

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

CIVIL REVISION PETITION No.3601 OF 2016

Between:

Transmission Corporation of Andhra Pradesh Limited.
(A.P.Transco), Vidyut Soudha, Hyderabad.

... Petitioner

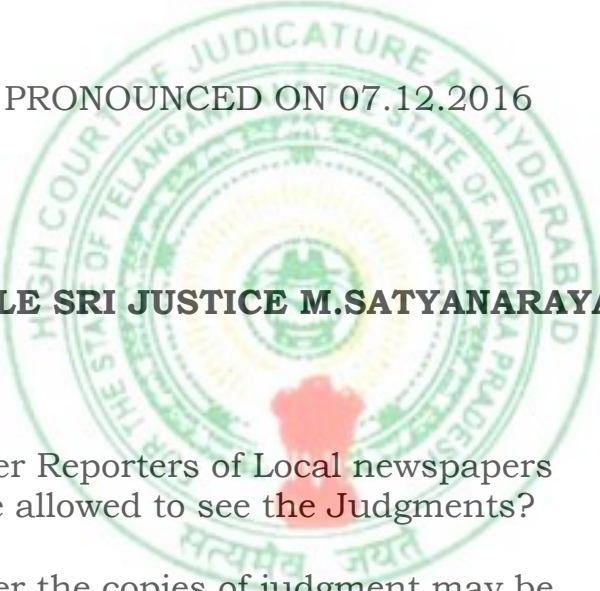
And

M/s. Equipment Conductors and Cables Limited

... Respondent.

JUDGMENT PRONOUNCED ON 07.12.2016

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- 
1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? - No -
 2. Whether the copies of judgment may be
marked to Law Reporters/Journals - Yes -
 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? - Yes -

*** THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION No.3601 of 2016

% 07.12.2016

Transmission Corporation of Andhra Pradesh Limited.
(A.P.Transco), Vidyut Soudha, Hyderabad.

....Petitioner

v.

\$ M/s. Equipment Conductors and Cables Limited
.... Respondent

! Counsel for the Petitioner : Advocate General (Andhra Pradesh) for
Sri N.Siva Reddy.

Counsel for Respondent: Sri M.V.Pratap Kumar.

<Gist :

>Head Note:

? Cases referred:

1. (1999) 9 SCC 334
2. (2011) 6 SCC 739
3. (2015) 4 SCC 33
4. AIR 2016 Cal 213
5. 2012 SCC OnLine Del 1224
6. (2011) 7 Mad L J 1267
7. AIR 2001 SC 2472
8. (1996) 1 SCR 924
9. AIR 1996 SC 3338
- 10.(2010) 3 SCC 34
- 11.(2011) 5 SCC 758.
- 12.(1979) 2 SCC 616
- 13.AIR 1963 SC 1685
- 14.(2002) 3 SCC 722
- 15.6 H.L.Ca' 61
- 16.(1988) 3 SCC 609
- 17.(2004) 6 SCC 672
- 18.(1990) 2 SCC 231

- 19.AIR 1987 SC 2310
- 20.(1975) 1 ALL ER 16
- 21.1987 (1) SCC 606
- 22.2007 (7) SCC 636
- 23.(2009) 3 SCC 553
- 24.1995 Supp (1) SCC 192
- 25.AIR 1987 SC 1023
- 26.AIR 1973 SC 2609
- 27.[1968]3SCR623
- 28.[1995]213 ITR 340(SC)
- 29.(1956) 2 Q.B. 429
- 30.[1957]1SCR488
- 31.[1966]3SCR275
- 32.1995CriLJ517
- 33.AIR1995SC1012



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
CIVIL REVISION PETITION NO.3601 OF 2016

ORDER:

This revision under Article 227 of Constitution of India is filed challenging the order dated 30.06.2016 passed in E.P.No.33 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad in F.A.O.No.34 of 2015 on the file of the High Court for the States of Punjab and Haryana at Chandigarh dated 29.01.2016 preferred against the order in A.A.No.399 of 2010 on the file of the Additional District Judge, Chandigarh dated 28.08.2014 preferred against the Award No.HMSEFC/2010/08 (case No.7) on the file of Haryana Micro and Small Enterprises Facilitation Council, Chandigarh dated 21.06.2010 and to set aside the same.

During the year 1998, the respondent herein has supplied electric conductors to the predecessor (combined state) of the petitioner herein and though the amount was paid as per invoices with some delay, the respondent without any protest has received entire amount. Later, the respondent initiated the arbitration proceedings by filing claim petition before the Haryana Micro and Small Enterprises Facilitation Council (hereinafter, for short, referred to as "Council") at Chandigarh in Case No.7 Award No.HMSEFC/2010/08, against the petitioner herein under the provisions of "***Interest on Delayed Payments Act, 1993***". The petitioner herein having received the notices in the said case filed its counter and contested the matter. After hearing both the parties the Council partly allowed the claim petition, passed Award dated 21.06.2010 for an amount of Rs.22,42,619/- in respect of invoice

Nos.26 to 45 appended as annexure A.W.1 to the said order and rejected rest of the claim made by the respondent herein.

Being aggrieved by the said Award dated 21.06.2010 passed by the Council, the petitioner filed Arbitration O.P.No.523 of 2010 before the Chief Judge, City Civil Court at Hyderabad under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter, for short, referred to as "the Act") and deposited an amount of Rs.16,81,964/- by way of Bankers Cheque No.904081 dated 11.11.2010 drawn on the State Bank of Hyderabad, Vidyut Soudha Branch, Khairatabad, Hyderabad, obtained in the name of Chief Judge, City Civil Court, Hyderabad, towards 75% of the award amount, in view of statutory requirement under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short "MSMED Act 2006") and the same was credited to the said O.P.

On receipt of the notices in the arbitration case No.399 of 2010 filed by the respondent herein at District Court, Chandigarh, the petitioner herein filed Transfer Petition before the Supreme Court to get the arbitration case filed by the respondent herein before the learned District Judge, Chandigarh, transferred to the file of the learned Chief Judge, City Civil Court at Hyderabad on the ground of jurisdiction, but the same was dismissed and the O.P. filed by the petitioner was transferred to the file of learned District Judge, Chandigarh, which was re-numbered as Arbitration Case No.580 of 2010 before Chandigarh Court and during the pendency of the said Arbitration Case, the petitioner has also deposited an amount of Rs.1,35,203/- towards difference of the amount before the Chandigarh Court to the credit of Arbitration

Case No.580 of 2010. Thus, in all, the petitioner has deposited an amount of Rs.18,17,167/- and the respondent herein has encashed the said amount together with interest accrued thereon.

Upon hearing, the District Court at Chandigarh passed an order without considering the grounds urged, dismissed the arbitration Case No.580 of 2010 by order dated 27.08.2014 on the ground that the petitioner has not deposited 75% of the awarded amount with interest.

The respondent filed Arbitration Case No.399 of 2010 challenging the order of the Council dated 21.06.2010 dismissing the claim covered by Sl.Nos.1 to 25 of the Annexure A.W.1. The District Judge, Chandigarh passed order dated 28.08.2014 holding that the claim covered by Sl.Nos.1 to 25 are within limitation and remanded the matter to the Council for fresh decision.

Aggrieved by the orders in Arbitration Case No.580 of 2010 and Arbitration Case No.399 of 2010, the petitioner filed appeals before the High Court for the States of Punjab and Haryana at Chandigarh in F.A.O.No.68 of 2015 and F.A.O.No.34 of 2015. Against the Arbitration Case No.3 of the Council two more appeals vide F.A.O.No.10525 of 2014 and F.A.O.No.10507 of 2014 are also filed. The High Court for the States of Punjab and Haryana at Chandigarh passed common order dated 29.01.2016 holding that the order dated 28.08.2014 passed by the District Court, Chandigarh remanding the matter to the Council for fresh decision is bad and set aside the same and also set aside the order passed by the District Court, Chandigarh in Arbitration Case No.580 of 2010 and remanded the matter to the District Court, Chandigarh with a direction to give opportunity to the petitioner to pay any

deficit amount towards 75% of the Award amount and to decide the matter on merits.

