

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

CIVIL REVISION PETITION No.2583 of 2017

Between:

Kotha @ Pulipalupula
Dhananjaya

... Petitioner

And

Kotha @ Pulipalupula Lokesh
S/o Late Kotha @ Pulipalupula
Srinivas and another.

... Respondents

JUDGMENT PRONOUNCED ON 08.11.2018
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE T.AMARNATH GOUD

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< Gist:

> Head Note:

! Counsel for the petitioner: Mr. Prabhakar Sripada

Counsel for respondent No.1: Mr. V.Hari Haran

^ Counsel for respondent No.2: Mr. M.S.Prasad

Senior Counsel

For Mr. K.Durga Prasad

? Cases Referred:

NIL

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
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Counsel for the petitioner: Mr. Prabhakar Sripada

Counsel for respondent No.1: Mr. V.Hari Haran

Counsel for respondent No.2: Mr. M.S.Prasad

Senior Counsel

For Mr. K.Durga Prasad

The Court made the following:

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

This Civil Revision Petition arises out of order, dated 29.4.2017, in E.A.No.801 of 2017 in E.P.No.56 of 2011 in Arbitration O.P.No.1 of 2009 on the file of the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

We have heard Mr. Prabhakar Sripada, learned counsel for the petitioner, Mr. V.Hari Haran, learned counsel for respondent No.1 and Mr. M.S.Prasad, learned senior counsel appearing for respondent No.2.

The petitioner and respondent No.2 have suffered a final arbitral award on 27.8.2010 in Arbitration O.P.No.1 of 2009. Seeking execution of the said award, respondent No.1 filed E.P.No.56 of 2011 in the Court of the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad. The petitioner filed E.A.No.801 of 2017 praying for dismissal of the said E.P. as not maintainable as, the arbitral award was not made the Rule of the Court under Section-17 of the Arbitration Act, 1940 (for short 'the 1940 Act'). The Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, dismissed the said application in limine without even inviting a counter from respondent No.1. Feeling aggrieved by the said order, the applicant in E.A.No.801 of 2017 filed this Civil Revision Petition. In the affidavit filed in support of the said E.A., the applicant *inter alia* averred as under:

“I submit that I filed O.P.No.80 of 1992 on the file of Principal Senior Civil Judge under Section-8 of the Arbitration Act, 1940, seeking the appointment of an Arbitrator to adjudicate the disputes between me and my brothers. The said O.P. was allowed by an order, dated 03.5.1997. Initially, Hon’ble Sri Ramandham, Retired Judge, was appointed as Arbitrator, after adjudicating the dispute for some time demitted office. Later on, Hon’ble Mr. Justice Vaman Rao (Retd.) was appointed as an Arbitrator, after adjudicating the dispute for some time he too demitted office. Subsequently, Hon’ble Mr. Justice A.Gopal Rao (Retd.) was appointed as an Arbitrator and he too after adjudicating the dispute for some time demitted office. Later on, Mr. Vidya Sagar, Former Law Secretary, was appointed as an Arbitrator and he too after adjudicating the dispute for some time demitted office and ultimately, Hon’ble Mr. Justice G.Bikshapathy (Retd.) was appointed as an Arbitrator by the Hon’ble Principal Senior Civil Judge, R.R. District, L.B.Nagar in I.A.No.2778 of 2008 in O.P.No.80 of 1992 by an order, dated 27.01.2009. It is deemed to be an appointment under the Arbitration Act, 1940.

I submit that under the provisions of the Arbitration Act, 1940, the Award of the Arbitrator by itself is not per-se executable, it becomes executable only after the Award is made a Rule of the Court in terms of Section-17 of the Arbitration Act, 1940. In the instant case, the Decree-holder has never bothered to get the Award made the Rule of the Court. No judgment and decree has been passed in accordance with Section-17 of the Arbitration Act, 1940.

I submit that the so called Award passed by the Hon’ble Sole Arbitrator is an Award under the provisions of the Arbitration Act, 1940 and without there being a judgment and decree in terms of Section-17 of the Arbitration Act, 1940, the present Award is in-executable.”

