

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL Nos.1026 and 1028 of 2017

Date: 15.02.2018

CMA.No.1026 of 2017 :

Between :

Y. Laharika

... Appellant

And

M/s. Sarada 70 MM (A/C) Sarada Delux & others

... Respondents

CMA.No.1028 of 2017 :

Between :

Y. Laharika

... Appellant

And

M/s. Sarada Theatre & others

... Respondents

COUNSEL FOR APPELLANT : Lawyers & Solicitors

COUNSEL FOR RESPONDENTS : Sri C.H. Jaya Krishna

THE COURT MADE THE FOLLOWING:

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

These two Civil Miscellaneous Appeals arise between the same parties albeit in separate O.Ps.

The appellant in both the appeals, being the daughter of late Venkateshwarlu, one of the Partners of respondent No.1 – Firm running a Theatre, filed Arb. O.P.No.17 of 2017 under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity “the Act”) for a direction to respondent Nos.1 to 5 and 7 to deposit monthly rents paid by respondent No.7 in respect of the petition schedule property into the Court, to restrain respondent Nos.1 to 5 from creating any charge over the petition schedule property and to restrain the respondents from objecting to the petitioner to have access into the petition schedule property. Arb. O.P.No.188 of 2017 was filed by the appellant under Section 9 of the Act, restraining respondent Nos.1 to 5 from conducting management of respondent No.1 – Theatre and utilizing the income of it and for appointment of an Advocate-Commissioner to take possession of respondent No.1 – Theatre and also for appointment of an interim receiver to take control of the administration of respondent No.1, including handling of income and expenditure. Both these petitions were seriously contested by respondent Nos.1 to 6. The Court below, by a common order and decrees dated 18.07.2017, dismissed Arb. O.P.No.188 of 2017 and partly allowed Arb. O.P.No.17 of

2017 to the extent of directing respondent Nos.1 to 5 not to create third party charge over the petition schedule property for a period of ninety days from the date of the order. Feeling aggrieved by the said common order, the petitioner in the two Arbitration O.Ps. filed these appeals.

At the hearing, learned counsel for the appellant has brought to the notice of this Court that an application filed under Section 11 of the Act for appointment of Receiver has been pending before this Court. He submits that the Court below has committed an error in not granting any relief to the appellant in the petition filed by her in Arb. O.P.No.188 of 2017 and restricting the relief not to create third party charge over the petition schedule property for a period of ninety days only.

After hearing the learned counsel for the respondents, we are of the opinion that the reliefs of deposit of monthly rents into the Court and appointment of an Advocate Receiver for maintaining the Theatre are too extreme in nature, to be granted by the civil Court under Section 9 of the Act, even before the Arbitrator is appointed and *prima-facie* case of the appellant/applicant has been established. However, we are of the view, restricting the restraint order against creation of third party charge over the petition schedule property only for a period of ninety days by the Court below is not correct. Admittedly, the appellant is the successor of

her father late Venkateshwarlu, one of the Partners of respondent No.1 – Theatre. In the event of her succeeding in the post-arbitral proceedings, she cannot be deprived of the fruits of her success. Therefore, preservation of the property i.e., the Theatre without being encumbered, pending arbitral proceedings, is necessary.

Accordingly, the order in Arb. O.P.No.17 of 2017 is modified by restraining respondent Nos.1 to 5 from creating charge over the Theatre till arbitral proceedings before the Arbitrator are concluded. As regards the other reliefs, we are not inclined to grant the same. However, the appellant is not precluded from filing applications before the Arbitrator after commencement of arbitral proceedings before him claiming appropriate reliefs pending arbitral proceedings.

In the result, C.M.A.No.1028 of 2017 is partly allowed to the extent indicated above, and C.M.A.No.1026 of 2017 is dismissed, subject to the observations made hereinabove. No order as to costs.

As a sequel, CMA.MP.No.1758 of 2017 in CMA.No.1026 of 2017 and CMA.MP.Nos.1760 and 1761 of 2017 in CMA.No.1028 of 2017 shall stand disposed of accordingly.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

15.02.2018.

Msr

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Msr