

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No. 3618 of 2017

24.04.2018

Between:

Malakala Sita Mahalakshmi

..Petitioner/respondent/
Judgment debtor

and

M/s. Shriram Transport Finance Ltd.,
Rep., by its Recovery Executive-cum-
GPA Holder, Singampalli Nooka Raju,
Bhimavaram, West Godavari District and 2 others.

..Respondents/petitioners/
Decree Holders

Counsel for the petitioners: Mr. A.K.Kishore Reddy

Counsel for the respondents: Mr. Praveen Kumar Challa

The Court made the following:

JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The judgment debtor in E.P.No.448 of 2016 on the file of the Principal District Judge, East Godavari at Rajamahendravaram filed this civil revision petition against order, dated 02.06.2017.

2. The petitioner has suffered an Arbitration Award, dated 30.09.2014, passed by respondent No.4-Sole Arbitrator. Respondent No.1 filed E.P.No.448 of 2016 seeking execution of the Award. The petitioner has resisted the said EP by stating that not only that the Award was passed without notice, even a copy of the Award was not furnished by the Arbitrator as a result of which, she was deprived of the opportunity of questioning the Award. The lower Court, however, did not give due weight to the said pleas of the petitioner and decided to proceed with the execution proceedings. Questioning this order, the petitioner filed this Civil Revision Petition.

3. As the petitioner's main grievance pertains to non-furnishing of the Award by the Arbitrator disabling her from questioning the Award, this Court ordered impleadment of Arbitrator as respondent No.4, and also permitted the petitioner to serve notice on respondent No.4. The counsel for the petitioner has accordingly filed memo of proof of service by

Chinnam Saibaba Reddy, legal counsel at Kakinada, on respondent No. 4. Despite service of notice, respondent No.4 has not entered appearance.

4. Mr. A.K.Kishore Reddy, learned counsel for the petitioner, has submitted that under Section 31(5) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), it is the duty and obligation of the Arbitrator to deliver a signed copy of the Arbitral Award and that no such copy was delivered on the petitioner.

5. Mr. Ch.Praveen Kumar, learned counsel for respondent No.1, while fairly admitting that the Arbitrator has not delivered the copy of Award to the petitioner, however, stated that on the directions issued by the Arbitrator, respondent No.1 has sent a copy of the Award to the address of the petitioner, but the same was returned undelivered with the endorsement that the petitioner was not residing at the address to which the Award was sent.

6. When a statutory enactment prescribes the procedure, the person entrusted with the duty to act according to the provision of the Act has to necessarily follow it. Section 31(5) of the Act, unambiguously imposed the duty of delivering a copy of the Award on the parties to the dispute on the Arbitrator. In the

absence of any power of delegation conferred on him, it is not permissible to the Arbitrator to delegate his duty to another person, who is none other than one of the parties to the dispute. By doing so, respondent No.4 has committed grave impropriety. He has further compounded his act by not even responding to the notice ordered by this Court. Respondent No.1 is directed to consider the desirability of continuing respondent No.4 as Arbitrator in its cases in future.

7. Be that as it may, as respondent No.4 has failed in carrying statutory obligation of delivering a copy of the Award to the petitioner, it would be a travesty of justice to proceed against her in execution proceedings without giving her an opportunity of contesting the Award on merits.

8. Mr. Ch.Praveen Kumar, learned counsel for respondent No.1, agreed to furnish an attested copy of the Award to Mr. A.K.Kishore Kumar Reddy, learned counsel for the petitioner, today itself.

9. Therefore, the petitioner is permitted to file a petition under Section 34 of the Act, questioning the Award, on or before 10.06.2018. If such a petition is filed within the above stipulated time, the Jurisdictional Court shall not raise any objection either as to the non-filing of the certified copy of the

Award or the limitation to question the correctness of the Award. The petitioner shall be free to apply for an interim relief, pending the said petition. To facilitate the petitioner to file the petition and seek interim relief as permitted above, the lower Court shall not proceed with the EP for a period of three (3) months or till passing of an appropriate order in the application that may be filed by the petitioner for interim relief in the proposed petition, whichever is earlier. Further proceedings in EP.No.448 of 2016, however, depend upon the order that may be passed by the lower Court on the application for interim relief which may be filed by the petitioner.

10. The Civil Revision Petition is, accordingly, allowed to the extent indicated above.

11. As a sequel to allowing of the Civil Revision Petition, I.A.No.1 of 2017 (CRP.MP.No.4751 of 2017 and IA.No.2 of 2018 (CRP.MP.No.8917 of 2017) shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

D.V.S.S.SOMAYAJULU, J

Date: 24.04.2018
KLP