

HONOURABLE SRI JUSTICE S. RAVI KUMAR

CRP.No.2319 of 2016 and CMA.Nos.407 & 415 of 2016

Date: 08-09-2016

C.R.P.No.2319 OF 2016.

Between:

Akumalla Raja Gopal.

..Petitioner.

And:

Annaiahvari Thulasamma and others.

..Respondents.

C.M.A.No.407 OF 2016.

Between:

Annaiahvari Sai Prasad (died) and others.

..Petitioner.

And:

Annaiahvari Thulasamma and others.

..Respondents.

C.M.A.No.415 OF 2016

Between:

Akula Raja gopal alias Raja Gopal Swamy.

..Petitioner.

And:

Annaiahvari Sai Prasad (died) and others.

..Respondents.

HONOURABLE SRI JUSTICE S. RAVI KUMAR

CRP.No.2319 of 2016 and CMA.Nos.407 & 415 of 2016

COMMON JUDGMENT:

Both appeals and C.R.P. are preferred against interim orders passed in O.S.No.128 of 2014 on the file of IV Additional District Judge, Kadapa.

Parties are hereinafter referred to as 'plaintiffs and defendants' as arrayed in the suit for convenient sake.

Plaintiffs filed I.A.No.365 of 2016 in the above referred suit for grant of interim injunction restraining 6th defendant, his men, agents, associates, contractors and persons claiming right through him from entering into the plaint schedule mine pending disposal of the suit.

Trial court by its order dated 7th April, 2016 granted temporary injunction in favour of plaintiffs restraining 6th defendant from interfering with the management of the suit mine till disposal of the suit clarifying that the said order will not restrain the co-owners. Aggrieved by the said order, D.6 preferred C.M.A.No.415 of 2016. D.1 to D.3, D.5, D.7 to D.9 preferred C.M.A.No.407 of 2016.

D.6 filed I.A.No.364 of 2015 in the above referred suit under Order XIV Rule 2 (2) read with Section 151 and Section 94 (E) of C.P.C. requesting the trial court to decide the issue relating to jurisdiction and the trial court through order dated 7-4-2016 dismissed the application holding that court has got jurisdiction under Section 11 of the Civil Courts Act and overruled objection of D.6. Aggrieved by that order, D.6 preferred C.R.P.No.2319 of 2016.

Both side advocates argued all the three matters together and submitted the order in C.R.P. would have bearing on the other two appeals. As already referred above, D.6 filed application contending that civil court has no jurisdiction and requested the trial court to decide that issue which was held against D.6 by the lower court and the same is subject matter of C.R.P. therefore it has to be decided first and if the court has no jurisdiction, orders passed in the other I.A. would have bearing on the issue of jurisdiction, therefore, the C.R.P. is first taken up.

Plaintiffs filed the above referred suit for the relief of permanent injunction restraining D.6, his men, agents, associates, contractors and the persons claiming right through him from entering into the plaint

schedule mine in any capacity and thereby not to interfere with the smooth management of the mine in any manner.

There is no dispute with regard to relationship between the parties. Third plaintiff is husband of second plaintiff A.Saibaba, first defendant and husband of 4th defendant are sons of first plaintiff and her husband A.Venkata Narasappa. The said Venkata Narasappa is the eldest son A.Krishnappa. Parties belong to business family which engaged in mining business of asbestos and mines. Venkata Narasappa died in the year 1958. As misunderstandings arose between the parties, they referred the disputes to one Mr. M.S.Papanna who constituted an Arbitration Tribunal consisting of himself, A.Srinivasa Murthy and D.6 as panel of arbitrators. With the consent of all parties, arbitrators passed the award on 19-6-1998 regarding management and administration of suit schedule mine.

