

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

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

AND

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL Nos.322, 324 AND 325 OF 2016

DATED: 27-09-2016

CIVIL MISCELLANEOUS APPEAL No.322 OF 2016

M/s. Felguera Gruas India Private Limited,
Rep. by Mr. Nandan Kumar,
Senior Manager – Legal and
Company Secretary, 10-50-24/3, III Floor,
Sravya Manor, Visakhapatnam, A.P. --- Appellant.

And

M/s. R.V.R. Projects Private Limited,
8-3-293/82/A/70, III Floor, Plot No.70,
Anshu Colour Building, Opposite to Chiranjivi Blood Bank,
Road No.1, Jubilee Hills, Hyderabad. --- Respondent.

CIVIL MISCELLANEOUS APPEAL No.324 OF 2016

M/s. Felguera Gruas India Private Limited,
Rep. by Mr. Nandan Kumar,
Senior Manager – Legal and
Company Secretary, 10-50-24/3, III Floor,
Sravya Manor, Visakhapatnam, A.P. --- Appellant.

And

M/s. R.V.R. Projects Private Limited,
8-3-293/82/A/70, III Floor, Plot No.70,
Anshu Colour Building, Opposite to Chiranjivi Blood Bank,
Road No.1, Jubilee Hills, Hyderabad. --- Respondent.

CIVIL MISCELLANEOUS APPEAL No.325 OF 2016

M/s. Felguera Gruas India Private Limited,
Rep. by Mr. Nandan Kumar,
Senior Manager – Legal and
Company Secretary, 10-50-24/3, III Floor,
Sravya Manor, Visakhapatnam, A.P. --- Appellant.

And

M/s. R.V.R. Projects Private Limited,
8-3-293/82/A/70, III Floor, Plot No.70,
Anshu Colour Building, Opposite to Chiranjivi Blood Bank,
Road No.1, Jubilee Hills, Hyderabad. --- Respondent.

Counsel for the appellants : Mr. S. Niranjana Reddy.

Counsel for the respondents : Mr. V. Ravinder Rao.

This Court made the following:

COMMON JUDGMENT: (Per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

These three Civil Miscellaneous Appeals arose out of separate, but identical orders passed in Arbitration Original Petition Nos.2124, 2125 and 2123 of 2015 respectively, on the file of the Court of XXIV Additional Chief Judge, City Civil Court, Hyderabad (For short, 'the lower Court').

We have heard Mr. S. Niranjan Reddy, learned senior counsel appearing for the appellant, and Mr. V. Ravinder Rao, learned senior counsel appearing for the respondent.

The appellant filed the above mentioned O.Ps., under Section 9 of the Arbitration and Conciliation Act, 1996 (For short, 'the Act'), for various reliefs including the one for an *ex parte ad-interim* direction to the respondent to deposit with the Registry of the Court the amount of Rs.11,31,00,000/-, being the principal amount of bank guarantees encashed along with interest at the rate of 18% *p.a.* from the date of encashment up to the date of such retention by it, and to grant a further direction to keep such amount, after deposit, in interest bearing security with a nationalized bank, pending final adjudication of the disputes/claims between the parties, by the Arbitral Tribunal. The respondent has contested the said O.Ps. By separate orders, dated 25.01.2016, the lower Court has dismissed the said Petitions.

Mr. S. Niranjan Reddy, learned senior counsel for the appellants, mounted a serious attack on the orders under appeal mainly on the ground that the same are bereft of reasons. He has further submitted that the main ground, on which the lower Court has dismissed the Petitions, was that the appellant has not approached the Court by making applications under Section 11(5) and (6) of the Act for appointment of an

Arbitrator and that such a ground is wholly unsustainable as the law is well settled that a party can invoke the jurisdiction of the civil Court under Section 9 of the Act even before initiating the proceedings for arbitration.

As regards the appreciation of the elements of *prima-facie* case, balance of convenience and irreparable injury, the learned senior counsel pointed out that except reproducing the rival pleadings of the parties, the lower Court has failed to consider the said aspects, independently, and that the manner in which it has passed the orders shows a complete non-application of mind. Learned counsel has brought to our notice Section 17 of the Act, as amended by Act 3 of 2016 with effect from 23.10.2015, under which the appellant is entitled to approach the Arbitral Tribunal for various *interim* measures of protection including the one for detention, preservation or inspection of any property and also *interim* injunction *etc.*, and that in view of the aforementioned amendment, which came into force after the institution of the O.Ps. and also constitution of Arbitral Tribunal, the orders under Appeal may be set-aside with liberty to his client to approach the Arbitral Tribunal under Section 17 of the Act for appropriate *interim* reliefs.

Mr. V. Ravinder Rao, learned senior counsel, who initially sought to support the orders of the lower Court, however, at the end, fairly conceded that the conclusions drawn by the lower Court are not supported by proper reasons and that, in the event, this Court intends to set-aside the orders under Appeal, it may remand the cases to the lower Court, for fresh disposal.

Inasmuch as there is no serious dispute on the fact that the lower Court has failed to assign convincing reasons for dismissing the O.Ps. filed by the appellant, they are liable to be set-aside. However, as regards

the submission of learned senior counsel appearing for the respondent, that the matters may be remanded back to the lower Court, we are not inclined to accept the same for the reason that two significant changes have occurred after the appellant has filed the O.Ps. before the lower Court viz; 1) coming into force of the amendment to Section 17, as per which the Arbitral Tribunal is vested with the same power as a civil Court is vested under Section 9 of the Act for granting orders for various *interim* measures of protection, as enumerated therein (Under sub-section 3 of Section 9, there is a bar on the Court entertaining an application under Section 9 of the Act for *interim* measures, once the Arbitral Tribunal is constituted, unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious) and 2) constitution of Arbitral Tribunal.

In the light of these subsequent developments, and considering the fact that the Arbitral Tribunal consists of three former Supreme Court Judges, we are of the opinion that it would be more appropriate to permit the appellant to pursue its applications, for *interim* measures, before the Arbitral Tribunal rather than relegating it to the civil Court under Section 9 of the Act.

In the premise as above, the orders under Appeal are set-aside. All the three Civil Miscellaneous Appeals are allowed to the extent indicated above. The appellant is left with liberty of filing applications under Section 17 of the Act, before the Arbitral Tribunal, for appropriate *interim* measures if it is so advised.

As a sequel to disposal of these Appeals, C.M.A. M.P. Nos.634, 635 and 636 of 2016 in C.M.A. No.322 of 2016, C.M.A. M.P. Nos.641, 642

and 643 of 2016 in C.M.A. No.324 of 2016 and C.M.A. M.P. Nos.644, 645 and 646 of 2016 in C.M.A. No.325 of 2016, shall stand closed as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

Date: 27-09-2016.
Dsh



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

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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

207



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CIVIL MISCELLANEOUS APPEAL Nos.322, 324 & 325 OF 2016

(Common Judgment of the Division Bench delivered by
Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Date. 27-09-2016

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