

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

CASE No. CRP.Nos.313 & 363 of 2016

Between:

Mohd.Hussain Khan

... Petitioner

AND

Mohd.Imtiyaz Ahmed

... Respondent

DATE OF JUDGMENT PRONOUNCED: 18th July, 2016

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THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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| 1. | Whether reporters of local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Your Lordships wish to see the fair copy of the judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

*** THE HON'BLE MR JUSTICE C.V.NAGARJUNA REDDY**
AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD
+ CRP Nos.313 & 363 of 2016

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+ DT.18.07.2016

Mohd.Hussain Khan

...Petitioner

Vs.

\$ Mohd.Imtiyaz Ahmed

... Respondent

^ Counsel for the Petitioner: Sri R.Sameer Ahmed
for Sri C.Nageswara Rao

! Counsel for the respondent: Smt.Manjari S.Ganu

< Gist:

> Head note:

? Cases referred:

1. AIR 2006 Supreme Court 450

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD
Civil Revision Petition Nos.313 & 363 of 2016

-
Dated 18th July, 2016

Between:

Mohd.Hussain Khan

.....Petitioner

And

Mohd.Imtiyaz Ahmed

.....Respondent

Counsel for the petitioner: Sri R.Sameer Ahmed
for Sri C.Nageswara Rao

Counsel for the Respondent: Smt.Manjari S.Ganu

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

Civil Revision Petition Nos.313 & 363 of 2016

COMMON ORDER: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These civil revision petitions arise out of common order, dated 18.11.2015, passed by the sole Arbitrator in Arbitration Application No.83 of 2009.

I have heard Sri R.Sameer Ahmed, learned counsel for the petitioner, and Smt.Manjari S.Ganu, learned counsel for the respondent.

An arbitration dispute was pending before an Honourable retired Judge of this Court, wherein the petitioner is respondent No.1. After the evidence of PW.1 was closed, the petitioner has filed two interlocutory applications, one for re-calling PW.1 and another for receiving additional documents. By a common order, dated 18.11.2015, the Arbitrator has rejected the said applications. Questioning the said common order, the petitioner has filed these civil revision petitions.

When these civil revision petitions were taken up for admission and hearing, an earlier Division Bench has felt that the revision petitions may not be maintainable under Article 227 of the Constitution of India. Therefore, the case was being adjourned from time to time to enable the learned counsel to argue on this aspect. Today, we have

heard the learned counsel who argued that the bar under Section 5 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'), to question the orders passed in the IAs which fall under Part-I of the 1996 Act may not apply to the proceedings under Article 227 of the Constitution in view of the *non obstante* clause contained in Section 5 of the 1996 Act. According to him, the *non obstante* clause in Section 5 of the 1996 Act cannot override Article 227 of the Constitution and therefore this Court has every jurisdiction to interfere with the order passed by the Arbitrator.

Though this argument looks somewhat attractive examined superficially, on a deeper consideration, we find no merit therein. Indeed, this aspect is no longer *res integra* in view of the judgment of the Supreme Court in **M/s.S.B.P. & Co., v. M/s.Patel Engineering Ltd., and another**^[1] which is placed before us by Smt.Manjari S.Ganu, learned counsel for the respondent. Paragraphs-44 and 45 of the judgment are apt to be re-produced hereunder:

“It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution of India. We see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 of the Constitution of India or under Article 226 of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage." (emphasis added)

From the above re-produced judgment, it is very clear that the Supreme Court has disapproved the practice of some of the High Courts entertaining writ petitions or revision petitions under Article 226 or Article 227 of the Constitution of India during the pendency of the arbitration proceedings and termed such interference as contrary to the scheme underlying the 1996 Act. The Supreme Court dealt with the object of minimizing judicial intervention and held that pending arbitral proceedings, such intervention under Article 226 or Article 227 of the Constitution of India would frustrate the very object of the 1996 Act.

In the light of the authoritative pronouncement, as discussed above we have no hesitation to hold that the petitioner is not entitled to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India against any order passed by the Arbitrator pending arbitration proceedings. In this view of the matter, these civil revision petitions are dismissed.

As a sequel to dismissal of the civil revision petitions, pending interlocutory applications shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

18th July, 2016
VGB

^[1] AIR 2006 Supreme Court 450