According to plaintiffs, differences again arose between the plaintiffs on one hand and defendants 1 to 3 and 5 on the other hand in May, 2010 regarding management of suit mine and taking advantage of these disputes, 6th defendant started claiming himself as Special Officer

having full rights to do mining business deviating the clauses of award with the support of D.1 to D.3 and D.5 to eliminate plaintiffs from the management of mine and to deprive them to get any income from the mine. Plaintiffs contended that 6th defendant started mining work from June, 2010 onwards for which plaintiffs opposed but 6th defendant being influenced person went on excavating the mine highhandedly and did not choose to pay the royalty, dead rent to the Government and sold mineral illegally. It is also alleged that D.6 sold material worth Rs.8,00,000/- and a complaint was given to police in that connection. It is further contended that there are dues to a tune of Rs.50,00,000/- and 6th defendant did not pay any amount to the Government and carried away mining illegally.

According to plaintiffs, as the award has become final, provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") are not applicable and as general remedy of invoking civil law is available to plaintiffs, they filed the suit.

D.6 contended that the suit is motivated and aimed at disturbing the award of arbitral Tribunal dated 19-6-1998. He contended that

allegations leveled against him are motivated by malice, greed and vengeance and allegation that he is indulged in activities against to the interest of parties, and to the terms of award are absolutely incorrect. He contended that 3rd plaintiff earlier filed A.O.P.No.390 of 2013 before Principal District Judge, Cudapah contending that D6 deceived the parties i.e., co-owners and earned crores of rupees. He contended that the issues and facts raised in A.O.P.No.390 of 2013 are repeated in the present suit and the relief sought for in the present suit are exactly similar to the reliefs claimed in A.O.P.No.390 of 2013. He further contended that his appointment as Special Officer was under the award and not in pursuance of any civil court order. He contended that Section 5 of Arbitration Act restricts and limits the jurisdiction of civil court in respect of issues decided or arrangements made under the Arbitration Act and the remedy of the plaintiffs is to proceed under Section 34 of Arbitration Act, without invoking that remedy took the recourse of filing suit 16 years after arbitration award, therefore suit is not maintainable. He further contended that plaintiffs cannot get reliefs which they failed to get in A.O.P.No.390 of 2013 which was dismissed.

He further contended that as per Section 42 of Arbitration Act, the Civil Court has no jurisdiction to try the suit. He contended that unless the issue of maintainability is decided, grave injustice would be done to him and other defendants therefore, prayed to decide the maintainability of the suit and jurisdiction of the court.

On a consideration of the grounds raised in the application and the objections pointed out by the second plaintiff, in the counter, the court below passed order overruling the objection raised by D.6 and held that civil court has got jurisdiction to try the suit.

Advocate for revision petitioner submitted that as per Section 5 of Arbitration Act, there is an explicit bar to entertain the suit and the same was held by this court in *MIC ELECTRONICS LIMITED, HYDERABAD Vs. INTERNATIONAL TECHNO MEDIA PVT. LTD., DELHI* *REP.BY ITS MANAGING DIRECTOR MR. JATIN BANSAL* ⁽¹⁾. He further submitted that in view of the principle laid down in the above referred judgment, the suit is not maintainable as the suit is hit by section 5 of the Arbitration Act. He further submitted that as already award is

¹ (2012) 1 ALT 527 / (2012) 3 ALD 180

passed, the remedies available to the plaintiffs are one to seek for setting aside the award, secondly for implementation. He further submitted that with regard to first relief, as limitation period to file petition to set aside the award is expired long back, that remedy is no more available and the remedy of implementation alone is available. He further submitted that in spite of specific objection from D.6 as to the maintainability of the suit, the court below has not properly dealt the matter, not properly applied the provisions of the Arbitration Act and erroneously overruled the objection. He further submitted that by overruling that objection, the tribunal granted injunction in favour of the plaintiffs which virtually amount to interfering with the terms of the award and setting aside the right conferred on D.6 in terms of the award. He further submitted that court below wrongly interpreted word 'judicial authority' used in Section 5 of Arbitration Act ignoring the interpretation given by courts to the word 'judicial authority'. He further submitted that Arbitration award is binding on both parties and if the terms of award are not implemented, the remedy is to enforce the award under the provisions of Arbitration Act but the civil suit is not