Thus, District Court at Chandigarh again posted the matter to 15.02.2016 and the petitioner filed calculation memo in respect of 75% of the award amount and the respondent also filed its calculation memo. Subsequently, the respondent filed E.P.No.295 of 2016 against the petitioner before Additional District Court, Chandigarh. The petitioner also filed objections, more particularly about its maintainability on the ground that there is no enforceable award/executable decree. However, the respondent withdrawn the said E.P.No.295 of 2016 by filing a memo dated 30.05.2016, consequently the said E.P. was dismissed as withdrawn.

While the matter stood thus, the respondent suppressing several facts filed E.P.No.33 of 2016 for execution of decree/award dated 29.01.2016 passed by the High Court for the States of Punjab and Haryana at Chandigarh and decree dated 28.08.2014 passed by the Additional District Judge, Chandigarh in Arbitration Case No.399 of 2010 and Award No.HMSEFC/2010/08 dated 21.06.2010 passed in Case No.7 and obtained exparte garnishee order dated 30.06.2016 directing State Bank of Hyderabad, Vidyut Soudha Branch and ICICI Bank, Khairtabad Branch, to deposit Rs.8,22,52,239/- on or before 29.07.2016 to the credit of the above E.P. by exercising power under Order XXI Rule 46 and 46-A of C.P.C. On coming to know about the said order through bankers, the petitioner filed objections before the II Additional Chief Judge, City Civil Court, Hyderabad on 20.07.2016 stating that there is no enforceable award/executable decree in view of the pendency of the

matter in Arbitration Case No.580 of 2010 before the Additional District Court, Chandigarh due to remand by the High Court for the States of Punjab and Haryana at Chandigarh and sought for suspension of the garnishee order dated 30.06.2016, but the II Additional Chief Judge, City Civil Court, Hyderabad did not pass any order till today.

The main challenge to the proceedings is that the award passed by the Council is only for the amount covered by invoices Sl.No.26 to 45 of annexure A.W.1 attached to the award while rejecting the claim in respect of invoices Sl.No.1 to 25 of annexure A.W.1 and when the matter was remanded to the District Court by the High Court for the States of Punjab and Haryana at Chandigarh setting aside the award in respect of Sl.Nos.1 to 25, the respondent is not entitled to execute the award/decreed for Sl.Nos.1 to 25 of annexure A.W.1 of award.

The respondent is estopped from filing the present Execution Petition in respect of claims mentioned at Sl.Nos.1 to 25 of annexure A.W.1 attached to the award, and the order dated 28.08.2014 passed by the District Judge, Chandigarh in Arbitration Case No.399 of 2010 was set aside by the High Court for the States of Punjab and Haryana at Chandigarh in F.A.O.No.34 of 2015, thereby there is no decree or award for recovery of amount covered by Sl.Nos.1 to 25 of annexure A.W.1 attached to the award as the claim is pending for adjudication before the District Judge, Chandigarh in pursuance of the order dated 29.01.2016 passed by the High Court for the States of Punjab and Haryana at Chandigarh with a specific direction referred above.

It is further contended that the present execution petition is filed for wrongful gain and that the same is not maintainable at this stage and finally prayed to set aside the impugned order dated 30.06.2016 passed in E.P.No.33 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad in F.A.O.No.34 of 2015 on the file of the High Court for the States of Punjab and Haryana at Chandigarh dated 29.01.2016 preferred against the order in A.A.No.399 of 2010 on the file of the Additional District Judge, Chandigarh dated 28.08.2014 preferred against the Award No.HMSEFC/2010/08 (case No.7) on the file of Haryana Micro and Small Enterprises Facilitation Council, Chandigarh dated 21.06.2010 and to set aside the same.

During hearing learned Advocate General for the State of Andhra Pradesh mainly contended that the amended provisions of Act 3 of 2016 of Arbitration and Conciliation Act has no retrospective effect and it applies only to the Arbitration proceedings initiated after the commencement of the amended provisions of Arbitration Act i.e. on or after 23.10.2015. As the amended provisions of Arbitration and Conciliation Act came into force from 23.10.2015, there is deemed stay of operation of award during pendency of the appeal in view of Section 36 of Arbitration and Conciliation Act, but the II Additional Chief Judge, City Civil Court, Hyderabad without considering the effect of amended provisions, entertained the E.P.No.33 of 2016 and issued garnishee order for Rs.8,22,52,239/- by directing the Branch Manager, State Bank of Hyderabad, Khairatabad, Hyderabad (in respect of account No.52077965102 and 52077969912) and Branch Manager, ICICI Bank, Khairatabad (in respect of account No.000805008881) to

pay the attached amount from the said accounts to the credit of E.P. He also drawn the attention of this Court to several judgments in support of his contentions, more particularly the judgment of the Apex Court rendered in “**Thyssen Stahlunion GMBH v. Steel Authority of India Ltd**”¹, “**Thirumalai Chemicals Limited v. Union of India**”², unreported judgments of High Court of Calcutta in “**Electrosteel Castings Limited v. Reacon Engineers (India) Private Limited (AP No.1710 of 2015)**”, “**Sri Nitya Ranjan Jena v. Tata Capital Financial Services Ltd. (G.A.No.145 of 2016 with A.P.No.15 of 2016)**” and unreported judgment of High Court of Delhi in “**Ministry of Defence, Government of India v. CENREX SP. Z.O.O. and Ors (O.M.P.No.408 of 2007)**” to contend that the amended provisions would not take away the substantial right that accrued to the petitioner by the amendment to Section 36 of Arbitration and Conciliation Act with effect from 23.10.2015 and such interpretation would render the pre-amended provisions redundant and thereby there is deemed stay of execution of award, if any, passed by the Council in view of the pendency of application filed under Section 34 of the Arbitration and Conciliation Act before the District Judge, Chandigarh and such substantive right that accrued to the petitioner would not be taken away by amended Act 3 of 2016 since the proceedings were initiated much prior to the commencement of amendment and the application filed under Section 34 is continuation of earlier proceedings, thereby as on today there is, absolutely, no executable award, consequently, the impugned garnishee order passed by the II

¹ (1999) 9 SCC 334

² (2011) 6 SCC 739

Additional Chief Judge, City Civil Court, Hyderabad is liable to be set aside.

Learned Advocate General also contended that when the Act is amended, the right accrued to the parties under a specific enactment cannot be taken away and such amendment will have prospective effect only and such amendments, which are procedural in nature cannot be given effect to the proceedings pending already before the Courts so as to render the pending matters useless and in support of his contention, he relied on a judgment of the Supreme Court rendered in “***Videocon International Limited v. Securities and Exchange Board of India***³”

Per contra Sri M.V.Pratap Kumar, learned counsel for the respondent, would contend that when Section 36 of the Arbitration Act is amended, earlier right that accrued to the petitioner to claim deemed stay under Section 36 of the Act is no more available in view of setting aside the order passed by the High Court for the States of Punjab and Haryana at Chandigarh while remanding the matter to the District Judge and the amended provision has retrospective effect in view of the language used in Section 26 of the Act and apart from that “***Thyssen Stahlunion GMBH v. Steel Authority of India Ltd***” (referred supra) is distinguishable in view of the language used in Section 26 of the Act 3 of 2016. The language used in Section 26 of the Act 3 of 2016 is “***nothing contained in this Act shall apply to the arbitral proceedings commenced***”, whereas in Section 85 (2) (a) of 1996 Act stated that “***the provisions of the said enactments shall apply in relation***

