

*THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS*

CIVIL MISCELLANEOUS APPEAL No.864 of 2015

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

This appeal arises out of the order dated 01.09.2015 passed by the learned III Additional District Judge, Guntur, in A.O.P.No.854 of 2014. The appellant is the third respondent in the said A.O.P. which was filed by the first respondent herein under Section 9(ii)(e) of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996').

It appears that the said petition was filed sometime in September, 2014. However, during its pendency, the sole arbitrator passed Award dated 08.07.2015 holding all the three respondents in the arbitration case, A.O.P.No.367 of 2014, jointly and severally liable to pay a sum of Rs.7,76,656/- along with interest at 18% per annum on Rs.1,57,760/- from the date of the claim till the date of realisation along with costs. The appellant is the third respondent in the arbitration case. However, the factum of the Award having been passed by the sole arbitrator was not brought to the notice of the Court which was hearing the petition filed under Section 9 of the Act of 1996 in A.O.P.No.854 of 2014. Unmindful and ignorant of this development, the said A.O.P. was allowed by the order under appeal making absolute the interim attachment of the petition schedule property in I.A.No.1061 of 2015 belonging to the appellant/third respondent therein till conclusion of the proceedings before the sole arbitrator in A.O.P.No.367 of 2014.

As the arbitration proceedings before the sole arbitrator had already concluded by the date of passing of the order under appeal, the order was ineffective in its very inception. It may be noticed that the

petition under Section 9 of the Act of 1996 can be maintained after passing of the arbitral Award but before its enforcement in accordance with Section 36 of the Act of 1996. However, as that was not the nature of the petition filed before the Court below in A.O.P.No.854 of 2014 and as the order passed therein was limited in its operation till conclusion of the proceedings before the sole arbitrator, we are of the opinion that no adjudication is warranted in this appeal except for stating that the order dated 01.09.2015 in A.O.P.No.854 of 2014 on the file of the learned III Additional District Judge, Guntur, was ineffective and infructuous in its very inception.

The C.M.A. is accordingly closed. This order shall however not preclude the first respondent herein from taking appropriate steps in relation to the Award dated 08.07.2015 passed by the sole arbitrator in accordance with law.

Pending miscellaneous petitions, if any, shall also stand dismissed.

No order as to costs.



SANJAY KUMAR, J

ANI S, J

Date:03.11.2016

GJ