

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice D.V.S.S.Somayajulu

Civil Revision Petition No.649 of 2018

Dated 24.04.2018

Between:

Central Warehousing Corporation
New Delhi
Regd. Office at Hyderabad
Rep. by Regional Manager-Pawan Kant

... Petitioner

and

M/s.Nautical Road Lines Private Limited
Rep. by its Director P.R.Krishna Prasad
and another

...Respondents

Counsel for the Petitioner:

**Mr.M.Rama Krishna
for Mr.A.K.Jayaprakash Rao**

Counsel for respondent No.1:

**Mr.Akkam Eswar
for Mr.B.Chandrasen Reddy**

The Court made the following:

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

This Civil Revision Petition is filed by the petitioner in IA.No.899 of 2017 in Arbitration OP.No.2173 of 2016 on the file of the X Additional Chief Judge, City Civil Court at Hyderabad (for short 'the lower Court'), feeling aggrieved by Order, dated 05-01-2018, passed therein.

The petitioner has suffered an arbitral award passed on 28-04-2016. Though the IA was filed as per Section 36 of the Arbitration and Conciliation (Amendment) Act, 2015 (for short 'Act 3 of 2016'), the petitioner pleaded that as the arbitration proceedings commenced on 27-12-2012, which is much prior to coming into force of Act 3 of 2016, the said Act has no application to the award passed against it and that therefore, the arbitral award is not executable till disposal of the Arbitration OP. The lower Court has granted stay of execution of award subject to the petitioner depositing 50% of the amount awarded along with costs of Rs.2 lakhs within 30 days from the date of the order.

At the hearing, Mr.M.Rama Krishna, learned Counsel representing Mr.A.K.Jaya Prakash Rao, learned Counsel for

the petitioner, submitted that in view of the distinct language of Section 26 of Act 3 of 2016, it is quite clear that the amended provision of Section 36 of the Principal Act cannot be applied and consequently, mere pendency of the OP itself would operate as stay.

In **Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd. and ETC¹**, the Supreme Court, while dealing with the plea similar to the one advanced by the learned Counsel for the petitioner as referred to above, *inter alia* held as under:

“In 2004, this Court’s Judgment in National Aluminium Company (supra) had recommended that Section 36 be substituted, as it defeats the very objective of the alternative dispute resolution system, and that the Section should be amended at the earliest to bring about the required change in law. It would be clear that looking at the practical aspect and the nature of rights presently involved, and the sheer unfairness of the unamended provision, which granted an automatic stay to execution of an award before the enforcement process of Section 34 was over (and which stay could last for a number of years) without having to look at the facts of each case, it is clear that Section 36 as amended should apply to Section 34 applications filed before the commencement of the Amendment Act also for the aforesaid reasons.”

¹ Civil Appeal Nos.2885-2886 of 2018, dated 15-03-2018

In the light of the above position in law, the contention of the learned Counsel for the petitioner that the latter is entitled to an automatic stay cannot be accepted.

As regards the direction to deposit costs and 50% of the amount under the award as directed by the lower Court, inasmuch as the petitioner suffered the arbitral award on 28.04.2016, the Court below has exercised a sound discretion in imposing a condition, which, by no means, can be said to be unreasonable for granting stay.

For the aforementioned reasons, we do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

The learned Counsel for the petitioner submitted that the time stipulated by the lower Court for deposit of the amount has expired. He requested for granting reasonable time to deposit the amount as per the order of the lower Court.

After hearing the learned Counsel for the respondent, time for deposit of the amount by the petitioner is extended

by two months from today, failing which, the respondent is entitled to execute the award.

(C.V.Nagarjuna Reddy, J)

(D.V.S.S.Somayajulu, J)

Date: 24-04-2018
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