

*HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE MS. JUSTICE J. UMA DEVI

+C.M.A.No.596 of 2015
&
A.S.No.393 of 2017

% 15-12-2017

C.M.A.No.596 of 2015

Velugubanti Hari Babu

.. Appellant

Vs.

\$ Parvathini Narasimha Rao and another

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for appellant : Sri C. Ramachandra Raju

^ Counsel for respondents : Sri P. Sri Raghuram, Senior Counsel
appearing for Sri B.V. Rama Rao

? CASES REFERRED:

1. (1999) 2 SCC 479
2. (2004) 7 SCC 288

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE MS. JUSTICE J. UMA DEVI

C.M.A.No.596 of 2015
&
A.S.No.393 of 2017

Date : 15-12-2017

C.M.A.No.596 of 2015

Between :

Velugubanti Hari Babu

.. Appellant

And

Parvathini Narasimha Rao and another

.. Respondents



Counsel for appellant : Sri C. Ramachandra Raju

Counsel for respondents : Sri P. Sri Raghuram, Senior Counsel
appearing for Sri B.V. Rama Rao

The Court made the following :

COMMON JUDGMENT:

(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

As the parties and the subject matter in both the cases are common, they are heard and being disposed of together.

The parties are referred to as they are arrayed in A.S.No.393 of 2017.

The facts of the cases are briefly summarised hereunder :

Initially, the respondents have filed A.A.O.P.No.41 of 2013 on the file of the learned Principal Sessions Judge, Rajahmundry, under Section 9 of the Arbitration and Conciliation Act, 1996 (for short "the Act") for an injunction restraining the appellant from alienating the property admeasuring Ac.14-00 in Sy.No.416/2B2 falling within the municipal Corporation limits of Rajahmundry (for short "the subject property"). They have also filed A.A.O.P.No.22 of 2016 for grant of injunction restraining the appellant from trespassing and meddling with the subject property. It is the case of the respondents that the appellant is the owner of the subject property; that the dispute between the appellant and one Mattaparthi Sivayya and 2 others in relation to the subject property is pending in O.S.No.705 of 2012 in the

Court of the learned Principal Senior Civil Judge, Rajahmundry, wherein the said three persons have claimed title over the subject property; that in that context, the appellant has approached the respondents to invest on the legal process and also to arrange an amicable settlement by paying the required amounts to the said three persons so as to get clear title and recover possession of the subject property and that the respondents have accepted the said proposal and entered into a Memorandum of Understanding (MOU), dated 27-5-2013 with the appellant. That as per the said MOU, the appellant has agreed to part with 50% of the subject property to the respondents as consideration for the investment made by the latter and he has further agreed to sell the balance of the subject property at the rate of Rs.1 crore per acre and execute a regular sale deed after all the disputes were cleared; that in pursuance of the said MOU, the appellant has received a token advance amount of Rs.7 lakhs from the respondents with the condition to adjust the said amount from out of the sale consideration that may be received by him from the respondents at the time of execution of a registered conveyance deed. That both the parties have agreed to get the disputes, if any arising in connection with the MOU, resolved through an arbitrator as

mutually agreed by them as per the provisions of the Act. That as per the terms of the MOU, the respondents could settle the dispute with the third parties by investing huge amounts and took possession of the property from the third parties and that they have also settled the dispute with one Kanchumarthi Venkata Ramachandra Rao s/o. Seetarama Rao by agreeing to pay certain amounts to him and pursuant to the same, some advances were also paid to him in order to clear the ambiguity in title. That the appellant who developed greed and malice started proclaiming in the town his intention to execute a document of conveyance in favour of a third party in respect of the subject property for a higher price in order to defeat the rights of the respondents under the MOU. That one Nemani Krishna Raja Sekhar made a wide publication through Eenadu daily newspaper on 27-11-2013 informing the general public that the appellant has entered into an agreement with him for sale of the subject property. The respondents have also averred that noticing the intention of the appellant to alienate the subject property, they have issued notice dated 11-12-2013 to him seeking for appointment of an arbitrator and that apprehending that the appellant may sell the subject

property to the said Krishna Rajasekhar, they have filed the aforementioned O.P. under Section 9 of the Act.