³ (2015) 4 SCC 33

to arbitral proceedings which commenced". Thus, there is lot of distinction between the language used in Section 85 (2) (a) of 1996 Act and Section 26 of Act 3 of 2016. Moreover, the words used '**in relation to**' applies to all the matters where arbitration proceedings are commenced and at different stages, but the language used in Section 26 of Act 3 of 2016 applies to the arbitral proceedings commenced prior to amendment of the Act and drawn the attention of this Court to Section 26 of Act 3 of 2016. In view of amendment to Section 25 by Act 3 of 2016 with effect from 23.10.2015 there is no deemed stay and the petitioner is required to file an application before the District Judge and unless the District Judge grant stay of all further proceedings by exercising power under Section 36, the Award passed by the Arbitrator is executable and drawn the attention of this Court to a judgment of Division Bench of High Court of Calcutta rendered in "**Sri Tufan Chatterjee v. Sri Rangan Dhar**"⁴, "**M/s Religare Finvest Limited v. Ranjit Singh Chouhan**"⁵ and unreported judgment of Madras High Court in "**New Tirupur Area Development Corporation Ltd. v. M/s Hindustan Construction Co. Ltd and 2 others**" (A.No.7674 of 2015) and unreported judgment of Bombay High Court in "**The Board of Control for Cricket in India v. M/s Rendezvous Sports World**". (Chamber Summons No.1530 of 2015)

On the strength of these judgments, it is contended that the amended provisions have retrospective effect and in view of the law declared by those Courts, absolutely, there is no deemed stay, thereby the decree is executable.

⁴ AIR 2016 Cal 213

⁵ 2012 SCC OnLine Del 1224

One of the contentions raised by the Advocate General for the State of Andhra Pradesh unless the award is passed by the Council at Chandigarh is transferred like decree under the provisions of C.P.C. the award is not executable in the State of Andhra Pradesh by filing Execution Petition before City Civil Court, Hyderabad, but the learned counsel for the respondent refuting such contention drawn the attention of this Court to a judgment of the High Court of Madras rendered in “**Kotak Mahindra Bank Ltd. v. Sivakama Sundari and others**”⁶ wherein it is held that there is no need to transfer the award like a civil court decree.

Considering the rival contentions, perusing the material available on record, the points that arise for consideration are:

- (1) ***Whether the amended provisions of Arbitration and Conciliation Act by Act 3 of 2016, which came into effect from 23.10.2015 are applicable to the proceedings under Section 34 of Arbitration and Conciliation Act 1996 before the District Judge, Chandigarh if so, whether the right to claim deemed stay under Section 36, which is accrued to the petitioner be taken away by such amendment?***
- (2) ***Whether this Court is competent to set aside the order dated 30.06.2016 passed in E.P.No.33 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad?***

⁶ (2011) 7 Mad L J 1267

P O I N T Nos.1 and 2:

The facts in the case are not disputed. The only question remains is interpretation of amendment to Section 36 by virtue of Section 26 of Act 3 of 2016 and applicability of Section 36 of Act, 1996 (pre-amended Act).

In the present case, the respondent initiated arbitration proceedings before the Council and Council passed award for item Nos. 26 to 45 while rejecting the claim for item Nos.1 to 25. On application, the District Judge at Chandigarh passed an order allowing the claim of the respondent while dismissing the application of the petitioner on the ground of non-compliance of provisions of MSMED Act, 2006, but remanded the matter to the Council for fresh decision with regard to item Nos.1 to 25. Aggrieved by the order passed by the District Judge, Chandigarh in both the applications filed by the petitioner and respondent herein, preferred appeals FAO Nos.10525 of 2014, 10507 of 2014, 34 of 2015 and 68 of 2015. While deciding the said application the High Court of Punjab and Haryana, Chandigarh set aside the order passed by the District Judge and the operative portion of the order is as follows:

***“Instead of pondering upon the calculations referred to during the course of arguments, I am of the view that the same shall be subject matter of the objecting court. In essence, both the parties shall be given one-one effective opportunity to submit their calculations viz-a-viz amount constituting 75% of the awarded amount as per award dated 21.6.2010 and thereafter the objecting court shall determine 75% of the awarded amount and give another fifteen days’ time to the appellant to deposit 75% of the amount. In case of non-deposit of the same, objections shall be deemed to have been dismissed. If otherwise, the objecting court shall decide the matter pragmatically, much less in accordance with law.*”**

With the aforementioned observations, the orders passed by the objecting Court are hereby set aside. The matter is remanded back to it.”

The above said FAOs are against both the orders including the order passed by the District Court allowing the claim in respect of item Nos.26 to 45 and rejection of claim Nos.1 to 25.

Curiously at the end of page No.5 the High Court of Punjab and Haryana specifically held as follows:

“Accordingly the order passed by the objecting Court remanding the matter back is hereby set aside. As regards the objections filed by the appellant against the award aforementioned, it would be apt to refer Section 19 of the Act statutorily provides deposit of 75% of the amount.....”

Thus, the order of the High Court of Punjab and Haryana is clear that so far as part of the order passed by the objecting Court in respect of item Nos.1 to 25 was totally set aside and remanded the matter to the objecting Court and also set aside the order of the objecting Court in respect of item Nos.26 to 45. Thus, as on today the order, at best, executable is only in respect of item Nos.26 to 45 but not the order passed by the objecting Court in respect of item Nos.1 to 25 since it was set aside by the High Court of Punjab and Haryana.

Strangely, the respondent filed E.P. before the City Civil Court, Hyderabad for recovery of amount covered by items including Sl.Nos.1 to 25 though the order passed by the objecting Court was clearly set aside by the High Court of Punjab and Haryana, remanded the matter to the objecting Court to decide the matter afresh with regard to item Sl.Nos.1 to 25. When the order of the objecting Court with regard to item Sl.Nos.1 to 25 was set aside

by the High Court of Punjab and Haryana, absolutely there is no executable order in favour of respondent for item Nos.1 to 25 as on today. Therefore, filing of Execution Petition claiming amount covered by item Sl.Nos.1 to 25 in pursuance of the order of the objecting Court, which is set aside by the High Court of Punjab and Haryana, is illegal and therefore, the order in respect of item Nos.1 to 25 shall not be executed and no order be passed for recovery of amount covered by item Sl.Nos.1 to 25, but the II Additional Chief Judge, City Civil Court, Hyderabad passed garnishee order directing the Branch Manager, State Bank of Hyderabad, Khairatabad and Branch Manager, ICICI Bank, Khairatabad, Hyderabad to send an amount of Rs.8,22,52,239/- to the credit of Execution Petition, such order is unsustainable under law in view of specific order passed by the High Court of Punjab and Haryana setting aside the order passed by the objecting Court in respect of item Nos.1 to 25, thereby there was no executable order for the item Nos.1 to 25 as on the date of filing of the execution petition. Consequently, garnishee order covering the amount with regard to item Nos.1 to 25 appended as annexure A.W.1 is hereby set aside. However, it is left open to the respondent to file execution petition if the objecting Court passed order, if any, after making necessary enquiry as directed by the High Court of Punjab and Haryana in F.A.O.Nos.10525 of 2014, 10507 of 2014, 34 of 2015 and 68 of 2015.

The main endeavour of the learned Advocate General for the State of Andhra Pradesh is that the award was passed by the Council much prior to commencement of amendment to Arbitration and Conciliation Act, 1996 by Act 3 of 2016 and by the

date of commencement of amendment, the proceedings before the Council and Objecting Court i.e. District Court were over. But after the commencement of the Act, the High Court of Punjab and Haryana passed the order remanding the matter to the objecting Court i.e. District Court. Taking advantage of the order passed by the High Court of Punjab and Haryana, it is contended that a substantial right was accrued to the petitioner by virtue of Section 36 of Pre-amended Arbitration and Conciliation Act i.e. deemed stay on filing of application under Section 34 of the Act, cannot be taken away by the amended Act 3 of 2016, which came into force on 23.10.2015. Therefore, there is a deemed stay in view of pendency of the proceedings before the objecting Court on remand by the High Court of Punjab and Haryana.

