

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

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CIVIL REVISION PETITION No.2603 of 2015

ORDER: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Assailing the order dated 02.04.2015 in E.P. No.64 of 2014 in Arbitration Case No.33 of 2012 passed by the Principal District Judge, Warangal, the instant Civil Revision Petition is preferred by the revision petitioner (judgment debtor No.2) mainly on the ground that the executing court did not consider the objections raised by her in proper perspective as regards executability or otherwise of the Arbitration Award that was passed without following due procedure occasioning injustice and also on the ground that no notices were served on her in the arbitral proceedings and that the Arbitral Tribunal assumed its jurisdiction without consent from the parties, and, therefore, sought to set aside the order.

2. Coming to the facts, respondent No.2 herein (judgment debtor No.1) availed financial assistance of Rs.25-00 lakhs from respondent No.1 (decree holder) for business expansion and the revision petitioner and respondent No.3 herein (judgment debtor No.3) stood as guarantors. When default was committed as per the agreement between the finance company and the

borrower, matter was taken up by the Arbitral Tribunal in Arbitration Case No.33 of 2012. It is seen from the award that, though, notices were effected on the borrower and the guarantor, they did not enter their appearance and remained *ex parte*, which prompted the sole-arbitrator to pass the award from which the execution proceedings have arisen.

3. Before the executing court, respondent No.1 sought attachment and sale of immovable properties belonging to revision petitioner, over which, an equitable mortgage was created by deposit of title deeds under a registered document dated 29.11.2012. The executing court issued notices to the revision petitioner and she resisted the request by filing counter completely denying that she was not the guarantor or surety for respondent No.2 and that he (respondent No.2) never borrowed any amount from respondent No.1 and he (respondent No.2) filed I.P.No.18 of 2013 on the file of the Principal Senior Civil Judge, Warangal, in which, respondent No.1 is shown as respondent No.29, also showing the E.P. schedule property therein, and, thus, completely denied creation of mortgage by deposit of title deeds in its favour.

4. The executing court having heard both sides, overruled the objections observing that the objections

raised by the revision petitioner were in the nature of requiring the court to go beyond the decree relating to arbitral proceedings and ordered for further steps requiring respondent No.1 to file sale papers and encumbrance certificate.

5. It is the aforesaid order which is under challenge in the instant revision.

6. Heard Sri Alladi Ravinder, learned counsel for the revision petitioner, and Sri Maheswara Rao Kuncham, learned counsel for respondent No.1. The petitioner got mentioned in the cause title that respondent Nos.2 and 3, who are the borrower and other judgment debtor, are not necessary parties to the instant revision.

7. Learned counsel for the revision petitioner would submit that the Arbitral Tribunal lacks jurisdiction, since Clause – 11 of the loan agreement, which deals with Arbitration, Jurisdiction and Governing Law, provides that the disputes shall be referred to the arbitration of a sole arbitrator appointed by the company, but respondent No.1 herein without notice to the revision petitioner or borrower, unilaterally appointed arbitrator, and, therefore, the very arbitral award is not maintainable, and, though, such objection was raised in the counter filed in E.P., the court below did not take note of the said objection, and,

therefore, sought to set aside the impugned order.

8. Learned counsel for respondent No.1 supported the order contending that the objection raised by the revision petitioner is unsustainable as she did not challenge the order passed by the arbitrator, pursuant to which, the execution petition has been filed.

9. Perused the order and the material placed on record. In the counter filed by the revision petitioner as judgment debtor No.2, except denying borrowal of loan by respondent No.2 and herself standing as surety and stating that respondent No.2 filed I.P.No.18 of 2013 showing the E.P. schedule property in the schedule annexed to the insolvency proceedings and further stating that if property is ordered to be sold, her family will be thrown into streets, nothing else is mentioned. For the first time, during the course of arguments, objection was taken for appointment of arbitrator and award passed by him by contending as in the above. When the award remains unchallenged, it is not open for the revision petitioner to raise the issue relating to appointment of arbitrator, which objection was not at all taken even in the counter filed in the execution petition. Further, we are of the view, that the decisions of the Hon'ble Supreme Court relied on by the learned counsel for the revision petitioner in **Sunder Dass**

v. Ram Prakash^[1], Kiran Singh and others v. Chaman Paswan and others^[2] and Sachin Gupta and another v. K.S.Forge Metal Private Limited^[3] are of no assistance to him to grant the prayer in the instant revision.

10. The instant Civil Revision Petition is, therefore, dismissed. No order as to costs.

11. As a sequel thereto, miscellaneous petitions, if any pending in this revision, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

Date: 20.08.2015
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^[1] AIR 1977 SC 1201

^[2] AIR 1954 SC 340

^[3] (2013) 10 SCC 540