The appellant has filed a counter affidavit wherein while inter alia admitting that O.S.No.705 of 2012 was pending, he has however taken the plea that the suit schedule property is only an extent of Ac.0-11 cents i.e., 0-04 cents, 0-03 cents and 0-04 cents and not the entire subject property comprising Ac.14-00. He has also denied that there is any dispute between him and Kanchumarthi Venkata Ramachandra Rao s/o. Seetarama Rao over the subject property and that neither the defendants in the suit nor Kanchumarthi Venkata Ramachandra Rao have filed any suit against the appellant claiming title over the subject property. As regards the MOU, the appellant averred that he never entered into such a MOU and that the same is fabricated by the respondents. While denying the terms of the MOU, the appellant pleaded that he never approached the respondents at any point of time and entered into the MOU, that he never received any advance amount, that since the MOU itself is a forged and fabricated one, the question of reference of the dispute to an arbitrator does not arise and that consequently the application under Section 9 of the Act is not maintainable. He has also

referred to the fact of filing of a criminal case against the respondents for the alleged fabrication of the MOU and its pendency in the Court of the VII Additional Judicial First Class Magistrate, Rajamahendravaram.

On considering the respective pleas of the parties, the lower Court has allowed the application filed by the respondents and granted injunction restraining the appellant from alienating the subject property during the pendency of the arbitral proceedings.

While AAOP No.41 of 2013 was pending before the lower Court, the respondents have filed Arbitration Application No.79 of 2014 in the month of March 2014 seeking appointment of an arbitrator. In the counter affidavit filed in the said application also, the appellant has taken the stand that he never entered into the MOU and that the respondents have created the same by forging his signature. The learned Chief Justice, however, allowed the arbitration application by order dated 13-2-2015 appointing an arbitrator while observing that the issue pertaining to the genuineness or otherwise of the MOU will be decided by the arbitrator himself. About six months after the said application was allowed, the appellant has filed the present Civil Miscellaneous Appeal with an application for condonation of

delay of 180 days. There is a serious controversy as to the manner in which the appellant got the delay condoned. However, we do not propose to delve into the said aspect as the same has no relevance for disposing of the cases.

Against the order appointing the Arbitrator, the appellant filed S.L.P.No.15415 of 2015 in the Supreme Court wherein interim order of stay of the order of the Chief Justice was granted.

At the hearing, Sri C. Ramachandra Raju, the learned Counsel for the appellant, advanced the following submissions :

- (1) That *ex facie*, the MOU is unconscionable as no person of ordinary prudence will agree to part with Ac.7-00 of valuable land situated within the municipal Corporation limits of Rajahmundry, free of cost in consideration of the respondents agreeing to settle the dispute with third parties over a paltry extent of Ac.0-11 cents which alone was the subject matter of O.S.No.705 of 2012 and that the Court below has completely overlooked this fact while granting the injunction orders.
- (2) That when the respondents have chosen to approach the Hon'ble Chief Justice under Section 11 of the Act, they should have sought interim relief in that application itself

and that on the facts of the case, they were not entitled to maintain the application under Section 9 of the Act.

- (3) That as the dispute relates to the genuineness of the MOU, the lower Court ought to have refrained from granting injunction till its genuineness is adjudicated by the competent authority as until such adjudication, it was not possible for any Court to weigh the element of prima facie case which is one of the requirements for grant of an order of injunction.
- (4) That under sub-section (2) of Section 9 of the Act, the order granting interim measure would automatically come to an end if arbitral proceedings are not commenced within 90 days and the Court granting such order has not extended time for such commencement and that in the instant case as the arbitral proceedings have not commenced even till date, the interim order of injunction has ceased to exist by operation of the aforementioned statutory provision.
- (5) That by granting injunction in A.A.O.P.No.22 of 2016, the lower Court committed a serious error.

Sri P. Sri Raghuram, learned Senior Counsel for the respondents opposed the above submissions. He has taken us through the relevant pleadings, the recitals in the MOU, the relevant provisions of the Act and submitted that the orders of the lower Court do not suffer from any illegality and that on the contrary, on the facts of the case, the same were just and necessary.

It is brought to the notice of this Court that the order dated 13-2-2015 of the learned Chief Justice appointing the arbitrator was set-aside by the Supreme Court and the matter was remanded for adjudication as to the genuineness or otherwise of the MOU and that after such remand the application is still pending in this Court.