maintainable. He further submitted that judicial intervention is not permissible. He submitted Section 5 of the Arbitration Act takes away the jurisdiction of the court, is the principle laid down by the Honourable Supreme Court in *EMPIRE JUTE CO., LTD., AND OTHERS v. JUTE CORPORATION OF INDIA LTD., AND ANOTHER* ⁽²⁾. He further submitted that taking away the power or decree granted under the award is not permissible and the same is the principle laid down in *KVAERNER CEMENTATION INDIA v. BAJRANGLAL AGARWAL* ⁽³⁾.

On the other hand, advocate for plaintiffs contended that the word “judicial authority” is not defined in the Arbitration Act and only word ‘court’ is defined. He submitted that in some section, the word ‘court’ is used and in some section word “judicial authority” is used and as per Section 5 only judicial authority’s intervention is prohibited. He submitted that judicial authority may be court but court cannot be “judicial authority” and the objection with regard to jurisdiction is a mixed question of fact and law as there is no specific bar under Section 5, the trial court rightly overruled the objection of D.6. It is further

² 2008(1) ALD 70 SC

³ (2001) 6 Supreme 265

submitted that no presumption can be drawn barring civil court jurisdiction, unless the same is specifically barred. He further submitted that the facts in the decision relied on by D.6 are different to the facts of this case and therefore, those decisions have no application. He further submitted that in those cases, during arbitration proceedings, courts have interfered and in such circumstances, such interference was held as without jurisdiction. He further submitted that as there is no prohibition under Section 5 to file suits, suit filed by plaintiffs is very much maintainable and trial court rightly held so. He further submitted that enforcement of award can be only against parties to the award and it cannot be against 3rd party, but here as D.6 is a third party, the only remedy of plaintiffs is to file civil suit and the trial court rightly entertained the suit and therefore, there is no jurisdictional error in the order of lower court and there are no grounds to interfere with the order of the trial Court while exercising revisional powers.

As already referred to above, D.6 filed I.A.No.364 of 2015 requesting the court to decide the issues relating to the jurisdiction and maintainability as a preliminary issue before taking up trial. Court

below while dismissing that application also considered the point of jurisdiction and maintainability and decided it against D.6.

The main contention of advocate for D.6 and other defendants is when the award is already passed, remedy available to the plaintiffs is either to seek for setting aside the award or to take steps for implementation of that award and both the steps are only under provision of Arbitration Act and civil court has no jurisdiction at all. They contended that Section 5 is a specific bar for the civil court to entertain any suit and the court below lost sight of these aspects and erroneously dismissed the application of D.6.

On the other hand, it is the contention of advocate for plaintiffs under Section 5 of Arbitration Act there is no express bar for the civil court since the word used in Section 5 is “judicial authority”.

Admittedly, an award is passed on 19-6-1998 and as per the terms of the award, D.6 is appointed as Special Officer for supervision etc., It is also clear from the pleadings in the plaint that D.6 is managing the disputed mine from 2010 onwards. Arbitration Act contain 10

chapters and these chapters are categorized subject wise. The first chapter is about preliminary which is basis for all other chapters.

Section 5 of the Arbitration and Conciliation Act, 1996 dealt with judicial intervention, it may be relevant to read that section which reads as follows:

“Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

From a plain reading of the above Section, there is a clear bar for the judicial authority to intervene in respect of the matters governed by the provisions of Arbitration Act.

Admittedly, judicial authority is not defined in the Act and therefore, this word has to be examined with reference to the scope and object of the Act.

The purpose of introducing new Act, 1996 by revising the old Arbitral Act, 1940 is to make arbitral process smooth, by omitting or amending various sections of the Act which allowed interference or intervention by courts at almost every stage.

Some of the objects for introducing a new Act is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the Arbitration.

Another reason is to provide the Arbitral Tribunal to give reasons for its award.

