58/1979-80 in respect of construction of L.F. and E.F. Irrigation Canals including CD and CM works of Sarpanapally Project, Vikarabad Taluk, Ranga Reddy District. The work was completed in all respects, but the Department failed to pay the amounts for the work lawfully executed by him. Though he was earlier informed that payments would be made soon after the revised estimate was approved by appropriate authorities, but they failed to adhere to their promise. Having left with no other alternative, the petitioner invoked the arbitration cause and issued 15 days notice on 08.09.1985 calling upon the 3rd respondent by marking a copy to the 4th respondent to arrange payment of the amount due and payable to him including the deposits, together with interest and compensation. As there was no reply to the said notice either from the 3rd respondent or the 4th respondent, the petitioner filed O.S.No.1223 of 1985 on the file of the II Additional Senior Civil Judge, City Civil Court, Hyderabad, under Sections 8 and 20 of the Act for appointment of a sole arbitrator to decide the disputes which arose between the parties. By judgment and decree dated 06.08.1991, the Court below appointed the 5th respondent as a sole arbitrator. Aggrieved by the same, the respondents 1 to 4 herein filed a civil miscellaneous appeal before this Court and this Court set aside the judgment of the Court below by an order dated 13.12.1994 and referred the matter to a panel of arbitrators. Pursuant to the orders of this Court, the Court below directed the concerned Superintending Engineer to file the agreement before the Court and refer the dispute to the panel of arbitrators under Section 20(4) of the Act, by an order dated 23.04.1996 granting four months' time for passing an award from the date of entering into reference as per the provisions of Clause (3) of Schedule I of the Act. Accordingly, warrants were issued

to the panel of arbitrators in April, 1998, but they failed to enter into the reference and act upon. Then, the petitioner issued a notice under Sections 8 and 9 of the Act on 20.09.1999 to the respondents 1 to 4 with a copy to the panel of arbitrators. Even after receipt of the said notice, neither the respondents 1 to 4 nor the panel of arbitrators responded. Hence, the Court below again appointed a panel of arbitrators. Aggrieved by the orders of the Court below, the petitioner preferred C.R.P.No.3531 of 2005 before this Court. By judgment dated 23.08.2010 this Court appointed the 5th respondent and referred the dispute for adjudication. In pursuance of the orders of this Court, the 5th respondent entered on the reference, and after considering the statement of the petitioner, the evidence adduced by both the parties and also the written arguments, passed an award on 02.01.2014 and the present application is made for making the same a rule of the Court.

Sri G. Krishna Murthy, learned counsel for the petitioner, states that though a statutory notice is served on the respondents on 11.02.2015, no objections were filed by them within 30 days from the date of service of the statutory notice issued under Section 14(2) of the Act, as envisaged under Article 119 of the Limitation Act, 1963. As such, the respondents are estopped from raising any objections. He also states that since the Arbitrator was appointed by this Court in C.R.P.No. 3531 of 2005, this Court alone has jurisdiction to entertain the present application under Sections 14 to 17 of the Act for making the award of the 5th respondent a rule of the Court. In support of his contention, he relied on a judgment of the Apex Court in ***M/s. Guru Nanak Foundation Vs. M/s. Rattan Singh and Sons***.

On the other hand, the learned Government Pleader for Arbitration opposed the petition.

In the judgment referred to supra, the Apex Court observed in paras 15 to 18 as under:

“15. Section 31 of the Act provides the forum in which an award may be filed. Sub-section (1) of section 31 provides that an award may be filed in any court having jurisdiction in the matter to which the reference relates. Incorporating the definition of the expression 'court' as set out in section 2 (c) in sub-section (1) of section 31 would mean that the award will have to be filed in that court in which the suit in respect of the dispute involved in the award would have been required to be filed. This is quite consistent with the provision contained in sub-section (2) of section 14. So far there is no difficulty. The scheme disclosed in sub-sections (2),(3) and (4) of section 31 clearly indicates that to the exclusion of all other courts only one court will have jurisdiction to deal with the proceedings incidental