We have considered the respective submissions of the learned Counsel for the parties with reference to the record.

We would like to deal with each of the contentions of the learned Counsel for the appellant herein below:

Re Contention No.1: The sheet-anchor of the submission of the learned Counsel for the appellant is that the subject matter in O.S.No.705/2012 being only Ac.0-11 cents, no prudent person would agree to part with Ac.7-00 of valuable land for free and the

balance Ac.7-00 on paltry consideration of Rs.1 crore per acre. In order to test the correctness of this submission, it is necessary for us to refer to the relevant pleadings of the plaint and its Schedule. The averments contained in paragraphs 6 and 7 of the plaint read as under :

“6. The plaintiff submits that the defendants are staying in Ac.0-04 cts, Ac.0-03 and Ac.0-04 cts respectively in which they were permitted. The respective houses were shown in a separate plan as plots 1, 2 and 3 and here to filed for better appreciation of the Hon’ble Court. Now the plaintiff wants to renovate his entire land and to make good of it by removing all the waste trees, shrubs and bushes and to make it one cultivable by removing the small number of cashew nut trees remained in the land and told to the defendants on 15-6-2012 to remove their thatched houses and sheds from the land and vacate the site. The defendants requested two months time, but they did not vacate the same and on the other hand began advancing threats. They began to talk as if they perfected rights over the Ac.0-11 cts of land in which they were permitted. Recently the defendants come to know that the high-way is going to be further extended and widened and their huts may be removed. On which the defendants with all their high handed acts and at the instance of one notorious land grabbing gang leader, the defendants are trying to erect their thatched house encroaching some site from the plaint schedule property on the east of their present staying site. The defendants are now in the hands of land grabbers and also some political big-wigs and not caring the plaintiff or his demands in any way. The plaintiff along with this suit is simultaneously issuing a notice to the defendants terminating permission given by him and demanding eviction and possession of that Ac.0-11 cts of site and take separate steps as per law for evicting the defendants. Since the defendants are threatening to invade, interfere and occupy the land of plaintiff in further in view of the recent

proposals for further widening of high-way, and since the defendants are making abortive attempts for the same taking the plaintiff's not having any men and muscle power, the plaintiff in view of urgency involved has filed this suit for protecting his land from being high handed occupation of the defendants.

7. The plaintiff submits that the defendants are strongly influenced by a political man and notorious land grabbing activist of the local area and making all these things at his instance. There is nothing law-full on the part of defendants. The defendants have no manner of right to enter into the land of plaintiff i.e., plaint schedule land much less to occupy. The plaintiff in order to prove himself the possessor of plaint schedule property apart from absolute title has filed all his documents registered wills, pattadar pass books, No.5 Adangal extracts etc., and his possession is un-fettered and can not be questioned by anybody including the defendants.”

In paragraph-9 of the plaint, pertaining to cause of action, the appellant averred as under:

“ on 15-6-2012 when he asked the defendants who are in permissive possession to vacate plots 1 to 3 shown in the plaint plan which is to an extent of Ac.0-11 cts. in measurements and the defendants apart (sic: from) not vacating the same have begun high handed acts of further occupation of plaintiff's land on the east of their existing houses now in plots Nos.1 to 3 of plaint plan and making serious attempts of it and the plaintiff has been resisting and the defendants are causing violence and continuing their efforts and made believe the plaintiff that he has every urgency to seek redressal through a court of law and filed this suit and at Rajahmundry urban area where the plaint schedule property is situated....”

In paragraph-10 relating to valuation, the appellant has mentioned as under:

Plaintiff values the relief	@ Rs.1,55,300-00
Rs.10,000/- per acre x 15.53 cts	Rs.1,55,300-00

The plaint Schedule, to the extent it is relevant, reads as under :

“East Godavari District, Rajahmundry Town (Rajahmundry urban area) Rajahmundry municipal limits, in RS No.416/2B2 an extent of Ac.15-53 cts excluding Ac.0-11 cts which is in defendants’ permissive possession on the western side in three plots of Ac.0-04 cts, Ac.0-03 cts and Ac.0-04 cts as shown as Plot Nos.1, 2 and 3 in the plaint plan.....”

