

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE ANIS

CMA.No.719 of 2017

Date:21.7.2017

Between:

Kamani Venkateswarlu,
S/o Subbaiah

..... Appellant

And:

P.SreenuBasha, Legal Manager,
Shriram City Union Finance Ltd.,
Nellore and five others.

.....Respondents

Counsel for the appellant: Mr. Y.V.Ravi Prasad

Senior counsel

for M/s Karavadi Associates

The Court made the following:

JUDGMENT:

This Civil Miscellaneous Appeal arises out of order, dated 28.4.2017, in I.A.No.308 of 2016 in O.S.No.84 of 2016 on the file of the Judge, Family Court-cum-VIII Additional District Judge, Ongole.

We have heard Mr. Y.V.Ravi Prasad, learned senior counsel appearing for the appellant and perused the record.

Respondent No.2 appeared to have advanced certain monies to respondent No.3, for which an equitable mortgage was created by the appellant by depositing and delivering the original title deeds of the plaint schedule property. The appellant and respondent Nos.4 and 5 were shown as the co-borrowers to the said loan transaction. After payment of eight instalments in full and ninth instalment in part, respondent No.3 appeared to have committed default. At the instance of respondent No.2, arbitration proceedings were initiated under the Arbitration and Conciliation Act, 1996 (for short 'the Act'), vide ARC.No.165 of 2015 before the Arbitral Tribunal-respondent No.6 and notices were served on the appellant and respondent Nos.3 to 5. On receipt of the said notices, the appellant filed O.S.No.84 of 2016 for the following reliefs:

“(a) Relief of declaration to the effect that the alleged memorandum of deposit of title deeds dated 30th June, 2014 bearing registered No.5622/2014 with the office of the Joint Sub-Registrar, Ongole and the

loan agreement dated 26th June, 2014, and the Demand promissory note, dated 26th June, 2014 are all illegal, invalid and brought into existence by way of fraud, misrepresentation and undue influence on the part of defendant Nos.1 to 5 and for consequential permanent injunction restraining 2nd defendant from proceeding with the Arbitration proceedings initiated before the 6th defendant.

(b) for costs; and

(c) for such other or further relief as the Hon'ble Court deems fit and proper in the circumstances of the case."

In the said suit, the appellant has filed I.A.No.308 of 2016 for temporary injunction restraining respondent No.2 from proceeding with the arbitration proceedings initiated before respondent No.6 pending the suit. This application was resisted by respondent No.2 by filing a counter-affidavit, wherein it was alleged that the appellant, who is no other than the grandfather of respondent No.4, colluded with respondent No.3-principal borrower and his wife-respondent No.4 and filed the suit raising a dispute which is already the subject matter of the arbitration proceedings in order to pre-empt the same and that, no temporary injunction restraining the arbitration proceedings from being proceeded with can be granted. The Court below on considering the facts of the case, considered the pleadings of the parties and, dismissed the said application.

At the hearing, Mr. Y.V.Ravi Prasad, learned senior counsel appearing for the appellant, pointed out that the sole premise on which the Court below has dismissed the afore-mentioned I.A. is wholly incorrect. He submitted that Section-41(b) of the Specific Relief Act, 1963, based on which the Court below has dismissed the I.A., is wholly inapplicable as, the said provision prohibits grant of injunction restraining any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought. Learned senior counsel submitted that the Arbitral Tribunal not being a Court, the Court below has wrongly relied upon the afore-mentioned provision in dismissing the said application.

Section-2(1)(e) of the Act defines the word "Court" as follows:-

- (i) in the case of an arbitration other than international commercial arbitration, the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions, forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil Court of a grade inferior to such principal civil Court or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration, if the same had

been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court.”

Going by the definition of “Court”, as reproduced above, the Arbitral Tribunal cannot be treated as a Court. Therefore, we are in agreement with the learned senior counsel to the extent of the reasoning on which the Court below has dismissed the afore-mentioned application. However, while exercising the appellate jurisdiction, this Court can justify the conclusion by assigning its own reasons. When the subject matter of the dispute, *namely*, liability of the appellant and respondent Nos.3 to 5, is pending before the Arbitral Tribunal-respondent No.6, the very maintainability of the suit in respect of the same subject matter is in serious doubt. Apart from this, a perusal of the reliefs prayed in the plaint, as extracted above, shows that the appellant has not claimed any relief regarding the pending arbitration proceedings. In the absence of any such relief, it is not permissible for the appellant to claim an interim relief to stall the arbitration proceedings which traverses far beyond the scope of the relief claimed in the suit.

If the appellant had any grievance regarding the arbitration proceedings, he is not remediless. Under the Act, certain remedies are provided to a person if he is aggrieved by

the initiation of the arbitration proceedings by the adversary party. Therefore, if the appellant was litigating *bona fide*, he ought to have initiated proceedings under the Act by filing a separate suit and seeking stalling of the arbitration proceedings. In our opinion, the appellant has not acted *bona fide* in filing a separate suit regarding the same subject matter with respect to which arbitration proceedings are already initiated by the respondent. The Court trying the suit filed by the appellant has absolutely no control over the pending arbitration proceedings. Therefore, the very prayer made by the appellant in I.A.No.308 of 2016 was wholly misconceived.

For the afore-mentioned reasons, we do not find any merit in this Civil Miscellaneous Appeal and the same is, accordingly, dismissed.

As a sequel to dismissal of the appeal, CMAMP.No.1200 of 2017 filed by the appellant for interim relief is dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE ANIS

21st July 2017
DR