No doubt, the matter is remanded by the High Court of Punjab and Haryana to the objecting Court i.e. District Court, it is deemed that the petition filed under Section 34 of the Act is pending. Amended Section 26 of Act 3 of 2016 made it clear regarding applicability of pre-amended provisions of Arbitration and Conciliation Act. The difference between pre-amended and after amendment to Section 36 is as follows:

Pre-amended Section 36	Amended Section 36 (Act 3 of 2016)
Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.	“36. (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court. (2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the

	filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose. (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing: Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”.
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In view of substitution of certain clauses in Section 36, the petitioner has to file an application for grant of stay of operation of the said award. It is clarified in the sub-section (2) that filing of application under Section 34 shall not by itself render that award unenforceable, unless it is stayed on an application filed under sub-section (2) of Section 36. Sub-section (3) further says that upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing and proviso annexed to Section 36 of amended Act says that the Court shall, while considering the application for grant of say in the case of an arbitral award for payment of money, have due regard to the

provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

Thus, after amendment to Arbitration and Conciliation Act 1996 by Act 3 of 2016, there is absolutely no deemed or automatic stay since section 36 was totally changed and amended provision is almost identical to Order XLI Rule 5 of C.P.C. Therefore, unless an application is filed for grant of stay and obtained stay from the objecting Court i.e. District Court or any other Court, the person who obtained award can execute the decree.

The main contention of the learned Advocate-General for the State of Andhra Pradesh is that when the petitions were filed before objecting Court i.e. District Court prior to commencement of amended Act on its remand by the High Court of Punjab and Haryana to the objecting Court i.e. District Court, there is automatic stay of enforcement of the award, placed reliance on judgment of Apex Court in “**Thyssen Stahlunion GMBH v. Steel Authority of India Ltd**” and “**Videocon International Limited v. Securities and Exchange Board of India**”, (referred supra) besides judgments of other High Courts, which will be referred at appropriate stage.

Learned counsel for the respondent Sri M.V.Pratap Kumar while refuting the contentions of the learned Advocate General, drawn the attention of this Court to various provisions of amended Act, placing reliance on judgments of Bombay, Madras and Calcutta High Courts in support of his contentions, which will be discussed at appropriate stage.

In view of rival contentions, it is necessary to interpret Section 26 of Act 3 of 2016 to decide application of amended provisions.

As a general rule statute must be read as a whole. The meaning of the statute and the intention of the legislature in enacting it can only be properly derived from the consideration of whole enactment and every part of it in order to arrive at possible idea. While interpreting such statutes the intention of the legislature is predominant. If the statute is clear, it must be enforced.

The Apex Court in “**Shyam Sunder and Anr. v. Ram Kumar**”⁷ had an occasion to decide whether substituted Section 15 introduced by amendment Act of 1995 had retrospective effect or prospective effect on Punjab Pre-emption Act, wherein it was held that function of declaratory Act or explanatory Act is to supply an obvious omission or to clear up of doubts as to meaning of previous Act and such Act comes into effect from date of passing of previous Act and Section 15 of amending Act neither expressly nor by necessary implication intended to supply an omission or clear up doubts as to meaning of Section 15 of Punjab Pre-emption Act and meaning of words used in Section 15 was Punjab pre-emption Act was never in doubt and there was no omission in its phraseology and finally concluded that amending Act was prospective in nature and does not affect rights of the parties to litigation on date of adjudication.

In “**Karan Singh v. Bhagwan Singh (dead) by L.Rs.**”⁸ the Apex Court held that an appeal being continuation of the suit, the

⁷ AIR 2001 SC 2472

⁸ (1996) 1 SCR 924

right to claim pre-emption must be available on the date when the decree is finally to be affirmed and needs to be modified at the time of disposal of the appeal and since substituted Section 15 of the Act came into force during pendency of the appeal, the right and remedy of the preemptor stood extinguished. The decision is also followed in “**Ramjilal v Ghisa Ram**”⁹ wherein it was held that since substituted section 15 introduced by amending Act of 1995 having come into force during pendency of appeal which is continuation of the suit, the right and remedy of the plaintiff stood extinguished and as a result of which the suit for pre-emption was not maintainable.

In the facts of the above judgment, an identical situation came up for consideration, but there the suit was filed and thereafter an appeal was pending against such decree passed by the trial Court and since the appeal is a continuation of suit, the pre-amended provisions were applied to those proceedings and set aside the decree passed by the Court.

Here, no appeal is provided under the Act, only application is provided under Section 34 of the Act against the order passed by the Council under Arbitration and Conciliation Act, it is not continuation of arbitral proceedings of the Council and the analogy applicable to the suits and appeals cannot be applied to the proceedings under Arbitration and Conciliation Act. Under Code of Civil Procedure, first appeal is a substantive right to litigant but obtaining stay is not a substantive right under Order XLI Rule 5 of C.P.C. Whereas under Arbitration and Conciliation Act filing of application under Section 34 though deemed to be a substantive

⁹ AIR 1996 SC 3338

right, as per pre-amended provision filing of an application would operate as stay automatically, but after the amendment by Act 3 of 2016, no such deemed stay is available.

A similar question came up for consideration before Bombay High Court i.e. to decide whether the application filed under Section 34 of Arbitration and Conciliation Act can partakes the character of appeal; Single Judge of Bombay High Court in its unreported judgment rendered in “***The Board of Control for Cricket in India v. M/s Rendezvous Sports World***”, held that the proceedings under Section 34 of Arbitration and Conciliation Act cannot be equated with the appeal.

In “***Snehadeep Structures Private Limited V. Maharashtra Small-Scale Industries Development Corporation Ltd***”¹⁰., when the issue came up for consideration with respect to the interpretation of the term “appeal” in Section 7 of the Interest on Delayed Payments to Small- Scale and Ancillary Industrial Undertakings Act (“The Interest Act” for short), it is held that said Section provided that while preferring an appeal against a decree, award or other order in favour of a small scale or ancillary industrial undertaking, the appellant was required to deposit 75% of the amount payable in terms of such decree, award or other order. An award-debtor (the award-holder being a small scale or ancillary industrial undertaking) filed an application under Section 34 of the 1996 Act, which application was dismissed by the Single Judge on account of non-compliance with requirement of deposit of 75% on the basis that the term 'appeal' in the said Section was wide enough to include an application

¹⁰ (2010) 3 SCC 34

under Section 34 of the 1996 Act. The Division Bench held to the contrary and reversed the order passed by the Single Judge. After exhaustively examining a number of precedents, the Hon'ble Supreme Court observed at para 36 as follows:

“On a perusal of the plethora of decisions aforementioned, we are of the view that “appeal” is a term that carries a wide range of connotations with it and that appellate jurisdiction can be exercised in a variety of forms. It is not necessary that the exercise of appellate jurisdiction will always involve reagitation of entire matrix of facts and law. We have already seen in *Abhyankar* that even an order passed by virtue of limited power of revision under Section 115 of the Code is treated as an exercise of appellate jurisdiction, though under that provision, the Court cannot go into the questions of facts. Given the weight of authorities in favour of giving such a wide meaning to the term “appeal”, we are constrained to disagree with the contention of the learned counsel for the respondent Corporation that appeal shall mean only a challenge to a decree or order where the entire matrix of law and fact can be re-agitated with respect to the impugned order/ decree. There is no quarrel that Section 34 envisages only limited grounds of challenge to an award; however, we see no reason why that alone should take out an application under Section 34 outside the ambit of an appeal especially when even a power of revision is treated as an exercise of appellate jurisdiction by this Court and the Privy Council.”