A cumulative reading of the afore-extracted averments of the plaint in O.S.No.705/2012 would undoubtedly reveal the stand taken by the appellant that while the defendants therein were in permissive possession of Ac.0-11 cents, they were trying to further encroach the balance of the suit schedule land. In paragraph-6 of the plaint, the appellant clearly averred that as regards Ac.0-11 cents of land, he is simultaneously issuing a notice terminating the permission and taking separate steps as per law for evicting the defendants from the said extent of land. In the paragraph relating to cause of action, it is clearly stated that while the defendants were not meeting the demand of the appellant to vacate the extent of Ac.0-11 cents, they have also started high handed acts of further occupying his land situated on the east of the houses existing in plot Nos.1 to 3 of the plaint

plan. The appellant has calculated the Court fees over the entire extent of Ac.15-53 cents. In the plaint schedule, the appellant has excluded Ac.0-11 cents from out of Ac.15-53 cents, which necessarily means that the subject matter of the said suit was Ac.15-42 cents only. This being the unequivocal position emerging from the various averments of the plaint as discussed above, we do not find any basis for the strong assertion of the learned Counsel for the appellant that the subject matter of O.S.No.705 of 2012 was only Ac.0-11 cents and that the terms of the MOU are wholly unconscionable. This contention is accordingly answered.

Re Contention No.2: Though, to start with, the learned Counsel has advanced his submissions that the respondents ought to have filed an application under Section 11 of the Act for interim relief, he has finally conceded that under the said provision, the Hon'ble Chief Justice or his nominee is not empowered to grant such interim relief.

Re Contention No.3: As far as the first part of the submission of the learned Counsel is concerned, the same can be referred only to be rejected. Interim injunction is one of the reliefs envisaged under Section 9 of the Act. It is a well settled legal

proposition that before granting an order of injunction, the Court has to consider the elements of prima facie case, balance of convenience and irreparable injury. The evaluation of prima facie case is therefore *sine qua non* for the Court while considering an application for grant of injunction. Merely because the genuineness of the MOU propounded by the respondents is disputed by the appellant, the Court cannot abdicate its responsibility to weigh the elements of prima facie case and non-suit the proponent of the disputed document till its genuineness or otherwise is adjudicated by the competent authority. It is common knowledge that quite often one party disputes the genuineness of the documents produced by the opposite party. The Court must nevertheless deal with such dispute and render a prima facie finding as to whether the party who approached the Court for the relief of interim injunction has a prima facie case or not. The learned Counsel for the appellant has conceded that the lower Court while exercising its jurisdiction under Section 9 of the Act is not expected to render a finding on the genuineness or otherwise of the MOU. Indeed, the lower Court has not even attempted to delve into this aspect and in our view, very rightly. When the respondents have produced the MOU, the Court

cannot ignore their plea based on such disputed document for evaluating the *prima facie* case till the competent authority has declared it as a forged or a genuine document. In our view, the lower Court has rightly taken into consideration the existence of the MOU while dealing with the application of the respondents for grant of interim relief.

The learned Counsel for the appellant submitted that the lower Court has erroneously found the *prima facie* case in favour of the respondents only on the ground of existence of a dispute regarding the genuineness of the MOU. We are afraid, this submission is advanced on an incorrect reading of the order under appeal. A proper reading of paragraph-12 of the order of the lower Court passed in A.O.P.No.41 of 2013 shows that it has referred to Ex.P-1-MOU in support of its finding that the same constitutes *prima facie* evidence that an agreement between the parties exists. While considering the element of balance of convenience, the lower Court has referred to the factum of existence of a dispute regarding the MOU between the parties and further observed that pending adjudication of the dispute by the arbitrator, there is every possibility of the subject property being alienated to the detriment of the interests of the respondents, that