(Emphasis added)

In the order under Revision, the lower Court observed that Section-17 does not deal with any requirement of the Award being made Rule of the Court before the same being executed like a judgment and decree of a civil Court.

Before carrying the discussion further, we find it necessary to reproduce the entire order, which though small in size, is however not 'beautiful'.

"Perused the record. There is an order, dated 29.7.2016, to await execution till passing of order in A.O.P.No.1039/2010 and the same was dismissed on 03.03.2017. The petitioner questioned the maintainability of the present petition stating that the Arbitration Award has not been made a Rule of Court u/s 17 of the Arbitration Act. Perused Section-17 of the Arbitration Act, said section does not deal with any requirement about making an Award a Rule before the same can be executed like a judgment and decree of a Civil Court.

The respondent No.1/D.Hr prayed that the petition be dismissed on merits.

There are no merits in the petition about maintainability u/s 17 of CPC on the ground that Section-17 of the Arbitration Act has not been complied. As such, this petition is not maintainable.

In the result, this petition is dismissed."

Mr. V.Hari Haran, learned counsel for respondent No.1, has not disputed, and indeed, he cannot dispute, that an award passed under the 1940 Act is not straightaway executable unless judgment in terms of the said award was passed under Section-17 of the 1940 Act. The core issue before the lower Court, therefore, was whether the Award, for execution of which E.P.No.56 of 2011 was filed by

respondent No.1, was passed under the 1940 Act or under the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act'). If it is held that the Award was passed under the former Act, the E.P. *per se* was not maintainable as, admittedly judgment in terms of the Award was not passed as required under Section-17 of the 1940 Act. Conversely, if the award was passed under the 1996 Act, there would be no requirement of passing the judgment in terms of the Award.

To our utter disappointment, the lower Court has failed to discuss the core issue referred to above and render a finding thereon. Its cryptic finding that Section-17 of the Arbitration Act does not deal with any requirement about making an award a Rule before the same can be executed like a judgment and decree of a civil Court is highly perfunctory, to say the least as, the lower Court has not discussed as to under which of the two Acts, it was referring to Section-17.

Section-17 of the 1940 Act deals with judgment in terms of the award which reads as under:

"Judgment in terms of award: Where the Court sees no cause to remit the award or any of the matters referred to arbitration for consideration or set aside the award, the Court shall, after the time for making application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except on the

ground as it is in excess of, or not otherwise in accordance with, the award.”

The provision reproduced above thus postulates making a judgment and passing a decree in terms of the award. This provision needs to be read with Sections-30 and 33 of the 1940 Act, under which an award could be set aside on contest by the aggrieved party. Thus, under the scheme of the 1940 Act, it is the decree which alone is executable and not the award simplicitor.

As rightly argued by the learned counsel for the petitioner and learned senior counsel for respondent No.2, when a specific issue on the maintainability of the E.A. was raised, it is the duty and responsibility of the lower Court to decide the said issue. Unfortunately, the lower Court has abdicated this responsibility and dismissed the E.A. in a light hearted manner without bestowing its attention to the E.A. with all the seriousness it deserved. Such an approach is not expected of a senior judicial officer.

In the above view of the matter, this Court is left with no option other than setting aside the order of the lower Court. Accordingly, the order under revision is set aside. E.A.No.801 of 2017 is restored to the file of the Principal District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad. The lower Court is directed to decide the said E.A. by rendering a specific finding as to under which of two Acts, viz., the 1940 Act or 1996 Act the Award in respect of which E.P.No.56 of 2011 is filed falls, after inviting counter from respondent No.1 and hearing counsel for both parties.

Subject to the above direction, the Civil Revision Petition is allowed.

As a sequel to allowing of the Civil Revision Petition, interim order, dated 12.10.2017, in CRPMP.No.3390 of 2017 is vacated and the said application is disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

08th November, 2018

Note:

LR copies to be marked.

B/o

DR

