

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8737 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in order dt.29.08.2017 in CrI.M.P.No.2969 of 2017 in C.C.No.890 of 2007 passed by the X Additional Chief Metropolitan Magistrate at Secunderabad allowing the petition filed under Section 254(1) Cr.P.C. receiving five documents set out in the list annexed to the petition.

2. The second respondent filed petition before the court below under Section 254(1) Cr.P.C. and requested the court to receive the documents viz. certified copy of MCX Tribunal Award, dt.16.06.2007 vide Arbitration No. MCX/Legal/019A/06, certified copy of certificate of incorporation consequent upon change of name of the complainant company dated 22.1.2010, certified extract of Board Resolution, dt.17.07.2017, special power of attorney dated 17.7.2017 and certificate under Section 65B(4) of the Indian Evidence Act dt.18.07.2017, in view of changed circumstances subsequent to filing of the complaint under Section 138 of the Negotiable Instruments Act.

3. The petitioner/respondent filed counter denying material allegations and the first and foremost contention raised before the court in the counter is that the second respondent prayed for more than one relief in the petition and on this ground alone the petition is not maintainable. The second ground is that the dispute with regard to arbitration award pending before the Ill Addl.District Judge, Ranga Reddy District at LB Nagar in AOP No.65 of 2011. Therefore, the same cannot be received at this stage in evidence and mark it before the court. The third

ground is that the name of the company was changed about 7 years ago, but no changes were made in the cause title till date and so on this ground also the documents submitted in the list cannot be received. It is also contended that the Board Resolution document No.3 filed along with the petition cannot be received in the present case at this stage as the name of the company and its registered office has been changed in the year 2010 itself and the earlier company board resolution issued by the company dt.4.12.2008 already marked as Ex.P-1. Therefore, after seven years the document cannot be received without changing the name of the original company in the cause title. The fourth document is special power of attorney dt.17.07.2017. The special power of attorney executed in favour of Mr.V.P.Prasad, dt.01.08.2006 is also filed in the present case and the same cannot be substituted by another power of attorney dt.17.07.2017 and that the certificate issued under Section 65B(4) of Indian Evidence Act is not in accordance with the guidelines of Apex Court and therefore, the same cannot be received and requested this court to dismiss the petition CrI.M.P.No.2969 of 2017 by setting aside the order dt.29.08.2017.

4. During hearing, learned counsel for the petitioner mainly contended that the court below did not consider the objections raised before the court and passed the impugned order reserving the findings on the objections raised by the petitioner at the time of pronouncing of the judgment in the main case. Passing such an order without considering the objections is illegal and requested this court to set aside the order passed by the court below while exercising power under Section 482 Cr.P.C.

5. As seen from the material on record, the documents set out in the list are certified copy of MCX Tribunal Award, dt.16.06.2007 vide Arbitration No. MCX/Legal/019A/06, certified copy of certificate of incorporation

consequent upon change of name of the complainant company dated 22.1.2010, certified extract of Board Resolution, dt.17.07.2017, special power of attorney dated 17.7.2017 and certificate under Section 65B(4) of the Indian Evidence Act dt.18.07.2017. But, these documents are sought to be received and mark them as exhibits on behalf of the petitioner to substantiate his claim. The first and foremost contention raised by the learned counsel for the petitioner is that the award in arbitration matter is pending before civil court. However, during hearing, the learned counsel for the petitioner reported no objection to receive the same and mark it as exhibit. The second document is certificate of incorporation dt.22.01.2010. The complaint was filed by Sipad Commodity and Derivatives Pvt.Ltd., office at 409,4th floor, Navaketa, opposite Clock Tower,S.D.Road, Secunderabad. But, now the company changed its name as Kellton Commodity and Derivatives Private Limited which is not the complainant before the court. Though the company name was changed on 22.01.2010, no steps were taken to make appropriate changes in the complaint by virtue of certificate of incorporation which is document No.2. But, without impleading Kellton Commodity and Derivatives Private Limited, the present petition cannot be filed since the earlier company i.e. Sipad Commodity and Derivatives Pvt.Ltd. is ceased to be in existence as on today. Therefore, on this ground, receiving documents without impleading or substituting Kellton Commodity and Derivatives Pvt. Ltd., the petitioner cannot be prosecuted. Therefore, on this ground, the order passed by the court below is liable to be set aside since the petitioner who filed these documents are not actual parties before the court below. The other contentions regarding validity of power of attorney etc. cannot be considered at this stage.

6. In view of my foregoing discussion, the objection raised by the

petitioner regarding failure to make necessary changes in the complaint consequent upon change of name of the company by certificate of incorporation document No.2, receiving document by company which is not party to the complaint is erroneous.

7. Therefore, the order passed by the court below in CrI.M.P.No.2969 of 2017 is hereby set aside while directing the court below to consider the objections raised by the petitioner and pass appropriate order in accordance with law, while remitting the matter to the court below, within a month from the date of receipt of a copy of this order.

8. With the above directions, the criminal petition is disposed of.

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

Date:18.09.2017

Note:

Furnish C.C. by 19.09.2017.

B/O

ccm

JUSTICE M. SATYANARAYANA MURTHY



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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