in such an event the respondents would not only suffer loss, but such alienation also leads to multiplicity of proceedings and that such a situation may also result in the respondents not being able to enforce their interest in the MOU even if they ultimately succeed in proving its genuineness. On this reasoning, the Court below has found the balance of convenience and irreparable injury in favour of the respondents. This being the true purport of the order of the lower Court, we do not find any error in its reasoning while granting injunction in favour of the respondents. No party can legitimately insist that since it has disputed the genuineness of a document which forms the basis for the relief claimed by the opposite party, till its genuineness is decided by the competent authority, the Court must refrain from exercising its jurisdiction for granting interim relief pending adjudication of such dispute. As noted herein before, the main ground on which the lower Court has granted injunction is that if the suit property is alienated pending adjudication of the dispute relating to the genuineness or otherwise of the MOU, the same would cause irreparable injury to the respondents. We do not see as to how this reasoning of the Court below is either flawed or unsound. We are entirely in agreement with the observation of the Court

below that alienation of the suit property in any manner pending adjudication of a serious dispute would result in serious prejudice to the interests of the party who is bona fide litigating. Hence, this contention of the learned Counsel is rejected.

Re Contention No.4: For proper appreciation of this contention, we need to refer to a few relevant provisions of the Act. Section 9 of the Act empowers the Court to grant interim measures which include an order of interim injunction under sub-clause (d) to clause (ii) of sub-section (1) thereof. Sub-section (2) of Section 9, which is relevant in the present context, reads as under :

“Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.”

The contention of the learned Counsel for the appellant as noted herein before is that if for any reason the arbitral proceedings are not commenced within a period of 90 days from the date of passing the order of any interim measure, such order automatically ceases to be in force unless the Court which granted such order has extended the time for commencement of the

arbitral proceedings. He has further argued that once an arbitrator is appointed with the stipulated time, the order granting interim measure would automatically come to an end and the party has to move the arbitrator for such interim measure.

The obvious legislative intent in incorporating sub-section (2) of Section 9 of the Act is to prevent misuse of the provision regarding grant of interim measure by the Court since under Section 9(1), the party which is entitled to approach the Court and secure interim measure even before the commencement of arbitral proceedings, may avoid initiation of arbitral proceedings after securing an interim measure. The object behind insertion of this provision is to see that a party securing an order of interim measure will not continue to enjoy such measure beyond the period stipulated in the provision without initiating the arbitral proceedings. Viewed from this angle, though this provision per se does not declare that the interim measure granted under Section 9(1) automatically ceases to exist if arbitral proceedings are not commenced within 90 days or within such further time as the Court may determine, we find force in the submission of the learned Counsel for the appellant that such interim measure would automatically cease to exist on the expiry of the stipulated

period of 90 days from the date on which it was granted or within such further time as determined by the Court which granted such order. Even the learned Senior Counsel for the respondents has fairly conceded to this position.

In the light of the above noted statutory provisions, we shall now consider, whether in the present case the arbitral proceedings have commenced ?

Section 21 of the Act deals with commencement of the arbitral proceedings and the said provision reads as under :

“Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

The phrase, ‘arbitral proceedings shall be commenced’ in subsection (2) of Section 9 of the Act shall be understood in the light of Section 21 of the Act. On a true understanding of the said provision, there can be no doubt that the arbitral proceedings would commence the moment the respondent (opposite party) receives the request for the dispute to be referred to arbitration. The following case law fortifies this view of ours.

In M/s. Sundaram Finance Ltd. Vs. M/s. NEPC India

Ltd.¹ the Supreme Court held, at paras 11 and 12, as under :

“The reading of Section 21 clearly shows that the arbitral proceedings commence on the date on which a request for a dispute to be referred to arbitration is received by the respondent. It is in this context that we have to examine and interpret the expression "before or during arbitral proceedings" occurring in Section 9 of the 1996 Act. We may here observe that though Section 17 gives the arbitral tribunal the power to pass orders the same cannot be enforced as orders of a Court. It is for this reason that Section 9 admittedly gives the Court power to pass interim orders during the arbitration proceedings.

The position under the Arbitration Act, 1940 was that a party could commence proceedings in Court by moving an application under Section 20 for appointment of an arbitrator and simultaneously it could move an application for interim relief under the Second Schedule read with Section 41(b) of the 1940 Act. The 1996 Act does not contain a provision similar to Section 20 of the 1940 Act. Nor is Section 9 or Section 17 similar to Section 41(b) and the Second Schedule to the 1940 Act. Section 8 of the new Act is not in pari materia with Section 20 of the 1940 Act. It is only if in an action which is pending before the Court that a party applies that the matter is the subject of an arbitration agreement does the Court get jurisdiction to refer the parties to arbitration. The said provision does not contemplate, unlike Section 20 of the 1940 Act, a party applying to a Court for appointing an arbitrator when no matter is pending before the Court. Under the 1996 Act appointment of arbitrator/s is made as per the provision of Section 11 which does not require the Court to pass a judicial order appointing arbitrator/s. The High Court was, therefore, wrong in referring to these provisions of the 1940 Act while interpreting Section 9 of the new Act.”

