

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

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

+ C.R.P.Nos.2841 & 2842 of 2018

% Date: 09-07-2018

Between:

1. M/s. Perfect Welded Mesh Industries, Plot No.C-23, Co-Operative Industrial Estate, Balanagar, Hyderabad, rep. by Proprietor (not partner) Sri. Mohd. Anwar Khan.
2. Mr. Mohd. Anwar Khan S/o. late Mohd. Sartaj Khan, R/o. H.No.2 SRT, 2nd Floor, Prakash Nagar, Begumpet, Hyderabad.

Petitioners/JDRs
(in both the revisions)

Vs.

Mr. Mohd. Azgar Khan
S/o. late Mohd. Sartaz Khan,
R/o. H.No.405, A Block,
NASR Apartments,
New AC Guards, Hyderabad – 4.

Respondent/DHR
(in both the revisions)

! Counsel for the petitioners : Mr. Mohd. Imran Khan

^ Counsel for the respondent : Mr. D. Madhava Rao

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? Cases referred

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
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COMMON ORDER: (Per VRS,J.)

Aggrieved by an order passed by the Executing Court refusing to reopen the evidence and refusing to summon a third party witness, the Award Debtor has come up with the above revision petitions.

2. Heard Mr. Mohd. Imran Khan, learned counsel for the petitioners and Mr. D. Dharma Rao, learned counsel for the respondent.

3. 1st petitioner herein is a partnership firm of which the 2nd petitioner and the respondent were the partners. Disputes arose between the partners leading first to the institution of a civil suit by the respondent herein. The suit was rejected under Order VII Rule 11, on an application taken out by the 2nd petitioner herein, though it was on the ground that the dispute was arbitrable.

4. Eventually, this Court appointed a sole arbitrator, who passed an award on 27.10.2014. The Award was challenged unsuccessfully in Arbitration O.P.Nos.22 & 23 of 2014. The appeals filed against the judgment of the Court below in both the Arbitration O.Ps were dismissed by us today in C.M.A.Nos.746 and 858 of 2016. Thus the Award has attained finality.

5. During the pendency of the appeals C.M.A.Nos.746 & 858 of 2016, the respondent filed an execution petition in E.P.No.301 of 2017. In the said execution petition, the petitioners took out two applications in E.A.Nos.10 & 11 of 2018 for reopening the evidence and summoning the Administrative Officer of the Cooperative Industrial Estate Limited. These

applications were dismissed by the executing Court forcing the Award debtor to come up with the above revisions.

6. The main ground on which the petitioners are opposing the execution is that Clause-vii of the Award, declaring the entitlement of the respondent to half share in the schedule property, including the super structures, subject to the leasehold rights granted by the Cooperative Industrial Estate Limited, is not capable of being executed. In order to prove that the lease has already expired and that Clause-vii of the Award cannot be executed, the petitioners wanted to lead evidence.

7. But there are two difficulties for the petitioners. One is that the executing Court cannot go beyond the decree. The decree has already been upheld in an application under Section 34 and in two appeals under Section 37 of the Arbitration and Conciliation Act, 1996.

8. The second difficulty for the petitioners is that it is for the lessor to take the objection that the petitioners have now taken. Clause-vii of the decree merely declares that the respondent is entitled to half share, subject to the leasehold rights granted by the Cooperative Industrial Estates Limited. The relevant clause of the decree reads as follows:

“vii) The claimant is found to have right to the extent of half share in the schedule property including over the super structures subject to the lease hold rights granted by the Cooperative Industrial Estate Ltd.”

9. If, as stated by the petitioners, the lease has already expired, it is for the Cooperative Industrial Estate Limited to say that nothing survives out of the leasehold rights, to be shared between the second petitioner and the respondent herein. There is no decree against the Cooperative Industrial Estate Limited and no execution is sought against them. Therefore, the petitioners cannot oppose the execution of the

decree on that ground. Hence these civil revision petitions are dismissed.

There shall be no order as to costs.

10. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J.

N. BALAYOGI, J.

9th July, 2017
Js.



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

C.R.P.Nos.2841 & 2842 of 2018



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Js.