

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.3886 of 2002 AND
CIVIL MISCELLANEOUS APPEAL No.1319 of 2004

COMMON JUDGMENT: (per SK,J)

C.R.P.No.3886 of 2002 arose out of the common judgment dated 25.01.2002 of the learned Senior Civil Judge, Adoni, in so far as it pertained to O.S.No.37 of 1996 filed by the first respondent herein seeking reliefs over and above those granted in the Arbitral Award dated 16.07.1994. C.M.A.No.1319 of 2004 arose out of the common judgment dated 25.01.2002 of the learned Senior Civil Judge, Adoni, in so far as it pertained to O.P.No.5 of 1995 filed by the Government of Andhra Pradesh and its officers, the appellants herein, to set aside the Arbitral Award dated 16.07.1994. By the common judgment, the Court below made the said Award the rule of the Court and dismissed O.P.No.5 of 1995 filed by the Government to set it aside. The suit in O.S.No.37 of 1996 was decreed only to the extent of making the said award a rule of the Court and no further claims put forth by the first respondent were accepted or decreed.

By order dated 06.09.2002 passed in C.R.P.M.P.No.16288 of 2002 in C.R.P.No.3886 of 2002, this Court granted interim stay of further proceedings subject to the condition that the petitioners/State deposits half the decretal amount within a time frame. By later order dated 27.02.2003 passed in the C.R.P., this Court directed the first respondent to withdraw the amount deposited.

Heard the learned Government Pleader for Arbitration. Though the name of Sri Keerthi Prabhakar, learned counsel, appears in the cause list as the counsel for the first respondent and his vakalat is also very much

on record, the said counsel did not choose to appear before this Court despite the matter being adjourned on 03.08.2017, 10.08.2017 and 17.08.2017 to enable him to do so.

The learned Government Pleader would contend that the Arbitral Tribunal failed to take note of the fact that the claim put forth by the first respondent was hit by laches. He would further submit that the Court below did not appreciate this aspect. In this regard, he would bring it to our notice that the agreement between the State and the first respondent was executed on 08.10.1977 whereby the first respondent was to complete the work by 19.05.1979. He however did so only by 31.03.1981. Even before the said completion, the State called upon the first respondent to make necessary rectifications in relation to the works executed. He did not choose to come forward to do so. In view of the failure of the first respondent to rectify the works undertaken, his final bill was not even settled. Despite the same, the first respondent did not come forward. It was only on 27.11.1990 that the first respondent put forth his first representation raising certain claims. Though the State did not choose to respond to this representation, the first respondent did not take any steps till 28.04.1993 when he sought arbitration for the first time.

Given the aforestated facts, it is clear that the first respondent was negligent in acting upon his claims, if any, in relation to the works which he completed as long back as on 31.03.1981. Having failed to initiate steps in this regard for over 12 years the first respondent initiated arbitration proceedings. The Arbitral Tribunal, as well as the Court below, did not appreciate these facts in the correct perspective as they would invariably non-suit the first respondent from laying any claim in relation to

the works executed by him under the agreement dated 08.10.1977 which were completed on 31.03.1981.

In that view of the matter, the Award dated 16.07.1994 was unsustainable on facts and in law.

The said Award is accordingly set aside in its entirety. The C.M.A. and the C.R.P. are accordingly allowed. It shall be open to the State to initiate proceedings for recovery of the amounts withdrawn by the first respondent pursuant to the orders granted by this Court in these cases.

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

SANJAY KUMAR,J

Dr. SHAMEEM AKTHER,J

Date:31.08.2017

GJ