¹ (1999) 2 SCC 479

In **Milkfood Ltd. Vs. GMC Ice Cream (P) Ltd.**², the

Supreme Court held at para-49 as under :

“Section 21 of the 1996 Act, as noticed hereinbefore, provides as to when the arbitral proceedings would be deemed to have commenced. Section 1 although may be construed to be laying down in provision for the purpose of the said Act but the same must be given its full effect having regard to the fact that the repeal and saving clause is also contained therein. Section 21 of the Act must, therefore, be construed having regard to Section 85(2)(a) of the 1996 Act. Once it is so construed, indisputably the service of notice and/or issuance of request for appointment of an arbitrator in terms of the arbitration agreement must be held to be determinative of the commencement of the arbitral proceeding.”

In the instant case, the appellant himself has filed pleadings in A.A.O.P.No.79 of 2014. In paragraph-6 of the “Brief written statement”, forming part of the said A.A.O.P., the respondents stated as follows:

“It is respectfully submitted that the petitioners got issued legal notice dated 11-12-2013 to the respondent invoking arbitration clause for appointment of Arbitrator.”

In paragraph-17 of the counter affidavit filed by the appellant in the said A.A.O.P., he has averred as under :

“In reply to the contents of paragraph No.6, it is submitted that the applicants by way of a S.9 application based on false and forged documents have managed to get an interim order of status quo in their favour and the same is not a reflection of the veracity of the said forged MOU.”

² (2004) 7 SCC 288

The averments in the above reproduced paragraph of the counter affidavit reveal that the appellant has not specifically denied issue of legal notice on 11-12-2013 by the respondents invoking the arbitration clause for appointment of an arbitrator. Not only that such a notice appears to have been issued, but also an arbitrator was also appointed. However, as stated herein before the said appointment was set-aside by the Apex Court and the matter is pending before the learned Chief Justice, after remand.

The learned Counsel for the appellant argued that since the appointment of the arbitrator was set-aside by the Supreme Court, till the Chief Justice of this Court adjudicates the genuineness or otherwise of the MOU and appoints an arbitrator in the event he finds that the MOU is genuine and such arbitrator enters upon reference, the arbitral proceedings cannot be treated as having been commenced. He has further argued that in order that Section 21 becomes operational, an arbitrator needs to be appointed and he must enter reference and then only the fiction of deemed commencement under the said provision will come into play. This submission, in our view, is without any merit. The arbitral proceedings, as held supra, commenced on receipt of legal

notice by the appellant and the order of the Supreme Court setting aside the appointment of arbitrator had no effect on such commencement of the arbitral proceedings.

As regards the submission that the interim order granted by the Civil Court would automatically come to an end once an arbitrator is appointed and thereafter the party has to seek interim relief before the arbitrator, we find the same without any merit.

In **M/s. Sundaram Finance Ltd. (1-supra)**, the Supreme Court held at para-13 as under :

“Under the 1996 Act the Court can pass interim orders under Section 9. Arbitral proceedings, as we have seen, commence only when the request to refer the dispute is received by the respondent as per Section 21 of the Act. The material words occurring in Section 9 are "before or during the arbitral proceedings". This clearly contemplates two stages when the Court can pass interim orders, i.e., during the arbitral proceedings or before the arbitral proceedings.....”

The language of Section 9(2) of the Act does not limit the operation of interim measure till appointment of arbitrator only.

On the contrary, a party can seek interim measure at three stages, viz., before, during the pendency of arbitral proceedings and after passing of the award, but before it is enforced under Section 36 of the Act. The fact that a party can approach the Court even during the pendency of the arbitral proceedings and seek interim

measure, clearly shows that the legislature clearly intended to empower the court to grant interim measure to last till the arbitral proceedings conclude and an award is passed. As noted above, the Court is empowered to grant such measures even after an award is passed, but before it is enforced.