In another judgment rendered in “***J.G. Engineers Private Limited v. Union of India***¹¹” the Apex Court considered the scope of Section 34 of Arbitration and Conciliation Act and held that “a civil court examining the validity of an arbitral award under Section 34 of the Act exercises supervisory and not appellate jurisdiction over the awards of an Arbitral Tribunal. A court can set aside an arbitral award, only if any of the grounds mentioned

¹¹ (2011) 5 SCC 758.

in Sections 34(2)(a)(i) to (v) or Sections 34(2)(b)(i) and (ii), or Section 28(1)(a) or 28(3) read with Section 34(2)(b)(ii) of the Act, are made out. An award adjudicating claims which are “excepted matters” excluded from the scope of arbitration, would violate Sections 34(2)(a)(iv) and 34(2)(b) of the Act. Making an award allowing or granting a claim, contrary to any provision of the contract, would violate Section 34(2)(b)(ii) read with Section 28(3) of the Act.”

But in “**Snehadeep Structures Private Limited V. Maharashtra Small-Scale Industries Development Corporation Ltd**” (referred supra) to include application under Section 34 of the Arbitration Act was clearly a purposive interpretation of the term in the context or the object of that Act. Relying upon the decision of the Apex Court in “**S. Mohan Lal vs. R. Kondiah**”¹² it was argued that reference to the provisions of the statute to interpret the same expression used in another statute is not a sound principle of construction unless the two Acts in which the same word is used are cognate Act. The relevant observations at para 3 of the decision cited read as follows:

“3 It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; more so if the two Acts in which the same word is used are not cognate Acts. Neither the meaning, nor the definition of the term in one statute affords a guide to the construction of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term should be understood generally. On the other hand, it is a sound, and, indeed, a well-known principle of construction that meaning of words and expressions used in an Act must take their colour from the context in which they appear.”

¹² (1979) 2 SCC 616

Thus, in view of the law declared by the Apex Court in “**S. Mohan Lal v. R. Kondiah**” (referred supra) the provisions of cognate Act alone can be taken into consideration while interpreting any provision in the statute. If particular interpretation is given to the language used in Section 26 of Act 3 of 2016, it would frustrate the very object of the legislature in incorporating the said provisions. Therefore, the provisions of Code of Civil Procedure, which provides a remedy for First Appeal, which is a substantive appeal cannot be equated with an application filed under Section 34 of the Arbitration and Conciliation Act in view of the law declared by the Apex Court in “**Snehadeep Structures Private Limited V. Maharashtra Small-Scale Industries Development Corporation Ltd**” for the reason that in an appeal under Section 96 of C.P.C. the parties are entitled to agitate the decree passed by the trial Court on any of the grounds either legal or factual available in the particular matter, but in an application filed under Section 34 of the Arbitration and Conciliation Act the jurisdiction of the Court is limited to Section 34 (2) (a) (i) to (v) of the Act. Thus, the scope of Section 34 is restricted to the grounds mentioned in Section 34 of the act only.

The Bombay High Court by applying the principle laid down in “**J.G. Engineers Private Limited v. Union of India and Another**” concluded that the application under Section 34 of the Act cannot partake the character of appeal since the jurisdiction of objecting Court is supervisory in nature. Same principle was also reiterated in “**Union of India Vs. A.L. Rallia Ram**”¹³, as follows:

“The award is the decision of a domestic tribunal chosen by the parties, and the Civil Courts which are entrusted with the power

¹³ AIR 1963 SC 1685

to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right, the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the arbitration agreement.”

The judgment of Bombay High Court following various judgments of Apex Court is inconsonance with the object of amendment by Act 3 of 2016 and since no appeal is provided against the arbitral award, while providing an application under Section 34 of the Act, it is difficult to accept the contention of the learned Advocate General (Andhra Pradesh) that application under Section 34 of the Act is in the nature of appeal against the award. Therefore, his contention is rejected in view of the law declared by the Apex Court referred supra.

The ordinary principle of interpretation is that the Courts have to interpret the provisions of law based on several principles of statutory interpretation. When the meaning of the amended provision is clear and unambiguous, the Courts shall not make any interpretation to find out whether such amendments will have retrospective effect or prospective effect.

A statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past as per Sedgwick, Statutory and Constitutional Law, page No.160.

But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing or that a prospective benefit is in certain cases to be measured by or depends on antecedent facts. When the

language used in the amended provision of the statute is clear, the Court need not embark upon to interpret the language so as to decide as to whether it has retrospective or prospective effect.

In **Re Athlumney** [(1898) 2 Q.B. 547] Justice Wright held as follows:

“Perhaps no rule of construction is more firmly established than this, that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language that is fairly capable of either interpretation, it ought to be construed as prospective only.”

The interpretation of any provision of amended Act would depend upon the language used therein.

In **Re A Solicitor's Clerk** [(1957) 1 W.L.R. 1219] the disciplinary committee of the Law Society made an order under the Solicitors (Amendment) Act 1956 directing that without the permission of the Law Society no solicitor should thereafter employ the appellant, an unadmitted solicitor's clerk, who had been convicted of larceny in 1953. In reply to the contention that the committee was giving retrospective effect to the 1956 Act, it was held that the order was valid even though the Act was not retrospective. That act “enables an order to be made disqualifying a person from acting as a solicitor's clerk in the future and what happened in the past is the cause or reason for the making of the order, but the order has no retrospective effect. It would be retrospective if the Act provided that anything done before the Act came into force or before the order was made should be void or voidable, or if a penalty were inflicted for having acted in this or

any other capacity before the Act came into force or before the order was made. This Act simply enables a disqualification to be imposed for the future which in no way affects anything done by the appellant in the past.”

Recently, the Division Bench of this Court in W.A.Nos.259 and 260 of 2015 and batch while interpreting Section 24 of Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 after reviewing the entire law on the interpretation of statutes concluded that The language employed in a Statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake and to have intended to say what it has said. Assuming there is a defect in the words used by the legislature, the Court cannot correct or make up the deficiency, especially when a literal reading thereof produces an intelligible result.

A departure from the golden rule is permissible if it can be shown that the legal context in which the words are used, or the object of the statute in which they occur, require a different meaning. (**Justice G.P. Singh — Principles of Statutory Interpretation (8th Edn., 2001); Harbhajan Singh v. Press Council of India¹⁴**). If reading statutory words in its primary and natural sense, would lead to some repugnance or inconsistency with the rest of the instrument, the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency. (**Grey v. Pearson¹⁵; Kehar Singh v. State (Delhi Admn.)¹⁶; Maulavi Hussein Haji Abraham Umarji v. State**

¹⁴ (2002) 3 SCC 722

¹⁵ 6 H.L.Ca' 61

¹⁶ (1988) 3 SCC 609

of Gujarat¹⁷). An 'ordinary meaning', or a 'grammatical meaning', does not imply that the Judge attributes a meaning to the words of a statute independent of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used. By enabling citizens to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens, and to greater transparency in its own decisions, both of which are important values in a democratic society." (**Cross in Statutory Interpretation (3rd Edn., 1995; Harbhajan Singh v. Press Council of India)**). In determining the meaning of any word or phrase in a statute, the following tests can be applied (i) ask for the natural or ordinary meaning of that word or phrase in its context in the statute, and follow the same unless that meaning leads to some result which cannot reasonably be supposed to have been the legislative intent; (ii) rules of construction are our servants and not masters; and (iii) a statutory provision cannot be assigned a meaning which it cannot reasonably bear and, if more than one meanings are capable, you can choose one but beyond that you must not go. (**Cross in Statutory Interpretation (3rd Edn., 1995; Harbhajan Singh v. Press Council of India)**).

