

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

CIVIL REVISION PETITION No.1432 of 2016

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

This civil revision petition under Article 227 of the Constitution was filed by the judgment debtors 1 and 2 in E.P.No.121 of 2014 in Arbitration Case No.370 of 2012 on the file of the learned III Additional District Judge, Guntur. Their grievance was with regard to the entertainment of the execution proceedings during the pendency of the application filed by them under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), before the learned Chief Judge, City Civil Court, Hyderabad, to set aside the Award dated 08.02.2014, execution of which was sought by way of E.P.No.121 of 2014.

By order dated 16.03.2016, this Court granted interim stay of further proceedings in the execution petition for a period of six weeks. C.R.P.M.P.No.4206 of 2016 was filed by the petitioners seeking extension of the said stay order.

However, having heard Sri K.L.N. Swamy, learned counsel for the petitioners, and Sri Kuncham Maheswara Rao, learned counsel for the first respondent/deGREE holder, we are of the opinion that the civil revision petition itself is amenable to final disposal.

It may be noted that the second respondent in this civil revision petition, being the third judgment debtor, did not choose to enter appearance in person or through learned counsel despite service of notice.

Section 36 of the Act of 1996 was amended with effect from 23.10.2015 under Amendment Act 3 of 2016. Prior to the amendment, making of an application under Section 34 of the Act of 1996 operated automatically as a stay of the Award. However, the amended provisions of Section 36 and, more particularly, Section 36(2) makes it clear that the mere filing of an application under Section 34 shall not, by itself, render the Award unenforceable unless the Court grants an order of stay of the operation of the said arbitral Award on a separate application made for that purpose.

In the present case, Sri Kuncham Maheswara Rao, learned counsel for the first respondent/decreed holder, does not dispute the fact that as on the date of filing of the application by the petitioners/judgment debtors 1 and 2 under Section 34 of the Act of 1996, the old provisions of Section 36 of the Act of 1996 had application. It appears that the said application was preferred by the petitioners/judgment debtors 1 and 2 on 09.06.2014 and was numbered as O.P.No.1258 of 2014. As the unamended provisions of Section 36 of the Act of 1996 would have application as on that date, the filing of the application itself would operate as a stay of the arbitral Award pending the disposal of the said application. The first respondent/decreed holder was therefore not at liberty to file execution proceedings after the institution of O.P.No.1258 of 2014.

The civil revision petition is accordingly allowed holding that E.P.No.121 of 2014 in Arbitration Case No.370 of 2012 was not maintainable before the learned III Additional District Judge, Guntur, in the light of institution of O.P.No.1258 of 2014 before the learned Chief Judge, City Civil Court, Hyderabad, under Section 34 of the Act of 1996. The Executing Court shall act accordingly.

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

SANJAY KUMAR, J

ANIS, J

17th October, 2016
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