Another important reason is to minimize the supervisory role of courts in the arbitral process and to permit an arbitral tribunal to use mediation, conciliation or other procedures and to encourage settlement of disputes. Another important feature is to provide that every arbitral award is enforced in the same manner as if it were a decree of the court.

To give effective implementation of the provisions of this Act, the role of court is very limited and only two or three sections empower the intervention of the courts. They are sections 16 (2), (3) Section 34 and Section 37 of the Act. Except under these three Sections, no proceedings can be initiated in a civil court touching the Arbitration.

So as rightly pointed out by advocate for defendants, the remedy of the plaintiffs is either to enforce the award or to get the award set aside under due process of law.

In *EMPIRE JUTE CO., LTD., AND OTHERS v. JUTE CORPORATION OF INDIA LTD., AND ANOTHER* (2nd cited), Honourable Supreme court held “in terms of 1940 Act, even a civil suit could have been entertained subject of course to exercise the courts jurisdiction under Section 21 thereof. Section 5 of 1996 Act takes away the jurisdiction of the court. There cannot be any doubt whatsoever, the provision of 1996 Act must be given effect to.”

From this, it is clear that there is a clear bar under Section 5 of the Act as to the jurisdiction of the Civil Court.

In *KVAERNER CEMENTATION INDIA v. BAJRANGLAL AGARWAL* (3rd cited). the Honourable Supreme Court while referring to Section 16 of the Act observed “a bare reading of Section 16 makes it explicitly clear that the arbitral tribunal has power to rule on its own jurisdiction even when any objection with respect to existence or validity of the arbitration agreement is raised and a conjoint reading of sub-sections (2), (4) and (6) of Section 16 would make it clear that such a decision would be amenable to be assailed within the ambit of Section 34 of the Act.”

In *MIC ELECTRONICS LIMITED, HYDERABAD* Vs.
INTERNATIONAL TECHNO MEDIA PVT. LTD., DELHI REP.BY ITS
MANAGING DIRECTOR MR. JATIN BANSAL (1st cited), Division Bench
of this court has followed the principle laid down in the judgment cited
supra.

From the above referred decision, it is clear that there is a clear
bar on the civil court to entertain any dispute in respect of arbitration
proceedings.

Here, the proceedings are concluded and award is also passed in
which case, the bar is more effective. Admittedly, plaintiffs have not
challenged award by invoking Section 34 of Arbitration Act.

As rightly pointed out by advocate for defendants, for any
clarification with regard to terms of the award, the plaintiffs have to
approach the arbitral tribunal but they cannot invoke jurisdiction of
civil court which virtually amount to meddling with the award terms.

Here, from a plain reading of plaint would indicate that the relief
claimed in the suit virtually amount to interfering with the terms of the
award. In other words, it amounts to granting stay of operation of the

terms of the award which in my view is absolutely not permissible.

The court below without examining these aspects simply carried away with the submissions of the opposite side i.e., plaintiffs, that there is no express bar for the civil court. The trial court lost sight of the fact that the very relief is in respect of terms of award, which award has become final.

For these reasons, I have no hesitation in holding that trial court committed error in not properly applying in terms of Section 5 of the Arbitration Act with regard to jurisdiction.

Coming to other aspects, though the relief is claimed as permanent injunction, it virtually is a mandatory injunction and that mandatory injunction if granted operates as a stay for execution of the terms of the award and in that way, the suit as framed is not maintainable.

Plaintiffs specially pleaded in the plaint that D6 commenced mining work from June-2010 onwards for which plaintiffs opposed for the direct involvement of the sixth defendant in respect of mining work. Plaintiffs contended that D6 being influenced person went on

excavating mining high handedly and did not pay royalty and dead rent due to Government, but sold the mineral illegally. The specific allegation against D6 is that he had stolen material worth of Rs.8,00,000/- and there are dues amounting to Rs.50,00,000/- on the suit mine. The other specific allegation is that D6 has no right to sell the mineral without knowledge of all the parties to the Arbitration Award and that in view of the advanced age of D6, he cannot do any mining activity. The main prayer in the suit is to grant permanent injunction restraining the defendant No.6, his men, agents, associates, contractors and persons claiming right through him from entering into the plaint schedule mine in any capacity and thereby not to interfere with the smooth management of the mine in any manner. There is no dispute that Arbitrator is passed award on 19-06-1998 and the terms of the award have become final. Admittedly, D6 is one of the arbitrators and as per the terms of the award, he was designated as Special Officer. The relevant clauses of the Arbitration Award are Clause Nos.2, 8, 15, 17, 27 & 28, which reads as follows:-