The **Heyden's** rule, or the mischief rule, can be applied where a statutory provision suffers from some ambiguity necessitating adoption of a rule other than the literal rule or the plain meaning rule of construction of statutes. Rules of

¹⁷ (2004) 6 SCC 672

interpretation are not rules of law. They are mere aids to construction, and constitute some broad pointers. It is the task of the Court to decide which one, in the light to all relevant circumstances, ought to prevail. (**Keshavji Ravji & Co. v. CIT**¹⁸). In each case Court must look at all relevant circumstances and decide, as a matter of judgment, what weight to attach to any particular 'rule'. (**Utkal Contractors and Joinery (P) Ltd. v. State of Orissa**¹⁹; **Keshavji Ravji & Co. v. CIT**; **Maunsell v. Olins**²⁰). As we are satisfied that Section 24(1)(b) does not suffer from ambiguity, it is wholly unnecessary for us to apply any other rule of construction.

In "**Balasinor Nagrik Cooperative Bank Ltd. v. Babubhai Shankerlal Pandya**²¹" the Apex Court in paragraph No.4 held as follows:

"It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section..... It also provides for the manner of the exercise of such power..... Sub-section (1) of Section [36](#) is made subject to the fulfilment of the conditions prerequisite."

Later in "**Tamil Nadu State Electricity Board v. Central Electricity Regulatory Commission**²²" while deciding the question of statutory interpretation, the Apex Court held as follows:

"Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than

¹⁸ (1990) 2 SCC 231

¹⁹ AIR 1987 SC 2310

²⁰ (1975) 1 ALL ER 16

²¹ 1987 (1) SCC 606

²² 2007 (7) SCC 636

one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Supreme Court cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature and therein include such category of persons as the legislature has not chosen to do.”

In “**Ansal Properties and Industries Ltd. v. State of Haryana**”²³ the Apex Court held as follows:

“It is well settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is determinative factor of legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute.”

In “**Ganga Prasad Verma (Dr.) Vs. State of Bihar**”²⁴ the Apex Court held as follows:

“Where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speaks the intention of the legislature.”

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when Court know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker , provided by such context, its

²³ (2009) 3 SCC 553

²⁴ 1995 Supp (1) SCC 192

scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place (See: ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.***²⁵)

Even otherwise, normally the Courts in our state following the principles laid down by various authors and applied in interpretation of statutory provisions.

It is clear that the Court has to ascertain the intention of the legislation based on the language used in the document. Time and again, the Court have laid down certain principles to interpret any statute or clauses therein. In fact there are no statutory rules to interpret any document. But based on the settled principles of statutory interpretation, the Courts are interpreting the statutes and any clauses therein. Rules of interpretation are mere working rules or as guidelines and are not binding on the Courts of law. Yet, they have some sanctity as they have been deduced from judicial decision over the years. It is found listed in Odgers Construction of Deeds and Statutes, used the listed rules by the Courts and they have acquired respectability. The Supreme Court in "***Delhi Development Authority v. Durga Chand***"²⁶ has also

²⁵ AIR 1987 SC 1023

²⁶ AIR 1973 SC 2609

noticed Odgers Rules and quoted them with approval and as the observation of the Supreme Court have the force of law of the land, it may be taken Odgers Rules (known as golden rules of interpretation) have been judicially recognized and may be adopted as Rules for interpretation of the documents or statutes in India. These Rules are listed hereunder:

1. The meaning of the provision or document or of a particular part of it is therefore to be sought for in the document or statute itself.
2. The intention may prevail over the words used
3. words are to be taken in their literal meaning
4. literal meaning depends on the circumstances of the parties
5. When is extrinsic evidence admissible to translate the language?
6. Technical legal terms will have their legal meaning.
7. Therefore the deed or statute is to be construed as a whole.

Apart from the said seven rules listed by Odger, it would be convenient to list the following rules for the sake of convenience are called additional rules and given number in continuation:

8. Same words to be given the same meaning in the same contract or statute.
9. Harmonious construction must be placed on the contract or statute as far as possible. However, in case of conflict between earlier or later clauses in a contract or a statute, later clauses are to be preferred to the earlier; while in a will, earlier clause is to be preferred to the later.
10. Contra Proferendum Rule-If two interpretations are possible, the one favourable to the party who has drafted the contract or for whose benefit the statute is enacted and the other against him, the interpretation against that party has to be preferred.
11. If two interpretations of a contract or statute are possible the one which helps to make the contract or statute operative to be preferred to the other which tends to make it inoperative.
12. the special will exclude the general
13. Rule of expression unius est exclusion alterius
14. Rule of noscitur a sociis

15. Ejusdem generic rule will apply both the contract and statute

16. place of Punctuation in interpretation of documents or statutes."

In "***Shyam Sunder and Anr. v. Ram Kumar and Anr.***"

(referred supra) the Apex Court followed the principle of statutory interpretation based on **Carries** on a Statute Lw, 7th Edition stated the statement of law thus:

"If a doubt is felt as to what the common law is on some particular subject, and an Act is passed to explain and declare the common law, such an act is called a declaratory Act."

G.P. Singh on Principles of Statutory Interpretation quoting **Craies** statue thus:

"For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statute. Usually, if not invariably, such an Act contains a preamble and also the word 'declared' as well as the word 'enacted'. But the use of the words "it is declared is not conclusive that the Act is declaratory for these words may, at times, be used to introduce new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be held to the substance rather than to the form.

If a new Act is "to explain" an earlier Act, it would be Without object unless construed retrospective. An Explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended."

What is declaratory statute is again a question. Declaratory and explanatory statutes are distinguishable. An explanatory Act is generally passed to supply an obvious omissions or to clear up doubts as to the meaning of the previous Act. (See: “**Keshavlal Jethalal Shah vs Mohanlal Bhagwandas**²⁷”)

Declaratory enactment declares and clarifies the real intention of the legislature in connection with an earlier existing transaction or enactment, it does not create new rights or obligations. If a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. A clarificatory amendment of this nature will have retrospective effect and therefore, if the principal Act was existing law when the Constitution came into force the amending Act also will be part of the existing law. If a new Act is to explain an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omissions or to clear up doubts as to the meaning of the previous Act vide “**R. Rajagopal Reddy (dead) & Ors. vs. Padmini Chandrasekharan (dead)**²⁸”

It is settled principle that nobody has a vested right in procedure, but in the declaratory reliefs, parties will have vested right. Sometimes retrospective effect may be expressed or implied. Retrospective effect may be supplied either by express enactment or by implication and that this latter is the much more frequent method. The presumption is against such operation (except as to procedure in which nobody has a vested right), especially where it would affect vested or acquired rights. Another presumption to the

²⁷ [1968]3SCR623

²⁸ [1995]213 ITR 340(SC)

opposite effect has been suggested. It is said that where an Act contains a clause postponing its operation for a certain period, it is an indication that the legislature intended it to have a retrospective action, because it gives time for proceedings to be taken in respect of causes of action already accrued and if the litigant neglects or omits to take advantage of that opportunity he must take the consequences of being caught by the retrospective effect, if any, of the new Act (See: Odgers' Construction of Deeds and Statutes – Fifth Edition at page Nos.289 and 290)

In **Re Athlumney** (referred supra) Justice Wright held that one exception to the general rule (i.e. that a retrospective intent is not to be assumed) has sometimes been suggested viz., that where as here (section 23 of the Bankruptcy Act 1890) the commencement of the operation of the Act is suspended for a time, that is an indication that no further restriction upon retrospective operation is intended.

Thus, the rule is at least doubtful and further Justice Wright pointed out that the phrase “shall have been” relied on in older statutes to suggest an inference of retrospectivity, is common form in modern drafting where this is no question of such an effect. The only modern case in which this point was raised did not deal with the issue clearly, although it is an excellent example of the method of dealing with retrospective legislation. In “**Fairey v. Southampton C.C.**”²⁹ a footpath over the plaintiff's land had been used by the public for 46 years, from 1885 to 1931, before the plaintiff objected. The Rights of Way Act 1932, which was passed in July, 1932 but which did not come into operation until January,

²⁹ (1956) 2 Q.B. 429

1934, provided a new means by which the public may acquire a right of way if they had used the footpath for 20 years. The Divisional Court held that the Act was procedural and therefore could apply retrospectively to a full period prior to the Act coming into force. The Court of Appeal disagreed and felt that the Act affected substantive law and was not prima facie retrospective. However, as a matter of necessary implication, looking at the Act as a whole, the Court held that the usual presumption was rebutted, and so the Act applied retrospectively. The fact that Parliament allowed an interval of 17 months before the Act came into operation was discussed, but was not a vital part of the decision.

