

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE T.RAJANI

CIVIL REVISION PETITION No.3664 of 2014

31.01.2017

Between:

Namburi Srihari

..Petitioner

And

Bharat Sanchar Nigam Limited, Vijayawada

..Respondent

Counsel for the petitioner: Mr.T.Ravi Kumar

Counsel for the respondent: Dr.P.Bhaskara Mohan

The Court made the following:



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

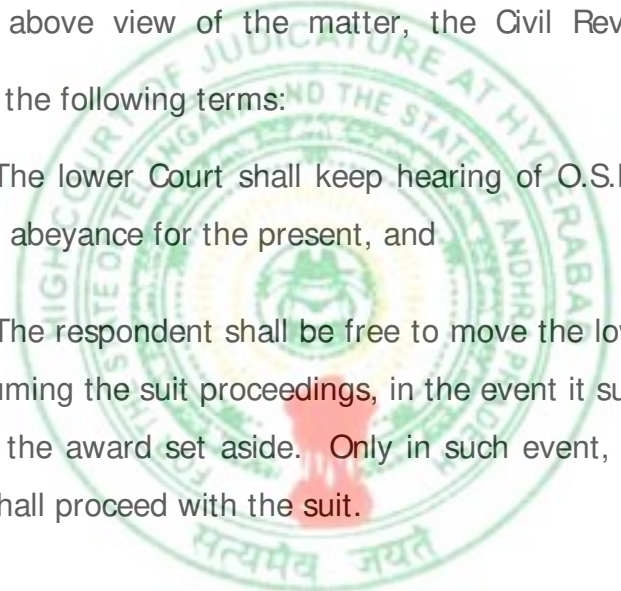
At the interlocutory stage, the civil revision petition itself is taken up for hearing and is being disposed of finally with the consent of the learned counsel for both the parties.

2. The petitioner executed a contract work entrusted by the respondent. The respondent filed O.S.No.121 of 2009 in the Court of XII Additional District Judge, Krishna at Vijayawada, for recovery of liquidated damages. The petitioner filed I.A.No.532 of 2010 in O.S.No.121 of 2009 under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for reference of the dispute to the Arbitrator. The lower Court, by the order under revision, has dismissed the said application by rendering a finding that the dispute raised in the suit is an excepted matter, which is not amenable for arbitration. Feeling aggrieved by the said order, the petitioner has filed this revision petition.

3. At the hearing, Dr.P.Bhaskara Mohan, learned counsel for the respondent, has fairly submitted that during the pendency of the suit, the claims preferred by the petitioner including that relating to the liquidated damages were referred for arbitration and that the Arbitrator passed an award in favour of the petitioner *qua* the liquidated damages, which are the subject matter of the suit. The learned counsel has further submitted that assailing the said award, the respondent has filed an application under Section 34 of the Act for setting aside the award and that the same is pending.

4. In the light of the aforementioned subsequent events, particularly in view of the passing of the award in favour of the petitioner, we are of the opinion that it is not appropriate for the lower Court to proceed with the suit as in such event, there is likelihood of conflicting decisions. Therefore, to avoid such conflicting decisions, it is desirable that the suit shall not be proceeded with till the proceedings under Section 34 of the Act are concluded. If the respondent is able to succeed in getting the award set aside to the extent of the liquidated damages, then only the suit can be proceeded with.

5. In the above view of the matter, the Civil Revision Petition is disposed of in the following terms:

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- (i) The lower Court shall keep hearing of O.S.No.121 of 2009 in abeyance for the present, and
 - (ii) The respondent shall be free to move the lower Court for resuming the suit proceedings, in the event it succeeds in getting the award set aside. Only in such event, the lower Court shall proceed with the suit.

6. As a sequel to disposal of the C.R.P., C.R.P.M.P.No.4994 of 2014 filed by the petitioner for interim relief shall stand disposed of.

C.V.NAGARJUNA REDDY,J

T.RAJANI ,J

31st January, 2017
GHN