

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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

+ C.M.A.No.197 of 2016 and CRP Nos.6277 & 6278 of 2016

%Date: 08.06.2018

Between:
C.M.A.No.197 of 2016

M s.S.V.S V.S Projects Pvt. Ltd., Kalyan Nagar,
Hyderabad, rep.by its Managing Director. ...Petitioner

Vs.

\$ M s.Sri Zenith Infra, Road No.4, Banjara Hills,
Hyderabad, Rep. by its Partner and others. .. Respondents

C.R.P.No.6277 of 2016

M s.Sri Zenith Infra, Road No.4, Banjara Hills,
Hyderabad, Rep. by its Partner. ...Petitioner

Vs.

M s.S.V.S V.S Projects Pvt. Ltd., Kalyan Nagar,
Hyderabad, rep.by its Managing Director. .. Respondent

C.R.P.No.6278 of 2016

M s.Sri Zenith Infra, Road No.4, Banjara Hills,
Hyderabad, Rep. by its Partner. ...Petitioner

Vs.

M s.S.V.S V.S Projects Pvt. Ltd., Kalyan Nagar,
Hyderabad, rep.by its Managing Director. .. Respondent

! For Petitioner in CMA No.197/ 2016 and
Respondent in CRP Nos.6277 & 6278/ 2016 : Mr.R. Raghunandan

^ For Respondents in CMA No.197/ 2016 and
Petitioner in CRP Nos.6277 & 6278/ 2016 : Mr.M.S Prasad,
M.V.KINI & Co.

< Gist :

> Head Note :

? Cases Referred :

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SRI JUSTICE N. BALAYOGI

C.M.A.No.197 of 2016 and CRP Nos.6277 & 6278 of 2016

COMMON ORDER: (per V. Ramasubramanian, J)

The Civil Miscellaneous Appeal as well as Civil Revision Petitions arise out of arbitration proceedings between the same parties and hence, they are taken up together.

2. The parties hereto entered into a contract, out of which certain disputes arose. The disputes, by consent of parties were referred to arbitration before a panel of three Arbitrators, who are arrayed as respondents 4, 5 and 6 in the Civil Miscellaneous Appeal. The Arbitral Tribunal passed an award on 04.09.2015. Both parties challenged the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 in OP No.2350/ 2015 and OP No.7/ 2016. These petitions have now been renumbered as COP Nos.97 and 98 of 2016 and they are pending on the file of XXIV Additional Chief Judge's Court (Commercial Court), Hyderabad.

3. It appears that after the passing of the Award, the 1st respondent in CMA No.197 of 2016 moved an application under Section 17 of the Act as amended by Act 3 2016 seeking a direction to the Executive Engineer R & B Division, Bodhan and the Assistant Pay & Accounts Officer, Nizamabad to deposit the amount relating to certain bills raised by the appellant in the CMA. This application was allowed by the Arbitral Tribunal, directing the Executive Engineer and the Assistant Pay & Accounts Officer to deposit a total amount of Rs.2,32,92,121/-, to the credit of OP No.2530/ 2015 (now renumbered as COP No.97/ 2016). Challenging the said order passed on 06.02.2016 by the Arbitral Tribunal,

after passing of the award, the sole respondent before Arbitral Tribunal has come up with the above Civil Miscellaneous Appeal contending primarily that after the passing of the Award, the Arbitral Tribunal is not vested with any power under Section 17 of the Act to pass any interim order.

4. In the meantime, the Award Holder filed EP No.37 of 2015 for enforcing the Award. In the said Execution Petition, the award debtor filed an application in EA No.14 of 2016 seeking dismissal of the Execution Petition on the ground that the award was passed prior to the amendment made in the year 2015 to the Act and that therefore, the mere filing of the petition under Section 34 of the Act tantamount to an automatic stay of the Award. Accepting the said contention, the Court below allowed EA No.14/ 2016 and dismissed the Execution Petition, forcing the Award holder to come up with CRP No.6277/ 2016.