to the reference and the arbitration. Sub section (3) clearly points in this direction when it provides that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the court where the award has been or may be filed and to no other court. Then comes sub- section (4). It opens with a non-obstante clause and is comprehensive in character. The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent with the substantive provision contained in sub-section (4). To that extent it carves out an exception to the general question of jurisdiction of the court in which award may be filed elsewhere provided in the Act in respect of the proceedings referred to in subsection (4). The provision contained in sub-section (4) will have an over-riding effect in relation to the filing of the award if the conditions therein prescribed are satisfied. If those conditions are satisfied the court other than the one envisaged in section 14 (2) or section 31 (1) will be the court in which award will have to be filed. That is the effect of the non-obstante clause in sub-section (4) of section 31. Sub-section (4) thus invests exclusive jurisdiction in the court, to which an application has been made in any reference and which that court is competent to entertain as the court having jurisdiction over the arbitration proceedings and all subsequent applications arising out of reference and the arbitration proceedings shall have to be made in that court and in no other court. Thus sub-section (4) not only confers exclusive jurisdiction on the court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other court which may as well have jurisdiction in this behalf. To illustrate the point, if an award was required to be filed under section 14 (2) read with section 31 (1) in any particular court as being the court in which a suit touching the subject-matter of award would have been required to be filed, but if any application in the reference under the Act has been filed in some other court which was competent to entertain that application, then to the exclusion of the first mentioned court the latter court alone, in view of the overriding effect of the provision contained in section 31 (4), will have jurisdiction to entertain the award and the award will have to be filed in that court alone and no other court will have jurisdiction to entertain the same.

16. The provision contained in sub-section (2) of section 14 will neither be rendered otiose nor stand in disharmony on the construction that we place on sub-section (4) of section 31 because the expression 'court' as defined in section 2 (c) will have to be adhered to unless there is anything repugnant in the subject or context in which it is used. Therefore, the expression 'court' as used in section 14 (2) will have to be understood in this background.

17. On a pure grammatical construction as well as taking harmonious and overall view of the various provisions contained in the Act it is crystal clear that ordinarily that court will have jurisdiction to deal with the questions arising under the Act, except the one in Chapter IV, in which a suit with regard to the dispute involved in the arbitration would be required to be filed under the provisions of the Code of Civil Procedure. However, where an application is made in any reference to a court competent to entertain it, that court alone will have

jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall have to be made in that Court alone and in no other court.

18. In this case an application was made to Delhi High Court under section 20 of the Act for a direction to file the arbitration agreement in the court. As provided in sub- section (2) of section 20, the proceeding was numbered as a suit. The suit ended in an order of reference to the arbitrator, the 2nd respondent. A subsequent application was made to Delhi High Court under section 5 read with section 11 of the Act for removal of the 2nd respondent as arbitrator. On this application being dismissed, the matter was brought to this Court in appeal being Civil Appeal No. 17 of 1977. By the decision of this Court in the appeal the 2nd respondent was removed as arbitrator and the 3rd respondent was appointed as sole arbitrator. Indisputably, therefore, the arbitrator was appointed by this Court. The order appointing the 3rd respondent as arbitrator gave a further direction that the arbitrator shall enter upon the reference within 15 days from the date of the order of the Court and he should try to dispose of the same as expeditiously as possible. The final order was that the appeal was disposed of in terms hereinabove indicated. A contention that thereafter this Court was not in seisin of the matter was urged relying upon the fact that the appeal was disposed of by the order of the court and that there was no further proceeding before this Court. This contention has merely to be stated to be rejected, as will be presently pointed out. After the disposal of the appeal, CMP No. 896/77 was presented to this Court for clarification and/or modification of the order of the Court dated January 5, 1977. This Court by its order dated February 10, 1977, gave further directions and a specific time limit was fixed by this Court directing the 3rd respondent as arbitrator to conclude the proceedings within four months from the date of order of the Court. Even with regard to the conduct of proceedings this Court directed that the 3rd respondent should proceed with the reference from the stage where it was left by the 2nd respondent and that not only that he may permit additional evidence to be led, but he must consider the pleadings and evidence already placed before the previous arbitrator. This will indisputably show that this Court had complete control over the proceedings before the arbitrator.”

Under Article 119 of the Limitation Act, 1963, a party to an Arbitration Award can file objection, with a prayer to set aside or modify the Award, within 30 days from the date of notice of filing of the Award in Court.

In view of the judgment rendered by the Hon'ble Supreme Court, this Court alone has jurisdiction to entertain the present application, and as per Article 119 of the Limitation Act, 1963, the respondents have failed to file objections within one month. Therefore, now it is not open for the learned Government Pleader to raise

any contentions, when once the respondents are estopped from raising objections. In view of the same, I do not see any reason for declining to make the award of the 5th respondent dated 02.01.2014 a rule of the Court.

Accordingly, the Original Petition is allowed. The award of the 5th respondent dated 02.01.2014 is made rule of the Court and interest at 12% per annum is awarded on the principal sum as adjudged in the award from the date of the decree till the date of realization. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending in the petition shall stand dismissed.

A. RAJASHEKER REDDY, J.

2nd November, 2015

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