“02. That Subject to the total control and superintendence of the Special Officer the conduct of Mining operations in the present No.A-1 stopping mine including quarrying of mineral, stocking it at PitHead after sorting the mineral grade wise, employment of workers, skilled staff, payment of salaries and wages, maintenance of all statutory registers and submission of statutory returns to Mines Dept., Labour Department, Safety Dept., ESI, EPF, IBM, and other Govt. authorities and other related functions shall be entrusted to and vest with Sri A. Anjaneyulu alias Anja, these functions and duties shall vest with and be performed by Sri A. Saiprasad for a period of one year commencing from 1.7.1999. After the expiry of his term of one year of management Sri A. Saiprasad shall handover the management to A. Anja on 1.7.2000. This process and tenure of Management of the Barytes Mine shall rotate by turns between Sri . A. Anja and A. Saiprasad, year after year, Sri A. Anja or Sri A. Saiprasad after completing his one year period of management shall handover charge to the other of all records, documents and other machines, vehicles and Assets etc, belonging to the Mine. Neither Sri A. Anja nor A. Saiprasad can delegate his functions and powers with regard to the management of the Mine to any other individual so that the benefit of personal management by the owner can be derived by the other four parties. If any malpractices or irregularities are committed, by the person in charge of management, he shall then rectify them and abide by the instructions or orders of the Special Officer in regard to the Management of the Mine touching all aspects and activities. Any disregard or defiance of the orders of the Special Officer by the person managing the mine shall result in

his being divested of the functions of the management and the special officer will take over the functions of the management and the special officer will take over the Management functions or allot them to any other deserving party among the other parties. All the powers exercised by the person incharge of management shall there upon stand vested with the Special Officer or any other party appointed by him.

08. That the Special officer shall distribute the mineral on or before 25th of every calendar month among all the five parties or on such day or days of each month depending on the quantity of the mineral available for allotment.

15. That the person in charge of management at the relevant period shall obtain Transport permits after making payment of Royalties and handover the permits to the special officer, that the Special officer shall distribute the permits among all the five parties equally or in proportion to the Tonnage allotted to him or her; That the parties to whom transport permits and Sales tax X forms are allotted shall utilise them only for the bonafide purposes of the company of the parties and not misutilise them and that any misuse of the KAB Permits resorted to by any party shall render him or her liable for any fine or penalty imposed by the Special Officer and if the fine is not paid by the delinquent party it is open to the Special Officer to sell his or her portion of the mineral and remit the amount to the common fund.

17. That the Special Officer shall have the power to transfer permits allotted to one party to any one or more among the

remaining four parties provided there is mutual consent between them.

27. On resignation of his office as Special Officer by Sri A. Rajagopal, Sri M.S. Papanna shall have power to appoint any other deserving person as special officer for the purpose of implementation of this Award.

28. That Sri M.S. Papanna either sue moto or on receipt of any representation from any of five parties in regard to any order or directions issued by the Special Officer shall call for the record or obtain information from the special officer and pass such order or directions as may deemed fit and his orders are binding on these special officer and the five parties."

