* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

+ Civil Revision Petition Nos.1923 and 1926 of 2018

% 03-7-2018

Chadalavada Krishna Murthy S/o. Late Venkata Subbaiah, Aged 65 years, R/o.14/182, Padmavathipuram, Thiruchanoor Road, Tirupathi-517 501, State of A.P.

... Petitioner/Respondent

Vs.

$ 1. Vinod Baid S/o Late J.M. Baid, Aged 58 years, Occ: Business, R/o.No.5, Lovelock Place, Kolkata-700 019

... Respondent/Appellant

2. Prudential Sugar Corporation Ltd., A Company regd. Under the provisions of Companies Act, 1956, Having its Regd. Office at Akash Ganga, Plot No.144, 4th Floor, Srinagar Colony, Hyderabad-500 073, Rep. by its Executive Vice President and Authorised Representative Mr. KVLN Bhaswanth

3. The Sole Arbitrator, Hon'ble Sri Justice Dalava Subrahmanyam, Former Judge, High Court at Hyderabad

... Respondents/Respondents

(R.2 & R.3 are pro forma parties)

! Counsel for the Petitioner: Mr. Prabhakar Sripada & Mr. Ch.Ramesh Babu

Counsel for Respondent No.1: Mr. Milind G. Gokhale

Counsel for Respondent No.2: Mr. T.Surya Satish

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> Head Note:

? Cases referred:

1. AIR 2007 SC 2563
2. (2007) 6 SCC 798
3. (2008) 2 SCC 302

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Common Order: (per V.Ramasubramanian, J.)

Aggrieved by an order passed by the Commercial Court, reversing an interim measure granted by the Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996, the claimant before the Arbitrator has come up with the above revisions.

2. Heard Mr. Prabhakar Sripada and Mr. Ch.Ramesh Babu, learned counsel appearing for the petitioner, Mr. T.Surya Satish, learned counsel appearing for the Company, which is the 1st respondent in one revision and 2nd respondent in another revision and Mr. Milind G. Gokhale, learned counsel appearing for Mr. Vinod Baid, who is the 2nd respondent in one revision and 1st respondent in another revision.

3. The long history of this litigation is not necessary for the purpose of deciding the present revisions. Suffice it to point out that the dispute between two individuals by name Chadalavada Krishna Murthy and Mr. Vinod Baid, arising out of a Memorandum of Understanding that they had, pursuant to which Mr. Krishna Murthy purchased the shares of the Company-Prudential Sugar Corporation Limited, was referred to arbitration by a Sole Arbitrator. Before the Sole Arbitrator, Mr. Krishna Murthy who was the claimant

moved an application under Section 17 seeking a direction to Mr. Vinod Baid to furnish security to the extent of Rs.75 Crores. The said application was allowed by the Sole Arbitrator by an order dated 03-7-2017.

4. As against the said order, the Company filed one appeal and the individual Vinod Baid filed another appeal. Both the appeals filed under Section 37 of the Arbitration and Conciliation Act were allowed by the Commercial Court, forcing the claimant before the Arbitrator to come up with the above revisions.

5. One of the grounds on which the Commercial Court allowed the appeals under Section 37(2)(b) is that the Arbitrator does not have the power to grant interim measures, unless both parties have agreed. This is completely contrary to the provisions of Section 17. The expression "unless the parties otherwise agree" appearing in Section 26 of the Amendment Act, has a correlation to some of the provisions which underwent a drastic change by virtue of the amendment. But Section 17 has always conferred powers upon an Arbitral Tribunal to pass interim measures. What a Court of a competent jurisdiction can grant under Section 9, can always be granted under Section 17 except to the extent that after the conclusion of the arbitration, it may not be possible for the Arbitrator to pass an interim order. Therefore, insofar as the opinion rendered by the Commercial Court with regard to the scope of the jurisdiction of the

Arbitrator under Section 17 is concerned, the same is liable to be reversed, so as to steer clear of any doubt. We hold that the Arbitrator/Arbitral Tribunal has powers to pass interim measures under Section 17 and the opinion of the Commercial Court to the contrary, is not in accordance with law.

6. Coming to the merits, it appears that in the previous round of litigation, Mr. Vinod Baid was directed by the Supreme Court to deposit a sum of Rs.25 Crores and such a deposit has been made. The Commercial Court proceeded on the footing that the order of the Supreme Court has sealed the prayer of the claimant for furnishing security. It is in that view of the matter, that the Commercial Court reversed the order of the Arbitrator directing Mr. Vinod Baid to furnish security.

7. Though arguments were advanced on both sides as to the correctness of the view taken by the Commercial Court, we think it is not necessary for us to go so far. A perusal of the order of the Sole Arbitrator, directing Mr. Vinod Baid to furnish security to the extent of Rs.50 Crores (after adjusting the amount of Rs.25 Crores already deposited before the Civil Court as against a claim of Rs.75 Crores), would show that the tests to be applied while dealing with an application under Order XXXVIII, Rule 5 CPC, have not been applied. The Supreme Court has made it clear in ***Adhunik Steels Ltd.***

v. Orissa Manganese and Minerals Pvt. Ltd.[1] and ***Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation***[2] that the principles governing the grant of interim injunctions under Order XXXIX, Rule 1 and the principles governing the grant of attachment before judgment under Order XXXVIII, Rule 5, are applicable as well to Arbitral Tribunals as they are applicable to Civil Courts. In ***Raman Tech. & Process Engg. Co. v. Solanki Traders***[3], the Supreme Court pointed out that Order XXXVIII, Rule 5 is a drastic measure.

8. While the Arbitral Tribunal may have leverage in dispensing with some of the rigidities of procedure prescribed by the Code of Civil Procedure, the Arbitral Tribunal cannot dispense with the fundamental requirements of Order XXXIX, Rule 1 or Order XXXVIII, Rule 5.

9. In the order of the Sole Arbitrator, no finding has been recorded as to how the claimant was likely to succeed in getting an award for a sum of Rs.75 Crores. The other aspects of balance of convenience and irreparable hardship are also not discussed. Therefore, dehors the wrong route taken by the Commercial Court, the order of the Sole Arbitrator could not have been sustained even otherwise.

10. Therefore, the civil revision petitions are liable to be dismissed and accordingly they are dismissed. However, the observations made herein shall not have an impact upon the

[1] AIR 2007 SC 2563
[2] (2007) 6 SCC 798
[3] (2008) 2 SCC 302

claim and counter claim of the parties. It will be open to the claimant to work out his remedies otherwise. The interlocutory applications, if any, pending in these revisions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

KONGARA VIJAYA LAKSHMI, J.

03rd July, 2018.
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Civil Revision Petition Nos.1923 and 1926 of 2018
(Common Order - per VRS, J.)

03rd July, 2018.
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