

THE HON'BLE JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.3769 2012

ORDER:

The order, dated 01.06.2012, passed by the learned Principal District Judge, Ranga Reddy District in E.A.No.110 of 2009 in E.P.No.38 of 2007 is under challenge in the present revision, filed under Section 115 CPC.

The facts and circumstances of the case, leading to filing of the instant Civil Revision Petition are as under:

In Arbitration proceedings No.71 of 1998, initiated by the first respondent herein against respondent No.4, the learned Arbitrator on 14.07.1999 passed an arbitral award and the following is the relief granted:

- 1) The petitioner is entitled to recover from the respondents jointly, severally and personally a sum of Rs.2,98,81,397.00 with interest at 21% p.a. from 08.08.1998 till payment on Rs.2,20,60,900.00.
- 2) The petitioner is entitled to recover from the respondents jointly, severally and personally a sum of Rs.70,950/- towards the cost of the arbitration proceedings.

Seeking enforcement of the said Arbitral Award, the first respondent herein filed E.P.No.38 of 2007 on 24.09.2007 under Order XXI Rule 11 CPC and Rule 141 of the Civil Rules of Practice by way of attachment and sale of the schedule 'A' and 'B' properties of the petitioner, Schedule 'C' property of the third respondent and Schedule 'D' properties of the fourth respondent.

In the said E.P.No.38 of 2007, on 03.08.2009, the petitioner filed E.A.No.110 of 2009 under Sections 151 and 153 CPC r/w Rule 211 of Civil Rules of Practice, praying the Court below to reject E.P.No.38 of 2007 to the extent of the petitioner or in alternative to delete his name from the array of the judgment-debtor and consequently to order deletion of 'A' and 'B' schedule properties from the Execution Petition. The said application was resisted by the first respondent by way of filing counter-affidavit. The learned Principal District Judge, by way of the impugned order, dated 01.06.2012, dismissed E.A.No.110 of 2009.

In the above background, challenging the validity and the legal sustainability of the said order, the present revision came to be filed. This Court on 14.08.2012, while admitting the Revision, granted interim stay.

Heard Sri A.Sudarshan Reddy, learned Senior Counsel representing the learned counsel for the petitioner on record, and Sri S.Niranjan Reddy, learned counsel for the first respondent, apart from perusing the material available before the Court.

Submissions/contentions of Sri A.Sudarshan Reddy, learned Senior Counsel are as under:

- 1) The order under challenge is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order XXI of the CPC.
- 2) The Court below has no jurisdiction to entertain the E.P. against the petitioner in the absence of any executable decree against him.

- 3) The petitioner was not a party in any capacity in the Arbitration Proceedings No.71 of 1998 , as such execution of the Award against him beyond the same is impermissible.
- 4) In the absence of any Award against the petitioner, the properties of the petitioner cannot be proceeded against.
- 5) The judgments relied upon by the Court below, for arriving at the conclusions, have absolutely no relevance to the facts and circumstances of the case on hand.

To bolster his submissions and contentions, the learned Senior Counsel takes the support of the following decisions:

- 1) (1996) 5 SCC 728
- 2) (2002) 2 SCC 475
- 3) AIR 2007 Delhi 157
- 4) (2014) 1 SCC 648
- 5) (2014) 2 SCC 465

The submissions/contentions of the learned counsel for the first respondent are as under:

- 1) There is no error nor there is infirmity in the impugned order, as such, the same is not amenable for any interference of this Court under Section 115 CPC.
- 2) Since the impugned order is supported by valid, cogent and convincing reasons, the petitioner is not entitled for any indulgence of this Court.

- 3) The judgments cited by the learned counsel for the petitioner have no relevance to the facts and circumstances of this case.
- 4) The Court below thoroughly considered all the issues and passed the questioned order, as such the present revision is liable to be dismissed.

The principal contention, urged by the learned Senior Counsel, appearing for the petitioner, is that, since the petitioner was not a party in the Arbitration Proceedings before the learned Arbitrator and in the absence of any Award/decreed against him, the very E.P. is not maintainable against the petitioner. The sustainability of the said contention is required to be considered and examined in the facts and circumstances of the case and in the light of the law laid down in various pronouncements.

In terms of the lease agreement, dated 24.03.1995, the first respondent herein sought reference of the issue to the sole arbitrator for adjudication of the claim. In the proceedings before the arbitrator the following were shown or arrayed as respondents:

- 1) M/s Rank Aqua Estates Limited, Road No.1, Banjara Hills, Hyderabad-500 034.
- 2) Sri S.Jayadev, S/o Sri S.Harinaidu, Plot No.105, Road No.1, Jubilee Hills, Hyderabad- 500 034.
- 3) Mrs. Vanaja, W/o S.Jayadev, Plot No.105, Road No.1, Jubilee Hills, Hyderabad- 500 034.

The signing of the lease agreement, dated 24.03.1995, by the petitioner in the capacity of the Director of the second respondent-

company and also by the respondent Nos.3 and 4 is not in dispute. It is also not in controversy that the petitioner, as the Director, addressed a letter to the first respondent on 22.05.1997, informing that their company was not in a position to adhere to the payment schedule agreed to earlier. It is also significant to note that in the said letter, dated 22.05.1997, signed by the petitioner, he gave an assurance that they were fully committed to clear the outstanding as soon as possible and that the trust would not be misplaced. It is also not in controversy that the debt was also acknowledged on 20.03.1998 by the second respondent-company and the petitioner herein signed the same in the capacity of authorised signatory.

A perusal of the order under challenge, in clear and vivid terms, discloses that the learned Principal District Judge for arriving at the conclusions against the petitioner herein, had taken the support of the judgments of the Honourable Apex Court reported in **DELHI DEVELOPMENT AUTHORITY v. SKIPPER CONSTRUCTION COMPANY (P) LTD¹** and **JAI NARAIN PARASRAMPURAI v. PUSHPA DEVI SARAJ²**. The Court below categorically recorded a finding that whenever a corporate entity is abused for unjust purpose, the Court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable thereof. The Court below also took into consideration the conduct of the petitioner herein in dealing with the issue. The learned Principal District Judge considered various

¹ 1996 (4) SCC 622

² (2006) 7 SCC 756

transactions wherein the petitioner herein participated and ultimately recorded a finding that if the corporate veil is lifted, there is no difficulty in identifying the petitioner as the person who is liable for discharging the debt of the decree-holder-company.

The judgments cited on behalf of the petitioner herein by the learned Senior Counsel, appearing for the petitioner, in the facts and circumstances of the case, would not render any assistance to the petitioner herein. In the absence of any perversity in the order passed by the Court below, this Court is not inclined to meddle with the order passed by the Court below. In fact, the learned Principal District Judge in order to arrive at the conclusions recorded valid and convincing reasons.

For the aforesaid reasons, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.
There shall be no order as to costs.

05th October, 2017
Tsy

A.V.SESHA SAI, J