From a combined reading of these clauses, the total control and superintendence is with Special Officer in conduct of mining operations. Clause 2 of the Award is very clear which empowers Special Officer i.e., D6 to have a superintendence and control. As per this clause, quarrying of minerals, employment of workers etc., is entrusted to the parties turn wise and the first year commencing from 1-7-1998 is with Sri A. Anjaneyulu @ Anja and after completion of the term of one year, the said Anja it shall vest with A. Sai Prasad for the next year i.e., commencing from 1999 likewise it shall rotate. It is also clear from

the award that D6 is a person having experience in mining, accounting procedure, knowledge in mine laws, labour laws and on that basis, he was entrusted with the power of superintendence the mining operation. This award is not challenged by any of the parties and it is being implemented from 1998 onwards. From the plaint averments, it is clear that from June-2010, D6 commenced mining work for which the plaintiffs raised an objection. Though from 2010 onwards, D6 was doing this work contrary to the wish of the plaintiffs, action was initiated only in the year 2014 i.e., nearly after four years. In between AOP.No.390/2013 was filed before Principal District Judge, Cuddapah for appointment of an Arbitrator afresh, but that application was dismissed holding that they have wrongly invoked the jurisdiction and thereafter without filing any application in appropriate forum, they filed the suit. Though the plaintiffs termed the relief as temporary injunction in the interlocutory application and permanent injunction in the suit, the relief virtually amounts to a mandatory injunction, because plaintiffs specifically prayed to prevent D6 from entering into the plaint schedule mine in any capacity. So the interim relief claimed has to be

treated as interim mandatory injunction and normally for granting such interim mandatory injunction, there shall be strong *prima facie* case in favour of the plaintiffs. In other words, there should be material before the Court to show that there is every likelihood of plaintiffs succeeding in the suit. As already referred above, the specific allegation against D6 is that he had stolen material worth of Rs.8,00,000/- and did not pay the royalty and dead rent to the Government to a tune of Rs.50,00,000/- . No doubt D6 admitted that there were some dues to the Government, and he is in process of clearing them and the same was due to some financial reasons. Admittedly, the award has become final and if any of the party to the award is not cooperating for enforcement of the terms of the award, the aggrieved party has to enforce the award as per Section 36 of the Arbitration Act. Now here the contention of the plaintiffs is that D6 is a third party, the plaintiffs cannot take any steps for enforcement of the award, but that objection cannot be accepted in view of the fact that D6 as a Special Officer is entrusted with some powers in terms of the award and if there is any deviation, plaintiffs can

definitely seek enforcement of the award and seek appropriate orders from the forum, which has to enforce that award.

In order to grant temporary injunction, the main and foremost ingredient is prima facie case. Plaintiffs mainly claimed temporary injunction on the ground that D.6 has stolen material worth of Rs.8,00,000/-. Plaintiffs have not placed any material to support this allegation at least prima facie. The other grounds on which they sought for temporary injunction is D.6 failed to pay the royalty and dead rent due to the Government, arrears are about Rs.50,00,000/-. Simply because, there were arrears due to the Government, it cannot be treated as prima facie case to prevent D.6 from discharging his obligation. To get interim injunction, plaintiffs must place material to show that D.6 intentionally not paid these amounts to Government in order to have personal gain. There is absolutely no material to show that D.6 has not paid these amounts to Government with malafide intention or to have personal gain having received amount in the mining process. Without establishing these aspects at least prima facie, the court below granted temporary injunction. As I have already observed that the very suit

itself is not maintainable, order of the court below in granting temporary injunction is to be treated as without jurisdiction and in that way also it is liable to be set aside.

For these reasons, I am of the view that both the appeals and C.R.P. are to be allowed and impugned order passed in I.A.Nos.364 of 2016 and 365 of 2016 are liable to be set aside. Consequently I.A.No.364 of 2016 is allowed and I.A.No.365 of 2016 is dismissed. No costs.

Accordingly, both the appeals and C.R.P. are allowed. No costs.

As a sequel to the disposal of this revision and appeals, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI KUMAR

Date: 08.09.2016.

Dvs/Mrb

HONOURABLE SRI JUSTICE S.RAVI KUMAR



C.R.P.No.2319 OF 2016, C.M.A.Nos.407 OF 2016 & 415 OF 2016

Dated 8-9-2016

Dvs