

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CIVIL REVISION PETILTION NOs.1462 AND 1481 OF 2018

DATED:09-04-2018

Between:

NHPC Ltd., NHPC Office Complex
Sector-33, Faridabad
Haryana, Represented by its
Authorised signatory Sri B.D. Moharana ... Petitioner

And

M/s. ICOMM TELE Ltd.
ICOMM House, Plot No.31,
Phase-1, Kamalapuri Colony
Srinagar Colony, Banjara Hhills,
Hyderabad ... Respondent

COUNSEL FOR THE PETITIONER: Mr. Chetluru Sreenivas

COUNSEL FOR THE RESPONDENT: Mr. P. Nagendra Reddy

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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

These civil revision petitions are filed against orders dt.06.11.2017 and 01.11.2017 in Arbitration O.P. Nos.2574 and 2528 of 2017 respectively, on the file of the Chief Judge, City Civil Court, Hyderabad, whereby it has extended the time for making the Awards by four months from the date of the order.

2. Mr. Chetluru Sreenivas, learned counsel for the petitioner, submitted that the orders of the lower Court are unsustainable for two reasons, namely, (i) that it has no jurisdiction to pass the said order, as no part of the cause of action had arisen within its territorial jurisdiction; and (ii) that before passing the orders, the lower Court has not issued notice to the petitioner.

3. As regards the first submission, the learned counsel for the petitioner stated that when the respondent has filed a O.P. under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Act") before the lower Court, the latter has dismissed the same on the ground that it has lacked territorial jurisdiction and that the same reasoning applies to Arbitration O.P. Nos.2574 and 2528 of 2017. Mr. P. Nagendra Reddy, learned counsel for the respondent, has not disputed the fact that the earlier O.P. filed by his client was dismissed on the ground of lack of jurisdiction. Therefore, the respondent ought

not to have filed the Arbitration O.Ps. for extension of time for making the Awards by the Arbitrator before the lower Court and the said O.Ps ought not to have been entertained by the latter. Hence, we have no hesitation to hold that the orders under revision were passed without jurisdiction and consequently they are nonest in law.

4. As regards the second submission of the learned counsel, a perusal of the orders of the lower Court does not show that any notice was issued to the petitioner herein before the same were passed. On the contrary, after extending the time for making the Awards, the lower Court has issued notice to the petitioner. In our opinion, the lower Court has seriously erred in extending the time for making the Awards before issuing notice to the petitioner. On both the above counts, the orders of the lower Court are not sustainable in law.

5. The learned counsel for the respondent submitted that the petitioner has already filed an application in Faridabad Court for extension of time for making the Awards and that therefore no prejudice would be caused to it, if the orders under revision are allowed to remain in force. Mr. Chetluru Sreenivas, learned counsel for the petitioner, submitted that while in principle his client has no objection for extension of

time for making the Awards, if the orders of the lower Court are not set aside, the respondent is likely to take advantage of the provisions of Section 42 of the Act and initiate subsequent proceedings before the lower Court, which otherwise lacks jurisdiction. We find this apprehension of the learned counsel for the petitioner well-founded. Under Section 42 of the Act, where with respect to an arbitration agreement any application is made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent proceedings arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court. By allowing the orders of the lower Court to stand, the petitioner may likely to suffer the undue hardship of being subject to the jurisdiction of the Court which otherwise lacks jurisdiction in respect of future proceedings. Therefore, the orders of the lower Court are set aside.

6. Mr. Chetluru Sreenivas, the learned counsel for the petitioner, assured that his client will pursue the applications already filed in the Faridabad Court for extension of time. As under Section 29A of the Act, the competent Court has power to extend the time for making the Award, no prejudice would be caused to the respondent by relegating it to the Faridabad

Court. In the unlikely event of the petitioner withdrawing its applications for extension of time, liberty is given to the respondent to file applications under Section 29-A of the Act for extension of time for making the Awards, before the Faridabad Court.

7. Subject to the liberty given to the respondent as above, the civil revision petitions are allowed.

As a sequel to disposal of the civil revision petitions, I.A. Nos.2 and 3 of 2018 in CRP No.1462 of 2018 and I.A. Nos.1 and 3 of 2018 in CRP No.1481 of 2018 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

09-4-2018

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