

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

COMMERCIAL COURT APPEAL No.26 OF 2018

JUDGMENT: (per Hon'ble Sri Justice Sanjay Kumar)

The appellant, Andhra Pradesh Tourism Development Corporation, Vijayawada, is aggrieved by the order dated 23.10.2017 passed by the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, in C.O.P.No.59 of 2017. The said C.O.P. was filed by respondents 1 and 2 herein under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996'), seeking an injunction restraining the appellant Corporation, the first respondent therein, from invoking/encashing the bank guarantee furnished by them pending invocation/disposal of the arbitral proceedings before the arbitral Tribunal. By the order dated 23.10.2017, the Tribunal allowed the C.O.P. restraining the appellant Corporation from invoking the bank guarantee subject to compliance with Section 9(2) of the Arbitration and Conciliation (Amendment) Act, 2015.

Though Sri Ravi Kondaveeti, learned counsel for the appellant Corporation, would seek adjudication of the matter on merits by placing on record additional documents, Sri A.Venkatesh, learned counsel for respondent Nos.1 and 2, the petitioners in the C.O.P., would point out that the bank guarantee in relation to which the said C.O.P. was filed expired on 25.10.2017. Sri Ravi Kondaveeti, learned counsel, fairly concedes this aspect.

That being so, we see no purpose served in adjudicating this appeal on merits. Even if the appellant Corporation succeeds in this

appeal, there is no question of it invoking the said bank guarantee at this late point of time long after its expiry.

Sri Ravi Kondaveeti, learned counsel, would however contend that the trial Court recorded a finding to the effect that the appellant Corporation was guilty of playing fraud upon respondents 1 and 2, the petitioners in the C.O.P., and that such a finding would invariably have an adverse impact on its interest during the arbitral proceedings as and when initiated.

We are of the opinion that any observations made in the order under appeal must be limited to consideration of the plea in the petition under Section 9 of the Act of 1996 and cannot be relied upon or pressed into service during the arbitral proceedings.

The appeal is accordingly dismissed making it clear that any observations made on merits in the order under appeal shall not have any bearing or influence upon the arbitral proceedings as and when the same are taken up.

Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

Date: 03.10.2018
IBL