

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Civil Revision Petition No.1469 of 2018

% 11-6-2018

1. Rashtriya Ispat Nigam Ltd.,
Visakhapatnam Steel Plant, Visakhapatnam,
Rep. by its Assistant General Manager (Law)
... Petitioner/Respondent No.1/
Judgment-debtor No.1

Vs.

\$ 1. M/s Radha Madhav Engineering Enterprises,
Door No.5-28/1, Near E-Seva, Chinagantyada,
Gajuwaka, Visakhapatnam-530 026
... Petitioner/Decree-holder

2. Justice Sri Y.K. Rao, Flat No.501, Honey Bee Apts,
Opp. SBI East Point Colony, Visakhapatnam
(Arbitrator)

3. Sri V.S. Rao, D.No.49-54-6/1, Balaji Hills,
Seethammadhara, Visakhapatnam (Arbitrator)

4. Sri R.Nagabhushana Rao, Flat No.202,
Swarna Jayanti Towers, Balayyasastry Layout,
Visakhapatnam (Arbitrator)

(Respondents 2 to 4 are not necessary in the CRP)

... Respondents

! Counsel for the Petitioner: Mr. V.Ravinder Rao,
Senior Counsel, representing
Mr. A.Krishnam Raju

Counsel for Respondent No.1: Mr. P.V. Krishnaiah

< Gist:

> Head Note: /

? Cases referred:

1. 2018(4) SCALE 502

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.1469 of 2018

Order: (per V.Ramasubramanian, J.)

Aggrieved by an order passed by the Principal District Judge, Visakhapatnam, overruling the objections to an execution petition filed by the 1st respondent herein and also directing the petitioner to pay the entire E.P. amount failing which there will be an order of attachment, the award-debtor has come up with the above revision.

2. Heard Mr. V.Ravinder Rao, learned Senior Counsel appearing on behalf of Mr. A.Krishnam Raju, learned counsel for the petitioner and Mr. P.V. Krishnaiah, learned counsel appearing for the 1st respondent/award-holder.

3. The respondents 2 to 4 are the members of the Arbitral Tribunal and hence, they are not necessary parties to this revision.

4. The dispute between the petitioner and the 1st respondent was referred to arbitration and the Arbitral Tribunal comprising of the respondents 2 to 4 passed an award on 15-12-2016. Challenging the award, the petitioner herein has filed O.P.No.306 of 2017 under Section 34 of the Arbitration and Conciliation Act, 1996 on the file of the Principal District Judge, Visakhapatnam.

5. But in the meantime, the 1st respondent/award-holder filed E.P.No.2 of 2017 for executing the award by attaching and

selling the properties described in the schedule to the execution petition. The execution petition was opposed by the petitioner herein on the short ground that the amended provisions of Section 36 of the Arbitration and Conciliation Act, 1996 will not apply to the case on hand and that therefore mere filing of the petition under Section 34 operated as an automatic stay. Overruling these objections, the Principal District Court passed an order on 08-01-2018 directing the petitioner to pay the E.P. amount on or before 30-01-2018 failing which there was a direction to issue Rule 43 attachment in respect of the properties described in the schedule to the execution petition. It is against this order that the petitioner has come up with the above revision.

6. As seen from the impugned order, there are two portions to the same. The first portion of the impugned order overrules the objection to the maintainability of the execution petition during the pendency of the petition under Section 34. This portion was based upon the amendment to the Arbitration Act under Act 3/2016.

7. But the issue as to whether the amendment will apply to cases where the reference was made before the amendment came into force, has now been settled by the Supreme Court in **Board of Control for Cricket in India v. Kochi Cricket Private Limited**¹. Therefore, the first part of the order of the Trial Court overruling the objections with regard to the enforceability of the award during the pendency of the petition

¹ 2018(4) SCALE 502

under Section 34 has to be upheld in the light of the law laid down by the Supreme Court.

8. Insofar as the second portion of the order of the Trial Court directing the attachment of the properties, upon the failure of the petitioner to pay the entire E.P. amount, the learned Senior Counsel for the petitioner submitted that the petitioner has filed I.A.No.674 of 2018 for stay and that the petitioner has a right to have the stay petition adjudicated in accordance with the amended provisions of the Act. However, this request of the learned Senior Counsel for the petitioner is opposed by Mr. P.V. Krishnaiah, learned counsel for the 1st respondent, on two grounds viz., (a) that the petition for stay was filed only after the law was settled by the Supreme Court and not along with the application under Section 34 and (b) that once the order passed by the Executing Court is in tune with the law recently laid down by the Supreme Court, no further directions can be given by this Court.

9. But the issue is as to whether the amendment took away the right of an award-debtor even to seek stay of execution or not. By virtue of the amendment to Section 36, the original position that the award cannot be executed till a petition under Section 34 is disposed of, stands modified. Nevertheless, the Court has been empowered to deal with the applications for stay, as normally Civil Courts would do.

10. Therefore, if we accept the contention of Mr. P.V. Krishnaiah, learned counsel for the 1st respondent and uphold

the order passed in E.P.No.2 of 2017 ordering attachment, the right conferred by the amendment to seek a stay gets obliterated. Just as the 1st respondent herein has a right flowing under the Amendment Act 3/2016, the petitioner also has a right to seek a stay of execution of the award, which can be disposed of by the Court below depending upon the facts and circumstances of the case. Therefore, in our considered view, the second part of the order should actually await the disposal of the application for stay, as otherwise it will be putting the cart before the horse.

11. In view of the above, the civil revision petition is disposed of to the following effect:

(i) The first part of the impugned order overruling the objections of the award-debtor is upheld;

(ii) The second part of the impugned order directing the award-debtor to pay the E.P. amount failing which there will be an attachment, will stand suspended for a period of 4 (four) weeks;

(iii) Within the 4 (four) weeks as aforesaid, the Court below shall dispose of the application for stay in I.A.No.674 of 2018 in accordance with the law after opportunities to both parties.

The interlocutory applications, if any, pending in this revision shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

11th June, 2018.

Ak

Note:-

Issue C.C. tomorrow.

(B/o) Ak

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.1469 of 2018
(per VRS, J.)



11th June, 2018.
(Ak)