Explanatory and declaratory Acts are free from the general presumption against retrospective effect. When a statute is passed either to supply an omission in a previous Act or to explain a previous Act, the later statute is taken to relate back to the time when the earlier was passed (See: R.V. Dursley (1832) 3 B. & Ad. 465 at p.469 per Parke J.; Western Transport Pty. Ltd. v. Kropp (1965) A.C. 914; Cf. Wijesuriya v. Amit (1966) A.C.372)

In “**Garikapati Veeraya v. N. Subbiah Choudhry**³⁰” this Court observed as thus:

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed."

³⁰ [1957]1SCR488

In “**Smt. Dayawati and another vs. Inderjit and others**³¹” : it is held thus:

"Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law., brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days of Coke whose maxim - a new law ought to be prospective, not retrospective in its operation - is off-quoted, courts have looked with disfavour upon laws which take away vested rights or affect pending cases. Matters of procedure are, however, different and the law affecting procedure is always prospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance."

(Emphasis is brought out)

In “**Hitendra Vishnu Tahkur v. State of Maharashtra**³²” the Apex Court laid down the ambit and scope of an amending Act and its retrospective option as follows:

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such as construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

³¹ [1966]3SCR275

³² 1995CriLJ517

(iv) a procedural statute should not generally speaking be applied retrospective where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) a statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication."

In "**K.S. Paripoornan vs. State of Kerala**³³" the Apex Court while considering the effect of amendment in the Land Acquisition Act in pending proceedings held thus:

"... In the instant case we are concerned with the application of the provisions of sub-section 1(1-A) of S. 23 as introduced by the Amending Act of acquisition proceedings which were pending on the date of commencement of the Amending act. In relation pending proceedings, the approach of the courts in England is that the same are unaffected by the changes in the law so far as they relate to the determination of the substantive rights and in the absence of a clear indication of a contrary intention in an amending enactment, the substantive rights of the parties to an action fall to be determined by the law as it existed when the action was commenced and this is so whether the law is changed before the hearing of the case at the first instance or while an appeal is pending (See Halsbury's Laws of England, 4th Edn., Vol. 44, para 922)".

In view of the law declared by the Apex Court and the principles of statutory interpretation, it is abundantly clear that when a specific language is used in the amended provisions of the Act and the intention of the legislature in incorporating such provision is to take away the right whatever accrued to the parties, such statutes can be interpreted without causing any violence, either by addition or by subtracting any words, to the language used in the statute, without frustrating the intention of the

³³ AIR1995SC1012

legislature considering the plaint language used in the amended Act.

Turning to the facts of the present case the Arbitration and Conciliation Act, 1996 offered benefit of automatic stay under Section 36 of the Act, but by virtue of Act 3 of 2016 such right was taken away. The main contention of the learned Advocate General for the State of Andhra Pradesh is that when a similar question came up before the Apex Court when 1996 Act came into force, but by virtue of Section 85 (2) (a) of the Act in “**Thyssen Stahlunion GMBH v. Steel Authority of India Ltd**” (referred supra) the Supreme Court concluded that all the arbitration cases, in which proceedings are commenced are saved and the same analogy is to be applied to the present facts of the case also. Whereas learned counsel for the respondent refuting the contention of the learned Advocate General (Andhra Pradesh) drawn the distinction between Section 26 of 2015 Act and Section 85 (2) (a) of 1996 Act and on the strength of the language used therein, it is contended that the arbitration proceedings commenced by the date of the amended provision are alone saved but not the proceedings terminated.

In view of the specific contentions urged before this Court, it is necessary to advert to those sections, which are as follows:

Section 26 (2016 Act)	Section 85 (2) (a) (1996 Act)
“Nothing contained in this Act shall apply to the arbitral proceedings commenced , in accordance with the provisions of Section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.”	“(2) Notwithstanding such repeal, - (a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force.”

In Section 85 (2) (a) of the Act, the words “in relation to arbitral proceedings which commenced” includes all proceedings and incidental or consequential proceedings are application under Section 34, appeal against such proceedings, execution petition etc., till satisfaction of the award.

But in Section 26 of Act 3 of 2016 specific words used are “to the arbitral proceedings commenced”. If arbitral proceedings are commenced before the commencement of Act 3 of 2016 and not terminated then the old Act would apply. In view of the language used in Section 26 of Act 3 of 2016, it is necessary to advert to Sections 21 and 32 for the purpose of deciding commencement and termination of arbitral proceedings.

Section 21 deals with commencement of arbitral proceedings in respect of particular dispute. Section 21 says “unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent i.e. referring the dispute to the arbitrator.

Section 32 deals with termination of arbitral proceedings. Section 32 (1) says that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

Section 32 (2) of the Act reads thus:

32 (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Sub-section (3) of Section 32 further says that subject to section 33 and sub-section (4) of Section 34, the mandate, the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

Thus, when an award is passed by the arbitral tribunal, here the Council, the proceedings are deemed to be terminated for all practical purposes within Section 32 of Arbitration and Conciliation Act.

In the present case, the arbitral proceedings commenced before the Council in the year 2008 and terminated on 21.06.2010 by passing an award by the Council. Hence, the proceedings in the present case were commenced and also terminated prior to the commencement of amended Act 3 of 2016. In such case, the analogy applied by the Supreme Court in “**Thyssen Stahlunion GMBH v. Steel Authority of India Ltd**” (referred supra) cannot be applied to the proceedings terminated prior to commencement of the amended Act 3 of 2016.

Learned Advocate General (Andhra Pradesh) based his contention on “**Videocon International Limited v. Securities and Exchange Board of India**” (referred supra) and even in the said judgment there was no specific provision specifying that the amended Act can be applied to the pending proceedings and in the absence of any provision the Supreme Court concluded in paragraph No.39 as follows:

“..... an appellate remedy is available in different packages. What falls within the parameters of the package at the initial stage of the lis or dispute, constitutes the vested substantive right, of the concerned litigant. An aggrieved party, is entitled to pursue such a vested substantive right, as and when, an adverse judgment or order is passed. Such a vested substantive right can be taken away by an amendment, only when the amended provision, expressly or by necessary intendment, so provides. Failing which, such a vested substantive right can be availed of, irrespective of the law which prevails, at the date when the order impugned is passed, or the date when the appeal is preferred. For, it has repeatedly been declared by this Court, that the legal pursuit of a remedy, suit, appeal and second appeal, are steps in a singular proceeding. All these steps, are connected by an intrinsic unity, and are regarded as one legal proceeding.”

In the facts of the above case, appeal was pending before the appellate Court against the judgment and decree. When appeal is pending and it is continuation of suit, there any amount of justification in applying the amended provision of the Act subsequent to passing of an order by the Court. Moreover, as discussed in the earlier paragraphs, petition under Section 34 of the Act and appeal against such order by the objecting Court cannot be treated on par with the appeal in view of the limited scope of the Arbitration and Conciliation Act and wider scope of appeal. Consequently, the principle laid down in “**Videocon**

International Limited v. Securities and Exchange Board of India” (referred supra) cannot be applied to the present case.

