THE HON'BLE SRI JUSTICE G.CHANDRAIAH

C.R.P.NO.1116 OF 2016

O R D E R

Heard the learned Senior Counsel Sri M.S.Prasad for the revision petitioner and Sri L.Raghunandan Reddy for the contesting 1st respondent.

2. The 1st respondent herein is the subcontractor of the revision petitioner. On 6.8.2013 it initiated proceedings under Section 21 of the Arbitration and Conciliation Act, 1996 before the Arbitration Tribunal for an amount of Rs.8,13,95,575/- against the revision petitioner in respect of work bills 4 to 23 relating to contract work namely output and performance based road contract for the maintenance of package 12 roads in Nizamabad District, executed by it on behalf of the revision petitioner. The Tribunal by order dated 4.9.2015 awarded an amount of Rs.4,18,22,822/- with future interest at 24 per cent per annum.

3. Pending the arbitration proceedings, the 1st respondent filed O.P.No.1392/2014 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad under Section 9 of the Act for attachment of an amount of Rs.2,32,92,121/- relating to the 24th and part RA bill and also for the subsequent bills. By order dated 5.11.2014, the court below allowed the relief sought for by the 1st respondent.

4. For execution of the award dated 4.9.2015, the 1st respondent filed E.P.No.37/2015 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad and filed present E.A.No.58/2015 in E.P.No.37/2015 under Order 21, Rule 52 read with Section 151 of C.P.C. to pass a prohibitory order by way of attaching an amount of Rs.1,65,21,257/- lying in the bank account bearing Nos.2011321728 and 60022006114 relating to the revision petitioner/ judgment debtor in Bank of Maharashtra, Sultan Bazar Branch, Hyderabad and K.T. Road Branch, Vijayawada respectively. By docket order dated 28.12.2015, the court below passed the following order:

> "Heard learned counsel for petitioner. Issue attachment warrant for an amount of Rs.1,65,21,257/- lying in bank account relating to the respondent/judgment debtor. Issue notices to respondent/J.Dr. through R.P./Courier. Call on 18.1.2016."

Challenging the above docket order, the present revision is filed. This court by docket order dated 2.3.2016 while ordering notice before admission, passed the following interim order in CRPMP.NO.1411/2016 in CRP.No.1116/2016:

> "Status quo obtaining as on today with regard to operation of attachment order passed by the court below shall be maintained for a period of three weeks from today.
>
> Post after two weeks"

5. Seeking to vacate the above interim order, the 1st respondent filed a detailed vacate/counter affidavit in CRP.VMP.NO.1697/2016 in CRP.No.1116/2016. The petitioner also filed reply.

6. The above interim order was extended from time to time and eventually while reserving the revision for judgment, by order dated 29.3.2016, the interim order was extended till the pronouncement of judgment.

7. From the material on record, it could be seen that challenging the award dated 4.9.2015, the revision petitioner filed O.P.No.7 of 2016 on the file of XXIV Additional Chief Judge, City Civil Court, Hyderabad for setting aside the award. As the 1st respondent sought for an amount of Rs.8,13,95,575/- and the Arbitration Tribunal awarded only an amount of Rs.4,18,22,822/-, Arbitration O.P.No.2530/2015 was filed for the remaining claim on the file of the said court. Thus both the O.P.s filed by the revision petitioner and the 1st respondent are pending adjudication before the court below.

8. The learned counsel appearing for the revision petitioner contended that the arbitral proceedings commenced in the year 2013 prior to Act 3 of 2016 to the Arbitration and Conciliation (Amendment) Act, 2015, (for short 'the amendment Act of 2015'), which came into force with effect from 23.10.2015. Therefore, provisions prior to Act 3 of 2016 shall have to be made applicable as per Section 26 of the amendment Act of 2015. As per Section 34 of the Arbitration and Conciliation Act, 1996, (for short 'the Act'), an application is maintainable for setting aside the arbitral award. In the present case, the revision petitioner has filed application under Section 34 of the Act within time and the same is pending and unless the said proceedings are disposed of, the award remains unenforceable. He stated that by virtue of amendment Act of 2015, which came into force with effect from

23.10.2015, Section 36 of the principal Act, was amended and by virtue of this amendment, sub section 2 of Section 36 stipulates that filing of an application under Section 34 of the Act shall not by itself render the award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award. He stated that this amendment to Section 36, which came into force with effect from 23.10.2015, cannot be made applicable to the facts of the present case, since the arbitral proceedings commenced in the year 2013 and, therefore, mere filing of an application under Section 34 of the Act for setting aside of the arbitral award, has to be construed as total stay of the execution proceedings and unless the said application is disposed of, execution shall not be proceeded and the court has no jurisdiction to grant stay or pass interim orders for enforcement of the award. In support of this contention, the learned Senior Counsel, relied on the judgments of the Apex Court reported in NATIONAL ALUMINIUM CO. LTD. V. PRESSTEEL & FABRICATIONS (P) LTD[1], NATIONAL BUILDINGS CONSTRUCTION CORPN. LTD. LLOYDS INSULATION INDIA LTD[2] and the judgment of the High Court of Madras in THE SUPERINTENDING ENGINEER vs. D.G.DEIVASIGAMANI[3]. He stated that in the present case, the revision petitioner has filed Arbitration O.P.No.7 of 2016 on the file of XXIV Additional Chief Judge, City Civil Court, Hyderabad, under Section 34 of the Act for setting aside the award dated 4.9.2015 and when the same is pending, the E.P.No.37/2015 filed by the 1st respondent for execution of part of the award is not maintainable. In support of this contention, the learned Senior Counsel relied on the judgment of a learned single Judge of the High Court of Calcutta in DAMODAR VALLEY CORPN. v. CESC LTD.[4]. He stated that the 1st respondent has already obtained a garnishee order relating to subject matter to an extent of Rs.2.32 crores and the machinery worth Rs.1.40 crores of the revision petitioner is in the custody of the 1st respondent. Therefore, in these circumstances, unless the award passed by the Arbitral Tribunal dated 4.9.2015 attains finality, execution cannot be made and the court below is not justified in granting the impugned attachment of the amounts lying in the bank accounts of the revision petitioner. With these submissions, he sought to set aside the impugned order.

