

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No.309 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act'), the petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

An agreement is said to have been entered into between respondents 1 and 2 herein to which the petitioner claims not to be a party. The second respondent filed A.A.No.86 of 2013 against the first respondent for recovery of Rs.3.13 Crores with interest and costs. The first respondent in turn filed a counter-claim against the second respondent for Rs.45.00 Crores with further interest and costs. Along with the counter-claim, the first respondent also filed an application under Section 17 of the Act requesting the Arbitrator to appoint a Receiver and an Auditor to audit the accounts of the petitioner herein. By his order in Application No.2/2014 dated 02.05.2014 the sole Arbitrator rejected the application, for appointment of the Receiver and Auditor, holding that there was no *prima facie* material to show that the petitioner herein was a party to the agreement between respondents 1 and 2. After dismissal of the application by the sole Arbitrator, the first respondent filed an application under Section 9 of the Act. Questioning the action of the Court below, in entertaining the application under Section 9 of the Act, the petitioner has invoked the jurisdiction of this Court.

The question whether the petitioner herein is a party to the arbitration agreement, and the effect of the order of the sole Arbitrator dated 02.05.2014 are matters which the Court below would, undoubtedly, take into consideration before passing an order on the

application filed by the first respondent under Section 9 of the Act. The mere fact that the application under Section 9 of the Act has been entertained would not justify invoking the extra-ordinary jurisdiction of this Court under Article 227 of the Constitution of India, as the petitioner cannot be said to have suffered substantial injustice thereby. This Court would not be justified in taking upon itself the task of examining whether the agreement between respondents 1 and 2 contains an arbitration clause; whether the petitioner herein is a party to the said agreement; and the effect of the order of the sole Arbitrator dated

02.05.2014; on the premise that these aspects would not be considered by the Court below. All the contentions raised in these proceedings can as well be raised before the Court below. We have no reason to doubt that all these aspects would be considered by the Court below before passing orders on the application filed by the first respondent under Section 9 of the Act.

The Civil Revision Petition as filed is wholly misconceived and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

12th February, 2015.

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