

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

CIVIL REVISION PETITION No.1757 of 2015

—
ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/judgment debtors, aggrieved by the docket order dated 27.11.2014 in E.P.No.14 of 2014 passed by the XVI Additional District and Sessions Judge, Ranga Reddy District, Malkajgiri, directing for issue of attachment dated 23.12.2014 in the Execution Petition filed by the respondent/decreed holder under Order XXI Rule 54 of C.P.C., seeking permission to issue warrant for attachment of schedule mentioned immovable property under and proclaim the same under Order XXI Rules 64 and 66 of C.P.C., and to credit the sale proceeds in the above E.P.

2. The petitioners have suffered an Award dated 30.4.2013 in Case No.ACP/154 of 2010 passed by the Arbitral Tribunal in a claim petition filed by the respondent under the provisions of the Arbitration and Conciliation Act, 1996 (for brevity "the Act"). Challenging the said Award, the petitioners have filed O.P.No.611 of 2013 under Section 34 of the Act before the Principal District Judge, Ranga Reddy District. During the pendency of said proceedings, the respondent has filed E.P.No.14 of 2014 before the XVI Additional District and Sessions Judge, Ranga Reddy District, Malkajgiri, under Order XXI Rule 54 C.P.C., seeking permission to issue warrant for attachment of schedule mentioned immovable property under and proclaim the same under Order XXI Rules 64 and 66 of C.P.C., and to credit the sale proceeds in the above E.P.

In such E.P., the learned XVI Additional District and Sessions Judge, Malkajgiri, has passed the impugned docket order dated 27.11.2014 directing to issue attachment dated 23.12.2014, on the only ground that counter affidavit is not filed by the petitioners/judgment debtors since three months. Hence, the present civil revision petition.

3. Sri Gaddam Srinivas, learned counsel for the petitioners/judgment debtors contended that when the Award dated 30.4.2013 is subject matter of challenge in O.P.No.611 of 2013 on the file of the Principal District Judge, Ranga Reddy District, it is not open for the respondent/deGREE holder to enforce the arbitral award in view of the provisions contained under Section 36 of the Act.

4. On the other hand, it is submitted by Sri T. Kishtaiah, learned counsel for the respondent/deGREE holder that inspite of giving sufficient opportunity, the petitioners/judgment debtors have not chosen to file counter and, as such, the Executing Court has passed the impugned order directing for attachment of E.P. schedule properties.

5. It is not in dispute that challenging the Award passed by the Arbitral Tribunal, the petitioners/judgment debtors have filed O.P.No.611 of 2013 before the Principal District Judge, Ranga Reddy District. Further, in E.P.No.14 of 2014, when notices were issued to the petitioners/judgment debtors, a Memo is filed on their behalf, which reads as under:

“The Judgment Debtors/Respondents filed O.P.No.611 of 2013 for set aside the Arbitration Award dated 30.4.2013 passed in Case No.ACP/154 of 2010 by the Arbitrator and the same is pending before the Hon’ble II Additional District Judge, R.R. District. Therefore, the E.P. is not maintainable under Section 36 of the Arbitration and Conciliation Act, 1996 till the disposal of the said O.P.No.611 of 2013.

Hence, this memo.”

6. From a perusal of Section 36 of the Act, it is clear that when an application is filed under Section 34 of the Act, until such application is refused, the Arbitral Award shall not be enforced under the provisions of C.P.C.

7. In view of the Memo dated 16.6.2014 in E.P.No.14 of 2014 filed by the petitioners/judgment debtors stating that they have questioned such Arbitral Award in O.P.No.611 of 2013 and as such E.P. is not maintainable under Section 36 of the Act till disposal of such O.P., the Executing Court has committed an error in passing the impugned order dated 27.11.2014.

8. For the aforesaid reasons, this Civil Revision Petition is allowed, setting aside the impugned order dated 27.11.2014. As a sequel, miscellaneous petitions pending, if any, in this revision shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A.SHANKAR NARAYANA

15.07.2015.
Msr

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