

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.4368 of 2018

ORDER: {Per Hon'ble Sri Justice Ramesh Ranganathan }

This Civil Revision Petition is filed, under Section 115 C.P.C, by the judgment-debtor in Arbitration Case No.1 of 2012 aggrieved by the order passed by the XXV Additional Chief Judge, City Civil Court, Hyderabad in E.P.No.15 of 2015 in Arbitration Case No.1 of 2012 dated 04.06.2018.

The respondent herein raised a dispute before the Arbitrator for recovery of Rs.71,98,000/- from the petitioner herein. The learned Arbitrator passed an award on 30.08.2014 directing the revision petitioner to pay Rs.71,98,000/- with future interest at 12% per annum from 01.11.2014 till the date of realisation. Immediately after the award was passed on 30.08.2014, the revision petitioner filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") before the XI Additional Chief Judge, City Civil Court, Hyderabad.

When the petition, under Section 34 of the Act, was filed in the year 2014, it was not necessary for the revision petitioner to file an application seeking stay of execution of the award as, by mere filing of the petition itself, the award became unenforceable till the petition was finally heard and decided. By Act 3 of 2016, Section 36 was substituted with retrospective from 23.10.2015, and Section 36(2) of the amended Act stipulated that, where an application to set aside an arbitral award has been filed in the Court under Section 34, the filing of such an application would not, by itself, render that award unenforceable, unless the Court granted an order of stay of operation, of the said arbitral award, in accordance with the provisions of Section 36(3), on a

separate application being made for that purpose. Section 36(3) of the Act stipulated that, upon filing of an application, under Section 36(2) for stay of operation of the arbitral award, the Court could, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing.

The petitioner herein contended that, since Section 36 of the Act was substituted with retrospective effect from 23.10.2015, it had no application to the petition filed under Section 34 of the Act earlier in the year 2014. This contention was rejected by the Court below relying on the judgment in **Board of Control for Cricket in India vs. Kochi Cricket Pvt. Ltd.**¹ wherein the Supreme Court observed as under:

“...In 2004, this Court’s Judgment in **National Aluminium Company vs. Pressteel & Fabrications (P) Ltd** had recommended that Section 36 be substituted, as it defeats the very objective of the alternative dispute resolution system, and that the Section should be amended at the earliest to bring about the required change in law. **It would be clear that looking at the practical aspect and the nature of rights presently involved, and the sheer unfairness of the unamended provision, which granted an automatic stay to execution of an award before the enforcement process of Section 34 was over (and which stay could last for a number of years) without having to look at the facts of each case, it is clear that Section 36 as amended should apply to Section 34 applications filed before the commencement of the Amendment Act also for the aforesaid reasons....**” (emphasis supplied)

It is clear, therefore, that Section 36 of the Act would apply even to petitions, filed under Section 34 of the Act, before commencement of the Amendment Act with retrospective effect from 23.10.2015.

We find no error, therefore, in the order passed by the Court below necessitating exercise of our revisional jurisdiction under Section 115 of C.P.C. As the order under revision does not suffer from any legal infirmity, suffice it to make it clear that the order now passed by us shall not disable the petitioner from making an application under

¹ AIR 2018 SC 1549

Section 36(2) of the Act, and in seeking stay of execution of the arbitral award.

Subject to the aforesaid observations, the Civil Revision Petition fails and is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

06th August, 2018
JSU



**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**



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Date: 06.08.2018

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