

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.74 of 2016

JUDGMENT: (Per Hon'ble Sri Justice Sanjay Kumar)

This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') arises out of the order dated 11.09.2015 passed by the learned Principal District Judge, Krishna, at Machilipatnam, in A.O.P.No.27 of 2013. The said O.P. was filed by the respondent herein under Section 9 of the Act of 1996 seeking the relief of a perpetual injunction restraining the appellants/respondents from alienating their rights in the petition schedule property till completion of the arbitration proceedings to be initiated. By the order under appeal, the learned Principal District Judge granted the temporary injunction as prayed for apart from directing the appellants/respondents to deposit the lease amounts every month into the Court to the credit of the O.P. in the event they had leased out the petition schedule property during the pendency thereof.

Heard Sri S. Lakshminarayana Reddy, learned counsel for the appellants/respondents, and Sri Keerthi Kiran Kota, learned counsel for the respondent/petitioner.

Sri S. Lakshminarayana Reddy, learned counsel, would assert that the petition filed under Section 9 of the Act of 1996 was defective and therefore ought not to have been entertained. He further states that the order under appeal reflects that there was no evidence marked and that the Court below ought not to have granted relief to the respondent/petitioner without at least looking into the relevant

documents. He would rely upon the observations made by this Court in *Amina Ayesha v. Model Constructions, Hyderabad*¹ in this regard.

Perusal of Rule 4 of the Andhra Pradesh Arbitration Rules, 2000 (for short, 'the Rules of 2000'), framed in exercise of the power conferred under Section 82 of the Act of 1996, reflects that every application under Section 9 of the Act of 1996 must be in accordance with the procedure prescribed thereunder. Rule 4(2) stipulates that a certified copy of the arbitration agreement and certified copies of the relevant documents must be annexed to every such application.

In the present case, perusal of the petition filed by the respondent/petitioner reflects that only photocopies of various documents, including the development agreement dated 21.01.2009, were filed. No certified copies were filed and there is no indication of the Court below having dispensed with the filing of such certified copies. Even if the filing of such certified copies was dispensed with, the necessary documents should have been marked in evidence so as to justify any order being passed by the Court below under Section 9 of the Act of 1996. Relevant to note, this Court observed in *Amina Ayesha*¹ in a similar fact situation that even if the Court below referred to certain documents but the appendix of evidence showed that no document had been marked, the order would be deemed to have been passed without appreciation of the evidence and would be liable to be set aside on that ground alone.

In the present case, the petition filed by the respondent/petitioner, as instituted, was not in conformity with the due procedure prescribed under Rule 4 of the Rules of 2000 and therefore ought not to have been entertained at the threshold. Even if the Court below was of the opinion

¹ 2014 (4) ALD 499 (DB)

that the filing of certified copies could be dispensed with, it ought to have followed the due procedure for marking the photocopies as secondary evidence before examining the matter on merits. On both grounds, the order under appeal is therefore liable to be set aside.

We accordingly set aside the order under appeal holding that A.O.P.No.27 of 2013 was not maintainable having been filed in violation of the due procedure. This order shall however not preclude the respondent/petitioner from filing a fresh petition in accordance with the due procedure and if such petition is filed, the same shall be considered on its own merits and in accordance with law, uninfluenced by this order.

The civil miscellaneous appeal is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

ANI S, J

18th October, 2016
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