

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CIVIL REVISION PETITION No.6410 of 2017
AND
CIVIL MISCELLANEOUS APPEAL No.1224 of 2017

COMMON ORDER
(per Justice Sanjay Kumar)

The first defendant in O.S.No.662 of 2017 on the file of the learned X Additional Chief Judge, City Civil Court, Hyderabad, filed these cases aggrieved by the common order dated 06.09.2017 passed by the trial Court in I.A.Nos.654 of 2017 and 760 of 2017 filed in the suit. The first respondent herein is the plaintiff and the second respondent is the second defendant in the suit.

Parties shall hereinafter be referred to as arrayed in the suit.

I.A.No.654 of 2017 was filed by the plaintiff in the suit under Order 39 Rules 1 and 2 CPC seeking a temporary injunction restraining the first defendant from invoking the bank guarantee dated 16.08.2016 and the second defendant from making any payment under the said bank guarantee. I.A.No.760 of 2017 was filed by the first defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'). By the common order under challenge, the trial Court allowed I.A.No.654 of 2017 granting a temporary injunction restraining the first defendant from invoking the bank guarantee and the second defendant bank from honouring the same pending disposal of the suit. I.A.No.760 of 2017 filed by the first defendant under Section 8 of the Act of 1996 was dismissed.

Perusal of the common order under challenge reflects that the only ground on which I.A.No.760 of 2017 was dismissed was that the original arbitration agreement or a duly certified copy thereof was not filed by the first defendant along with the said I.A. This understanding of the trial Court defies comprehension as the plaint itself indicated that the original document containing the arbitration clause was filed by the plaintiff.

In the light of the law laid down by a Division Bench of this Court in M/ s. Asian Securities & Estates Ltd. v. Mohammed Ajarudin¹, the mandatory requirement of Section 8(2) of the Act of 1996 with regard to filing of the certified copy or the original of the agreement is whittled down if the said agreement in original or a certified copy thereof is filed along with the plaint even before the other side files an application to refer the dispute to an arbitrator under Section 8 of the Act of 1996.

It is also pointed out that the plaintiff never raised the ground that the first defendant failed to produce the original/certified copy of the agreement. It appears that the trial Court itself struck upon this misconceived ground and dismissed the I.A. filed by the first defendant. As the trial Court failed to address the merits of the petition filed by the first defendant under Section 8 of the Act of 1996, the common order passed by the trial Court in so far as it relates to I.A.No.760 of 2017 cannot be sustained.

As regards the temporary injunction petition filed by the plaintiff in I.A.No.654 of 2017, the common order reflects that the trial Court was of the opinion that the allegation of fraud made in the plaint and in the affidavit filed in support of the petition was sufficient to attract the provisions of Section 17(4) of the Indian Contract Act, 1872. Despite the fact that the first defendant relied upon Himadri Chemicals Industries Ltd. v. Coal Tar Refining Company², the trial Court failed to note that the degree of fraud required to grant an injunction restraining the invocation of a bank guarantee would be of a much higher nature and such fraud must be of an egregious nature so as to vitiate the entire underlying transaction, without applying this standard, it appears that the trial Court merely assumed that any act fitted to deceive would be sufficient for a party to seek an injunction in restraint of invocation of a bank guarantee. This understanding of the trial Court is opposed to the settled legal position as spelt out by judgments galore of this Court and the Supreme Court. Thus, the common order in so far as it relates to I.A.No.654 of 2017 also suffers from insufficient application of mind.

On these grounds, the common order dated 06.09.2017 in I.A.Nos.654 of 2017 and 760 of 2017 in O.S.No.662 of 2017 on the file of the learned X Additional Chief Judge, City Civil Court, Hyderabad, is set

¹ CRP No.2039 of 2014 decided on 22.08.2014

² AIR 2007 SC 2798

aside and both the I.As. are remitted to the trial Court for consideration afresh on merits and in accordance with law.

We are informed that the trial Court already directed the plaintiff to renew the bank guarantee.

Sri A.Venkatesh, learned counsel, would further point out that the said bank guarantee was invoked by the first defendant long before its expiry in September, 2017.

Be that as it may.

As this is a second round of consideration of these I.As., the trial Court shall endeavour to dispose of the same expeditiously and preferably, within four weeks from the date of receipt of a copy of this order.

The civil revision petition and the civil miscellaneous appeal are allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

KONGARA VI JAYA LAKSHMI, J

Date: 11.12.2017
IBL