9. On the other hand, the learned Senior Counsel appearing for the 1st respondent while vehemently opposing the submissions of the learned senior counsel for the revision petitioner submitted that in the present case, there is no

dispute that the arbitration proceedings commenced during the year 2013 prior to Arbitration and Conciliation (Amendment) Act, 2015 (No.3 of 2016) which came force with effect from 23.10.2015. He stated that as per Section 26 of the amendment Act of 2015, the amended provisions cannot be made applicable to the arbitration proceedings commenced in accordance with the provisions of Section 21 of the principal Act, before the commencement of the amended Act, unless the parties otherwise agree. He stated that if the parties agree, the amended provisions can be made applicable. In the present case, the conduct of the parties is required to be looked into whether their acts amounts to agreeing the provisions of the amended Act of 2015. As per the amended provision under sub section 5 of Section 34, the applicant who files application under Section 34, has to issue a prior notice to the other party and such application filed under Section 34, shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement. The revision petitioner has issued notice dated 30.11.2015 as required under amended provision of sub section 5 of Section 34 of the Act with regard to filing of application under Section 34 of the Act for setting aside the arbitral award. He also made part payment of Rs.4,00,000/- towards E.P. amount on 31.12.2015. The learned Senior counsel further stated that under the amended provision of sub section 2 of Section 36 of the Act, mere filing of an application Section 34 shall not render the award unenforceable, unless the court grants stay of the operation of the arbitration award and for that purpose a separate application has to be made under sub section 3 of Section 36 and upon such application, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award. The revision petitioner who filed Arbitration O.P.No.7/2016, for setting aside the award, filed I.A.No.16 of 2016 for stay of execution of the award, as required under amended provision of sub section 3 of Section 36 of the Act and he has also referred to this in the affidavit filed in support of the petition. Therefore, by these acts of the revision petitioners, it has be construed that it agreed for proceeding with the matter under the amended Act of 2015. Therefore, the court below, in exercise of its discretion, ordered for attachment of the bank accounts and the same cannot be found fault with. The learned counsel submitted that the judgments relied on by the counsel for the revision petitioner with regard to application of the provisions of the amended Act, cannot be made applicable to the facts of the present case, as in the said cases, the provisions prior to the present amendment Act came into force, were dealt with.

10. The learned counsel further submitted that 1st respondent firm is registered under the provisions of Micro, Small and Medium Enterprises

Development Act, 2006. As per Section 19 of the said Act, for entertaining Arbitration O.P. against the award passed by the Arbitration Tribunal, the revision petitioner has to deposit 75 per cent of the awarded amount. In support of this submission, the learned Senior Counsel relied on the judgments reported in JMC PROJECTS (INDIA) LTD AND ANR. v. MECHTECH ENGINEERS AND ANR[5] and SNEHADEEP STRUCTURES (P) LTD. v. MAHARASHTRA SMALL SCALE INDUSTRIES DEVELOPMENT CORPN. LTD[6]. The learned Senior Counsel submitted that the court below in exercise of its discretion, granted the interim order pending the proceedings, and there are no reasons to interfere with the impugned order and therefore, sought for dismissal of the revision.

11. The Senior learned counsel for the revision petitioners made reply arguments, denying the applicability of Section 19 of Micro, Small and Medium Enterprises Development Act, 2006.

12. From a perusal of the impugned order, it could be seen that before the court below, the above contentions, were not raised. In the impugned order, which is extracted at the threshold, no reasons have been assigned. It is also brought to the notice of this court that petitions with regard to maintainability of Arbitration O.P.No.7 of 2016 filed by the revision petitioner for non deposit of 75 of the award amount under Section 19 of the Micro and Small and Medium Enterprises Development Act, 2006 and also petition filed by the revision petitioner for rejection of the E.P., are pending before the trial court. Therefore, in the light of the above rival submissions, and as no reasons have been assigned in the impugned order, I am of the considered view, the matter requires to be remitted back for disposal of the execution application afresh.

13. For the foregoing reasons, without expression any opinion on the merits of the case and respective contentions raised by both the learned senior counsel, the impugned order is set aside and the matter is remitted back to the court below to consider the contentions raised by both the counsel after giving opportunity and pass order afresh, without being influenced by earlier order, within a period of two weeks from the date of receipt of a copy of this order. It is needless to observe that both the parties shall co-operate with the disposal of E.A.No.58/2015 in E.P.No.37/2015.

14. The revision is accordingly disposed of. No costs.

15. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

DATE: 13 --04—2016
AVS

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[1] (2004)1 SCC 540

[2] (2005)2 SCC 367

[3] 2005(1) Arb. LR 149 (Madras) DB

[4] AIR 2005 Calcutta 67

[5] 2011 Law Suit (Guj) 547

[6] (2010)3 SCC 34