Learned Advocate General (Andhra Pradesh) drawn the attention of this Court to a unreported judgments of High Court of Delhi in ***“Ministry of Defence, Government of India v. CENREX SP. Z.O.O. and Ors (O.M.P.No.408 of 2007)”*** and unreported judgments of the High Court of Calcutta in ***“Electrosteel Castings Limited v. Reacon Engineers (India) Private Limited (AP No.1710 of 2015)”***, ***“Sri Nitya Ranjan Jena v. Tata Capital Financial Services Ltd. (G.A.No.145 of 2016 with A.P.No.15 of 2016)”***. In all the three judgments, learned Single Judge of Delhi High Court and Calcutta High Court held that the provisions of Section 26 of amended Act 3 of 2016 have no application to the proceedings already pending since the Act came into operation on 23.10.2015, but the proceedings were commenced before the commencement of the amended Act.

However, in unreported judgment of Bombay High Court ***“The Board of Control for Cricket in India v. M/s Rendezvous Sports World”***. (Chamber Summons No.1530 of 2015) and in unreported judgment of Madras High Court in ***“New Tirupur Area Development Corporation Ltd. v. M/s Hindustan Construction Co. Ltd and 2 others”*** (A.No.7674 of 2015), the learned Single Judges took a different view and held that the amended provisions are applicable to the proceedings pending before the Courts even though the arbitral proceedings commenced under Section 21 and terminated under Section 32 of the Arbitration and Conciliation Act before the commencement of the Act.

Learned Counsel for the respondent relied on “**Sri Tufan Chatterjee v. Sri Rangan Dhar**” wherein the Division Bench of High Court of Calcutta overruled the judgments which the petitioner relied on viz. “**Electrosteel Castings Limited v. Reacon Engineers (India) Private Limited (AP No.1710 of 2015)**”, “**Sri Nitya Ranjan Jena v. Tata Capital Financial Services Ltd. (G.A.No.145 of 2016 with A.P.No.15 of 2016)**”.

In view of the subsequent judgment of Division Bench of Calcutta High Court, the judgment rendered by learned single Judge of Calcutta High Court cannot be applied.

In any view of the matter, it is clear from the language used in Section 85 (2) (a) of 1996 Act and Section 26 of Act 3 of 2016, the amended provisions are not applicable if the arbitral proceedings before the arbitral Tribunal commenced before the commencement of Act 3 of 2016 and pending before arbitral tribunal. If commenced and terminated before the commencement of Act 3 of 2016 the new provisions alone are applicable but not the old provisions. Consequently, section 36 of the old Act cannot be applied to the present facts since the right accrued to the petitioner i.e. deemed stay under Section 36 of the Act was taken away by virtue of amendment to Section 36 by its substitution read with Section 26 of the Act 3 of 2016.

Hence, the petitioner is not entitled to claim benefit under Section 36 of pre-amended Act, as such right was taken away by amendment to declaratory statute substituting new section in the place of old section.

On an over all analysis of the law laid down by various Courts and the principles of interpretation laid down by Court, the following conclusions are arrived

- (1) Section 26 of Act 3 of 2016 made it clear that the amended provisions shall not apply to all the pending arbitration proceedings commenced before 23.10.2015 and if the arbitration proceedings before the Arbitral Tribunal are terminated before the commencement of the Act, the provisions of new Act i.e. Act 3 of 2016 alone shall apply though any incidental or consequential proceedings are pending before objecting Court i.e. District Court or any other Court.
- (2) If the judgment of the Apex Court in “**Thyssen Stahlunion GMBH v. Steel Authority of India Ltd**” (referred supra) is relied on, the first limb of Section 26 did not apply to the arbitration related court proceedings, but applies only to proceedings commenced and pending before the arbitral tribunal i.e. Council in the present case.
- (3) Amended Section 26 has taken away the right to claim deemed stay accrued to the petitioners.

Finally, the proceedings pending before the objecting Court cannot be equated with an appeal and therefore, the amended provisions of the Act 3 of 2016 have retrospective effect and applicable to all the awards passed prior to the commencement of Act 3 of 2016.

One of the contentions raised by the learned Advocate General is that in the absence of transfer of decree from

Chandigarh Court to City Civil Court, Hyderabad under Section 40 of C.P.C., the award/decree is not executable. No doubt, a decree in a suit unless it is transferred under Section 40 of C.P.C. it is not executable in City Civil Court, Hyderabad. But here, it is only award. However, the learned counsel for the respondent strongly contended that award need not be transferred since it is not a decree in civil suit and drawn the attention of this Court to a judgment of the High Court of Madras rendered in “**Kotak Mahindra Bank Ltd. v. Sivakama Sundari**” (referred supra), wherein it is held as follows:

“Once it is seen that an award of the Arbitral Tribunal is deemed to be a decree, by virtue of Section 36 of the 1996 Act, it follows as a corollary that the Arbitral Tribunal is in the position of a Court which passed the decree (though it may not be the same). But, no application for execution can be presented to an Arbitrator, by the holder of an award, under Order XXI, Rule 10, on the ground that the Arbitral Tribunal is the Court which passed the decree. Therefore, the provisions of Section 38 and Order XXI, Rules 5, 6 and 10 of the Code of Civil Procedure cannot be applied to an Arbitral Tribunal. To put it differently, it is only when an award holder is entitled to file an execution petition before the Arbitral Tribunal itself under Order XXI, Rule 10, (treating it as a Court which passed the decree) that the provisions of Order XXI, Rules 5 and 6 would come to play.

18. If no application for execution can be filed before the Arbitral Tribunal, by treating the Arbitral Tribunal as the Court which passed the decree, the Arbitral Tribunal cannot also order the transfer of the decree (or award) to any other Court for its execution. Similarly, there is no provision either in the Code or anywhere else, to treat a court, within whose jurisdiction the Arbitral proceedings took place, as the court which passed the decree. It is only when a court within whose jurisdiction the arbitral award was passed, is taken to be the court which passed the decree within the meaning of Section 37 and Order XXI, Rule 10 of the Code that the award holder would be entitled to seek transmission from that court.”

A similar view was reiterated by Delhi High Court in “**M/s Religare Finvest Limited v. Ranjit Singh Chouhan**” (referred supra).

Therefore, persuaded by the law declared by the Madras High Court and Delhi High Court, I am of the firm view that award need not be transferred, on that ground the garnishee order cannot be set aside.

As discussed above, as on today, the executable award against the petitioner is in respect of item Sl.Nos.26 to 45 appended as annexure A.W.1 and the award in respect of item Nos.1 to 25 was set aside by the High Court of Punjab and Haryana in FAO Nos.10525 of 2014, 10507 of 2014, 34 of 2015 and 68 of 2015.

In view of the applicability of provisiosn of amended Act 3 of 2016 the remedy open to the petitioner is to file an application under Section 36 of the amended Act 3 of 2016 and on filing of such application, the objecting Court has to pass appropriate order subject to compliance of requirement of 75% under MSMED Act, 2006. Hence, leaving it open to the petitioner to move appropriate application before the objecting Court under Section 36 of the Act as amended by Act 3 of 2016. I find no ground to set aside the award pertaining to item Nos.26 to 45.

Consequently, filing of E.P. for the award in respect of item Nos.1 to 25 and garnishee order issued by the II Additional Chief Judge, City Civil Court, Hyderabad for recovery of amount covered by item Nos.1 to 25 is illegal since there is no executable award in view of the order of High Court of Punjab and Haryana. Consequently, the garnishee order to the extent of amount covered

by item Nos.1 to 25 is hereby set aside while upholding the impugned garnishee order in respect of item Nos.26 to 45. Accordingly, the points are answered.

In the result, the revision is allowed in part setting aside the order dated 30.06.2016 passed in E.P.No.33 of 2016 by the II Additional Chief Judge, City Civil Court, Hyderabad in respect of item Sl.Nos.1 to 25 while confirming the order in respect of item Sl.Nos.26 to 45. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

Date:07.12.2016

Note:

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B/o
Ksp

JUSTICE M. SATYANARAYANA MURTHY

