

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Civil Revision Petition No.1669 of 2014

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

This civil revision petition is preferred against the order passed by the I Additional District Judge, East Godavari District at Rajahmundry in E.P.No.47 of 2013 in A.P.T.C.L.No.10559 of 2012 dated 21.04.2014.

The petitioner herein invoked the jurisdiction of the Arbitral Tribunal for recovery of a sum of Rs.10,05,57,975/- due as on 18.07.2012, along with interest at the rate of 13% per annum, and additional interest at the rate of 15% per annum on Rs.2,51,04,208/- from 19.07.2012. The Arbitral Tribunal passed an award on 20.01.2013 directing (a) the respondents to pay the petitioner a sum of Rs.10,05,57,975/- together with interest at the rate of 13% per annum and additional interest thereon at the rate of 15% per annum on Rs.10,05,57,975/- till payment. The Tribunal further declared, in clause (b) of paragraph 12 of the award, that the amount mentioned in Clause (a) was secured by a valid and subsisting equitable mortgage by way of deposit of title deeds of the properties.

The petitioner herein filed E.P.No.47 of 2013 before the Court below for execution of the award. By the order under revision, the Court below, relying on the judgment of the Supreme Court in ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others***, held that a claim of mortgage has to be decided by a public Fora, and not by a private Fora like the Arbitral Tribunal; Order 34 C.P.C. did not provide for execution of decrees, but for preliminary and final decrees to satisfy the rights of the mortgagees with reference to their mortgage security; in the present case the award was passed upon a claim for equitable mortgage given as security; and the award passed by Arbitrator was not executable.

Before us Sri S.Niranjan Reddy, learned counsel for the petitioner, would submit that no exception can be taken to the award passed by the Arbitral Tribunal, directing the respondents to pay the petitioner Rs.10,05,57,975/- with interest; in view of the law declared by the Supreme Court in ***Booz Allen and Hamilton Inc.***¹ the award, to the extent it had declared that the amount was secured by a valid and subsisting equitable mortgage, which is without jurisdiction; in view of the judgment of the Bombay High Court, in ***Tata Capital Financial***

Services Limited vs. M/s. Deccan Chronicle Holdings Limited, the petitioner has the remedy of instituting a suit for sale of the mortgaged property; it is wholly unnecessary for them to file a fresh suit for recovery of money, and to then execute the decree; and the order passed by the Court below, in holding that the award in its entirety is not executable, must be set aside.

Sri A.S.Vasudevan, learned counsel appearing on behalf of Pillix Law firm (counsel for respondent No.2), would fairly state that the award, only to the extent of paragraph 12(b) thereof, which cannot be executed and it would suffice if this Court were to affirm the order of the Court below to this extent, and leave it open to the petitioner to avail their remedies in accordance with law.

As counsel on either side are in agreement, the order of the Court below, to the extent it held that paragraph 12(b) of the award was not executable, is upheld. It is made clear that this order, and that of the Court below, shall not preclude the petitioner from availing such other remedies, as are available to them in law to have the award, in terms of paragraph 12(a) thereof, enforced.

The civil revision petition is, accordingly, disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

6th April 2015.

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 06.04.2015

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