

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO
CIVIL REVISION PETITION NO.5550 OF 2018

ORDER: (per SK,J)

This civil revision petition under Article 227 of the Constitution arose out of the order dated 01.08.2018 passed by the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, in C.O.P.No.81 of 2018. An application was filed therein under Section 29(A)(4) of the Arbitration and Conciliation Act, 1996, seeking extension of time to pass the Award. By the order dated 01.08.2018, the Commercial Court allowed the application and extended the time for passing of the Award up to 28.11.2018. However, the Commercial Court deemed it appropriate to order reduction of the fee payable to the Arbitrators by 5% for each month of delay from 28.08.2018 to 28.11.2018. That apart, the respondent was held liable to pay Rs.1,00,000/- to the petitioner towards exemplary costs.

By interim order dated 26.09.2018 passed in I.A.No.1 of 2018 filed in this civil revision petition, this Court observed as under:

'Heard Sri Omer Farooq, learned counsel representing Sri Avinash Desai, learned counsel for the petitioner, and Sri S.Sharath Kumar, learned counsel for the respondent company.

We are of the opinion that the trial Court overstepped its jurisdiction in finding fault with the Arbitral Tribunal and more so, with regard to the venue of the arbitral proceedings as it is well settled that the Arbitral Tribunal has the discretion to conduct such arbitral proceedings at its convenience at different venues subject to the agreement of the parties. Further, the trial Court ought not to have gone beyond the brief and imposed a cut in the Arbitrator's fee when the same was not even sought by either party.

The order under revision is accordingly stayed in so far as it deals with these aspects and shall remain operative only with regard to the extension of time by three months for passing of the arbitral Award. The imposition of costs also shall remain stayed.'

We are now informed by Sri Omer Farooq, learned counsel representing Sri Avinash Desai, learned counsel for the petitioner, that the Award has been passed.

As neither of the parties sought imposition of any penalty upon the Arbitrators while seeking extension of time, we are of the opinion that the Commercial Court exceeded its brief in purporting to do so. The order under revision to the extent it directs reduction of the fee payable to the Arbitrators by 5% for each month of delay from 28.08.2018 to 28.11.2018 is accordingly set aside.

Similarly, the imposition of costs upon the respondent was equally unwarranted as the petitioner never sought such relief. It appears that the Commercial Court exercised discretion in this regard also without reference to the grievance of the parties. The order under revision to the extent that it imposes costs of Rs.1,00,000/- upon the respondent is also set aside.

The civil revision petition is disposed of in terms of the above directions. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:03.12.2018

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