

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO**

CIVIL MISCELLANEOUS APPEAL No.998 OF 2015

JUDGMENT: (Per NRR,J)

Respondents 1 and 2 in AOP No.2180 of 2015 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad, are the appellants herein. The respondents 1 to 3 herein are the petitioners in the aforesaid mentioned AOP No.2180 of 2015 while respondents 4 and 5 herein are the bankers. Since the appellants herein and the respondents 2 and 3 are very closely related to each other and since they are all partners of the 1st respondent partnership firm, we have urged the learned senior counsel on either side to use their good offices for sorting out amicably the disputes amongst the parties as persisting disputes are not conducive for effectively carrying on the business operations by the 1st respondent partnership firm. Though, it appears, both the learned senior counsel tried, no satisfactory progress has been achieved in securing resolution of the disputes.

When the matter was reported to us, we requested the parties to confer consent upon us to constitute the arbitral tribunal and refer the disputes of both sets of parties for resolution through the said mechanism. Fortunately yesterday, both the appellants as well as the respondents 1 to 3 have filed memos granting us the necessary authority to constitute an arbitral tribunal and then refer both sets of parties for resolution of all disputes *interse* amongst them for resolution. We have, accordingly, accepted the memos filed on either side and we also place on record our appreciation for the honest and bona fide attempt to have all the disputes between the parties resolved through the speedy mechanism of arbitration. We also appreciate the concern of the parties and their trust and faith in us by authorizing us to

constitute the arbitral tribunal.

2. Having given our consideration to the nature of the disputes persisting between the two sets of parties and after gauging the intensity of the disputes and also after realizing the urgency for securing a satisfactory resolution of such disputes in real quick time, we have considered it appropriate to refer both the sets of parties by constituting Hon'ble Sri Justice Vilas V. Afzulpurkar, a former judge of this Court, to act as arbitral tribunal for resolving the disputes referred to him by both sets of parties. Accordingly we appoint and constitute the arbitral tribunal comprising of Hon'ble Sri Justice Vilas V. Afzulpurkar, former judge of this Court (High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh). Accordingly, we direct the Registry to communicate a copy of this order to Hon'ble Sri Justice Vilas V. Afzulpurkar, immediately.

3. Both the sets of parties are directed to lay their respective claims/counter claims within 15 days time from today. We hope and trust the resolution of the disputes would be achieved within a span of two (2) months.

4. However, we are required to deal with a contention canvassed by Sri M.V.S. Suresh Kumar, learned counsel for the appellants, who urged that when the respondents 1 to 3 herein have instituted suit O.S.No.242 of 2015 on the file of the II Additional Chief Judge, City Civil Court, the appellants herein have moved I.A.No.753 of 2015 therein under Section 8 of the Arbitration and Conciliation Act, 1996, for directing the parties to the mechanism of the resolution of disputes by way of arbitration in view of existence of an agreement to that effect. It appears the request of the appellants herein was accepted and an order was passed on 08.10.2015 by the learned II Additional Chief Judge, City Civil Court, Hyderabad. But however,

while referring the parties to the mechanism of arbitration, the Managing Partner of the 1st respondent firm has been permitted to continue to operate the bank accounts till necessary orders are passed by the Arbitral Tribunal. Aggrieved by this later part of the order, the appellants herein have instituted C.C.C.A.No.156 of 2015 before this Court and this Court passed an order on 19.10.2015 suspending that part of the order passed on 08.10.2015 by the learned II Additional Chief Judge, City Civil Court in I.A.No.753 of 2015 O.S.242 of 2015 whereby the Managing Partner of the 1st respondent firm herein has been permitted to continue to operate the bank accounts till the arbitration award is made.

5. It is specifically contended by Sri M.V.S.Suresh Kumar, the learned counsel for the appellants, that the respondents 1 to 3 herein have entered appearance in the aforementioned CCCA.No.156 of 2015 on 30.10.2015 but however, the respondents herein have moved AOP No.2180 of 2015 before the learned II Additional Chief Judge, City Civil Court, Hyderabad and secured an order on 02.11.2015 which runs contra to the order passed by this Court in CCCA No.156 of 2015 dated 15.10.2015. Hence, it is contended before us that it is not an appropriate conduct of the respondents 1 to 3 who have not taken the Court into confidence by disclosing the true and correct facts in particular relating to the order passed on 19.10.2015 in C.C.C.A.No.156 of 2015.

6. Sri D.Prakash Reddy, learned Senior Counsel appearing for the respondents 1 to 3 has fairly stated that the conduct of the respondents 1 to 3 to the extent of not disclosing in the AOP No.2180 of 2015 faithfully and truthfully, about the order passed by this Court on 19.10.2015 in CCCA No.156 of 2015 particularly when the respondents 1 to 3 have entered appearance therein on 30.10.2015, is not completely justifiable. The learned Senior counsel would submit

that the error of judgment committed by the respondents 1 to 3 herein is, however, unintentional.

7. Sri Prakash Reddy, learned Senior counsel for the respondents, would submit that this Court while entertaining the above C.M.A. has passed an interim order on 07.01.2016 by way of protecting the interests of the appellants herein by directing the respondents 1 to 3 in particular not to enter into any agreement or create any 3rd party interest whatsoever in respect of 8 independent houses in the ongoing project for a period of four (4) weeks from that date. However, that order was subsequently extended on 01.02.2016 by a further period of four (4) weeks and by one week on 29.02.2016.

8. We direct the said order to hold the field for the next three (3) months however, the respondents 1 to 3 shall in all respects complete all works relating to those 8 independent houses and keep the said houses in all respects ready along with the remaining houses undertaken construction thereof. In other words, not to keep any works relating to the 8 houses pending while completing the works relating to the rest of the houses in the project. We also need to address one other concern strongly urged by Sri M.V.S.Sureshkumar, learned counsel for the appellants that the appellants who are 50% partners in the 1st respondent partnership firm have been completely prevented from taking part or even knowing as to the developments that are going on in the project.

9. We consider that ends of justice would be better served by directing the respondents 1 to 3 herein to draw fortnightly statement of accounts and furnish a copy thereof to the appellants herein by registered post, first of such statement shall be drawn as on 31.03.2016 and shall be dispatched within the next three working days thereafter by registered post to the appellants herein. There

afterwards, during the pendency of the arbitral proceedings, a statement of accounts, however, fortnightly shall be drawn and it shall be dispatched by way of registered post to the appellants within the next three working days. We also consider that it would be appropriate to permit the 1st appellant herein to inspect, during working hours, the construction site whether works are in progress and make independently notes thereof including taking any photographs but however, in no manner disturbing the pace of works that is going on there. We further reserve liberty to both sides after two months only, for reviving the C.M.A. for any clarifications which are needed in working out the order which we have passed today. We reserve liberty to both sides to seek any further or fresh interim order from the arbitral tribunal as per Section 17 of the amended Act in terms and in accordance with law.

10. Accordingly, the C.M.A. stands disposed of. No costs. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr. B.SIVA SANKARA RAO, J

Date: 10.03.2016.

VVR