5. Simultaneously with the dismissal of the Execution Petition, the Court below also dismissed another application in EA No.58 of 2015 filed under order XXI Rule 52 by the Award Holder for a prohibitory order. Therefore, as against the said order, the Award holder has come up with CRP No.6278 of 2015.

6. Heard Mr.M.S.Prasad, learned Senior Standing Counsel appearing for the appellant in CMA No.197/ 2016 and the respondents in both the Civil Revision Petitions and Mr.R.Raghunandan, learned Senior Counsel appearing for the 1st respondent in the CMA and the petitioner in both the Civil Revision Petitions.

7. We shall first take up the Civil Revision Petitions, as they are now capable of being disposed of without much ado.

8. As we have pointed out earlier, the CRPs arise out of the dismissal of a petition for a prohibitory order and the dismissal of the

very execution petition filed by the award holder seeking enforcement of the award passed by the Arbitral Tribunal. The Court below dismissed the Execution Petition and dismissed the application for a prohibitory order on the sole ground that the amendment to Section 36 of the Act under the Amendment Act No.3 of 2016 was prospective in nature and that therefore, any award passed prior to the introduction of the amendment, would be governed by the position as it stood before the amendment.

9. But, in Board of Control for Cricket in India v. Kochi Cricket Private Limited¹, the Supreme Court has now settled the issue. As per this judgment, the amendment to Section 36 of the Act will have application even to the awards passed before the amendment or where proceedings are pending. Therefore, the dismissal of the Execution Petition and the dismissal of the application for prohibitory order, are not in tune with the latest decision of the Supreme Court. Hence, the revisions are liable to be allowed and the execution petition and the execution application restored to file.

10. It is stated across the Bar that both the main COP Nos.97 and 98 of 2016 have already been heard and judgment reserved. Therefore, all that can be done at this stage is to direct the Commercial Court to pass final orders in the main OPs, so that further proceedings would depend upon the outcome of the main OPs.

11. Insofar as the Civil Miscellaneous Appeal is concerned, a legal issue is raised in the appeal as to whether the Arbitral Tribunal would be competent to pass an order of protection under Section 17 of the Act, after the passing of the award. Insofar as the power of the Court under Section 9 is concerned, there has never been any dispute that the power is available before and during the pendency of the proceedings and after

¹ 2018 SCC Online SC 232

passing of the award. But, insofar as the position with regard to the power of the Arbitral Tribunal to pass an order under Section 17 of the Act after the passing of the award is concerned, it is not clearly borne out by the statute.

12. But, considering the fact that the main OPs filed by both parties under Section 34 of the Act against the Award, have already been heard and judgment reserved, we are of the considered view that at this stage we need not go into the legal issue raised in the miscellaneous appeal, but to pass an order where the equities between the parties could be balanced for the present.

13. In the light of the above, the Revisions as well as the Miscellaneous Appeal are disposed of to the following effect:

i. Without going into the correctness of the order passed by the Arbitral Tribunal under Section 17 of the Act, there shall be a direction to the Executive Engineer, R & B Division of the concerned District and the Assistant Pay and Accounts Officer of the concerned District, wherever the money is lying, to deposit the amount of Rs.2,32,92,121/- to the credit of COP Nos.97 and 98 of 2016, on the file of the XXIV Additional Chief Judge, City Civil Court, (Commercial Court), Hyderabad, within a period of four (4) weeks from the date of receipt of a copy of this order.

ii. The XXIV Additional Chief Judge, City Civil Court (Commercial Court), Hyderabad, which has reserved orders in COP Nos.97 and 98 of 2016 shall pass final orders in both the OPs within a period of six (6) weeks from the date of receipt of a copy of this order.

iii. Depending upon the outcome of OP Nos.97 and 98 of 2016, the Execution Petition shall stand restored to file. If there

is nothing to be executed after the disposal of COP Nos.97 and 98 of 2016, the Court will naturally dismiss the Execution Petition. If there is something to be executed, the EP and the EA will be taken up and it will proceed in accordance with law subject to the rights of both parties to file the statutory appeal against the orders passed under Section 34 of the Act.

14. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

June 08, 2018
KTL

N. BALAYOGI, J

