

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Civil Revision Petition No.1177 of 2017

Date: 27.04.2017

Between:

Mr.Adusumilli Venkateswara Rao

... Petitioner

and

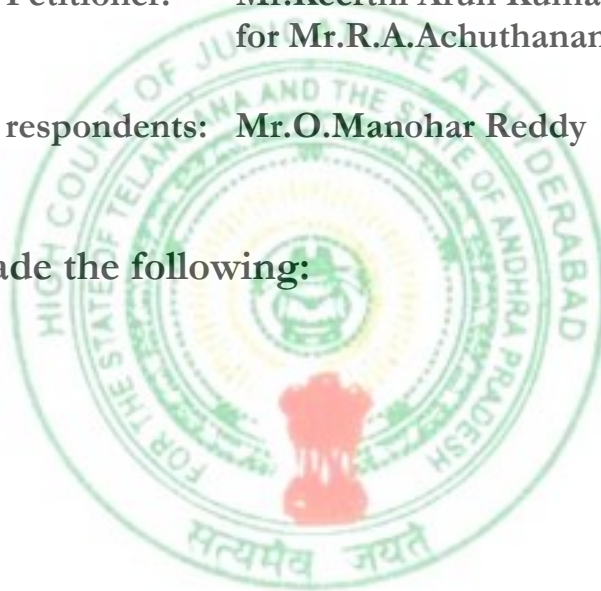
K.R.Raman and another

...Respondents

**Counsel for the Petitioner: Mr.Keerthi Arun Kumar
for Mr.R.A.Achuthanand**

Counsel for the respondents: Mr.O.Manohar Reddy

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Revision Petition arises out of Order, dated 02.01.2017, in IA.No.1601 of 2016 in AOP.No.2499 of 2016 on the file of the IX Additional Chief Judge, City Civil Court, Hyderabad (for short 'the lower Court').

We have heard Mr.Keerthi Arun Kumar, learned Counsel representing Mr.R.A.Achuthanand, learned Counsel for the petitioner, and Mr.O.Manohar Reddy, learned Counsel for the respondents.

At the instance of the parties, the dispute was referred for arbitration culminating in passing of an arbitral award *vide* AD.No.1 of 2016, dated 12-08-2016, for payment of money. The said award was questioned by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), which was registered as AOP.No.2499 of 2016. In the said Petition, the petitioner has filed IA.No.1601 of 2016 under Section 36 (2) of the Act for grant of interim stay. The Court below, while adjourning the said IA, granted stay subject to the petitioner depositing 50% of the sum of Rs.13,00,670/- awarded by the Arbitrator in favour of the respondents. Feeling aggrieved by the said Order, the petitioner filed this Civil Revision Petition.

The lower Court, while passing the conditional order referred to above, observed that the grounds urged, submissions made and the issues raised by the petitioner cannot be considered as they require detailed examination. On this premise, the Court below has granted stay subject to the condition of deposit of 50% of the aforementioned sum.

In our opinion, the Court below has not made a proper approach in considering the interim relief claimed in IA.No.1601 of 2016. Unless the Court applies the well-known parameters of *prima facie* case, balance of convenience and irreparable injury, it would not be in a position to know whether the petitioner deserves an interim order and if so, such an interim order must be conditional or otherwise. The petitioner, having a right of consideration of his petition for interim stay, cannot be mulcted with the liability of payment of 50% of the awarded amount, without examining his petition on the touch stone of the aforementioned parameters. Though discretion is vested in the Court, the same cannot be exercised arbitrarily by applying the Rule of Thumb and ignoring the aforesaid parameters.

In this view of the matter, we find that Order, dated 02.01.2017, in IA.No.1601 of 2016 in AOP.No.2499 of 2016 on the

file of the lower Court is not sustainable and the same is, accordingly, set aside. The lower Court is directed to dispose of IA.No.1601 of 2016, after hearing both sides, within two months from the date of receipt of this order. Till the said IA is disposed of, the respondents are restrained from executing the arbitral award, dated 12-08-2016, in AD.No.1 of 2016.

The Civil Revision Petition is, accordingly, allowed to the extent indicated above.

As a sequel to disposal of the Civil Revision Petition, CRPMP.No.1574 of 2017, filed by the petitioner for interim relief, is disposed of as infructuous.



(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 27th April, 2017
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