

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.746 of 2017

Date: 14.11.2018

Between:

Mr.Mohd Bin Salam,
S/o.Late Salam Bin Ahmed,
Aged about 45 years,
Occ: Business,
R/o.H.No.8-2-332/1/B,
Road No.3,
Banjara Hills, Hyderabad.

...

Appellant

And

Shaik Mohammed Saleem
@ Mahmooob,
S/o.Shaik Mohd. Khaja,
Aged about 47 years,
Managing Partner
M/s.Esskay Constructions Promoters
and Builders,
Reg. Partnership firm having office
at 10-5-2/3/4/M,
SK Chamber,
Beside Maheswari Complex,
Masab Tank, Hyderabad.

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Respondent

Counsel for the Appellant : Mr. Mohd. Adnan for
Mr. Mohd. Osman Shaheed

Counsel for the Respondent: Mr.M.M.Firdous

The Court made the following:

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

This civil miscellaneous appeal is filed against order dated 16.06.2017 in O.P.No.2228 of 2016 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, whereby he has dismissed the said O.P. filed for interim protection.

2. We have heard the learned counsel for both parties and perused the record.

3. In contemplation of initiation of arbitral proceedings, the appellant filed O.P.No.2228 of 2016 under Section 9 (d) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). An *ad interim* order of status quo in respect of the petition schedule property was granted by the lower court by its order dated 29.09.2016 in favour of the appellant. Under Section 9 (2) of the Act, where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure or protection under sub-section (1), the arbitral proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the court may determine. Admittedly, neither arbitral proceedings were commenced before the expiry of 90 days, nor the appellant has filed an application seeking extension of time for initiating arbitral proceedings. In those circumstances, the lower court has dismissed O.P.No.2228 of 2016.

4. At the hearing, Mr.Mohd Adnan, learned counsel representing Mr.Mohd Osman Shaheed, counsel for the appellant, submitted that

on 30.08.2018, an Arbitrator has been appointed by the Hon'ble Chief Justice of this Court. Under sub-section (3) of Section 9 of the Act, once the Arbitral Tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless it finds that circumstances exist, which may not render the remedy provided under Section 17 efficacious. In view of the prohibition contained in this provision against grant of interim measure and in the absence of the plea raised by the appellant that the remedy under Section 17 provided before the arbitrator for granting interim measure is not efficacious, the appellant is not entitled for grant of an interim measure at this stage.

5. Accordingly, the appeal is dismissed, however, with liberty to the appellant to move an application under Section 17 of the Act, for grant of interim measure before the Arbitrator.

6. As a sequel to the dismissal of the writ petition, I.A.No.1 of 2017 (C.M.A.M.P.No.1245 of 2017) and I.A.No.5 of 2018 stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 14th November, 2018

msb