On the premises as above, we hold that the order of injunction granted by the lower Court did not cease to exist as submitted by the learned Counsel for the appellant. This contention is accordingly rejected.

Re Contention No.5: This contention exclusively pertains to A.S.No.393 of 2017. In the order dated 6-2-2017 in A.A.O.P.No.22 of 2016, the lower Court has observed that as the merits of the basic case in both the A.O.Ps. are identical, they need not be separately discussed. It has relied upon the third party affidavits of P.Raj Kumar and Ch.M.V.S.N.S.D. Prasad and observed that prima facie case and balance of convenience are in favour of the respondents.

As rightly argued by Sri C. Ramachandra Raju, the *sine qua non* for granting an order of injunction is a finding regarding physical possession of the party seeking injunction. Admittedly, the appellant continued to be the owner of the property and the

respondents were only purporting to exercise their rights under the MOU dated 27-5-2013, a perusal of which shows that there is no recital in unequivocal terms that possession was delivered by the appellant to the respondents. With respect to the factum of possession, the respondents have raised a vague plea in sub-paras (c) and (d) of para-1, which reads as under :

“The petitioners submit that they and the respondent agreed to resolve the disputes, if any arises in connection the terms of agreement thus entered into by the petitioners and respondent on 27-5-2013 through an Arbitrator, who is mutually agreed by the petitioners and the respondent. They also agreed to settle the disputes through Arbitrator under the provisions of the Arbitration and Conciliation Act 1996.

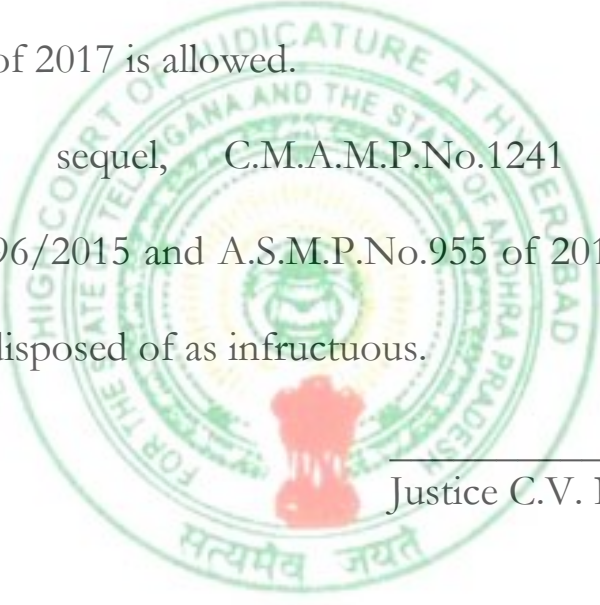
The petitioners submit that in pursuance of terms of contract, the petitioners have settled the dispute with 1) Mattaparthi Sivayya, 2) Mattaparthi Satyanarayana and 3) Mattaparthi Srinu, 4) Bunga Appa Rao, 5) Bathula Yedukondaly, 6) Polinati Srinu, 7) Nakka Venkata Ratnam Raju and took possession of the property from them about 50 days back by investing huge amounts.”

From the above reproduced pleadings, it is clear that the case of the respondents regarding their taking possession is not only vague and equivocal but also the same lacks conviction. They have not even produced the affidavits of the seven persons whose names have been mentioned in sub-para (d) of para-1, from whom the respondents have allegedly taken possession. Unless a specific finding with respect to the factum of possession on

considering the terms of the MOU and other documentary evidence, if any, is rendered, the respondents were not entitled to grant of injunction. We are therefore of the opinion that the Court below has committed a patent illegality in granting injunction restraining the appellant from “trespassing and meddling of the property”. The order dated 6-2-2017 in A.O.P.No.22 of 2016 is accordingly set-aside.

In the result, C.M.A.No.596 of 2015 is dismissed and A.S.No.393 of 2017 is allowed.

As a sequel, C.M.A.M.P.No.1241 of 2015 in C.M.A.No.596/2015 and A.S.M.P.No.955 of 2017 in A.S.No.393 of 2017 are disposed of as infructuous.



Justice C.V. Nagarjuna Reddy

Justice J. Uma Devi

Date : 15-12-2017

AM