

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

AND

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

CIVIL REVISION PETITION No.2060 of 2016

09.04.2018

Between:

M/s.Seshaiah Nayudu Constructions,
represented by its Managing Partner, Hyderabad and others

..Petitioners

and

M/s.Sundaram Finance Limited, Chennai

..Respondent

Counsel for the petitioners: Mr.D.Vijaya Kumar

Counsel for the respondent: Mr.Prabhakar Sripada

The Court made the following:



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

This Civil Revision Petition is filed by the respondents in E.P.No.8 of 2011 on the file of learned IV Additional District Judge, Kadapa, feeling aggrieved by the entertainment of the said E.P. filed for execution of award, dated 04.02.2010, by the Court below, even though the petition filed by them under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the said award is pending.

2. At the hearing, Mr.Prabhakar Sripada, learned counsel for the respondent, has placed before us recent judgment of the Apex Court in **Board of Control For Cricket in India vs. Kochi Cricket Pvt. Ltd.,¹** in support of his submission that even though the petitioners have filed the petition under Section 34 of the Act prior to the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (for short 'amendment Act'), the said amendment Act applies to all the petitions filed under Section 34 of the Act and pending as on the date of commencement of the amendment Act.

3. The Supreme Court in **Board of Control For Cricket in India** (supra), *inter alia*, held as under.

“....Learned counsel appearing for the appellant however submitted that since the Code of Civil Procedure was not applicable to Goa the decree became inexecutable and this being a vested right could not be taken away by the application of the Code of Civil Procedure to Goa during the pendency of the appeal before the Additional Judicial Commissioner. It seems to

¹ dated 15.03.2018, in Civil Appeal Nos.2879-2880 of 2018

us that the right of the judgment debtor to pay up the decree passed against him cannot be said to be a vested right, nor can the question of executability of the decree be regarded as a substantive vested right of the judgment debtor. A fortiori the execution proceedings being purely a matter of procedure it is well settled that any change in law which is made during the pendency of the cause would be deemed to be retroactive in operation and the appellate court is bound to take notice of the change in law. Since it is clear that execution of a decree pertains to the realm of procedure, and that there is no substantive vested right in a judgment debtor to resist execution, Section 36, as substituted, would apply even to pending Section 34 applications on the date of commencement of the Amendment Act.

.....

In 2004, this Courts Judgment in National Aluminium Company (supra) 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.”

4. Mr.D.Vijaya Kumar, learned counsel for the petitioners, has fairly conceded that the judgment in **Board of Control For Cricket in India** (supra) runs against his clients’ case. He has, however, submitted that on

merits, the award is not sustainable and hence, the E.P. cannot be maintained.

5. We are afraid, we cannot delve into the merits of the case as the same does not fall within the ambit of this revision petition. The only question of law raised in this revision petition *viz.*, whether the amendment Act applies to the award in the case on hand having been held against the stand of the petitioners in **Board of Control For Cricket in India** (supra), the further question would not arise for adjudication in this revision petition. The petitioners are, however, left free to raise all the legally sustainable pleas, if they choose to file an application for stay of execution before the Court below. If such an application is filed, the Court below shall decide the same after hearing both sides.

6. Subject to the liberty given to the petitioners as above, the Civil Revision Petition is dismissed.

7. As a sequel to dismissal of the C.R.P., interim order, dated 19.04.2016, is vacated and C.R.P.M.P.Nos.2644 of 2016 and 304 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

D.V.S.S.SOMAYAJULU, J

09th April, 2018
GHN