

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

CIVIL REVISION PETITION NO.6330 OF 2017

Between:

M/s Royal Mindzs India Pvt. Ltd. ... Petitioner

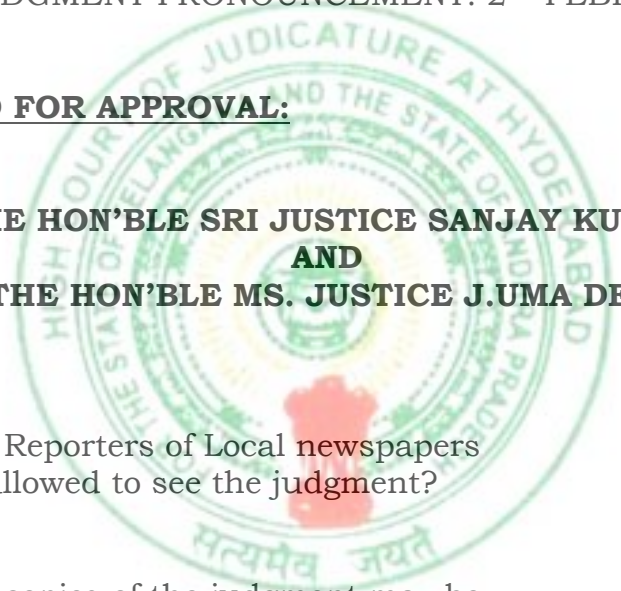
and

M/s Coastal Ceramics & Clay Works Pvt.
Ltd. and another ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 2nd FEBRUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

J.UMA DEVI, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

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Ltd. and another ... Respondents

<Gist:

>Head Note:

! Counsel for petitioner : Sri N.Subba Rao

^Counsel for respondent No.1 : Sri N.Vijay

^Counsel for respondent No.2 : --

? CASES REFERRED:

1. 2015 LawSuit(Del) 982
2. AIR 2010 SC 640
3. (1982) 2 SCC 499
4. 2012 (1) ALD 701 (DB)

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CIVIL REVISION PETITION NO.6330 OF 2017

O R D E R

(*per* Justice Sanjay Kumar)

This revision under Section 115 CPC arises out of the order dated 01.11.2017 passed by the learned Principal District Judge, East Godavari at Rajamahendravaram, in Civil Miscellaneous Appeal No.22 of 2017. The petitioner company was the appellant in the said appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996), against the order dated 09.03.2017 passed by the sole Arbitrator, the second respondent herein, in I.A.No.1 of 2017 in ARC No.156 of 2014. This I.A. was filed by the first respondent company herein under Section 151 CPC seeking a direction to the petitioner company to handover possession of the apartments allotted to its share as per the Development Agreement dated 16.12.2011 and Supplemental Agreement dated 21.11.2012, without prejudice to its rights and contentions in the arbitral proceedings. By the order dated 09.03.2017, the Arbitrator held the first respondent company entitled to its share of apartments and directed the petitioner company to hand them over. This order was confirmed by the learned Principal District Judge, East Godavari at Rajamahendravaram, by the order dated 01.11.2017 passed in CMA.No.22 of 2017. Aggrieved thereby, the petitioner company is before this Court.

Heard Sri N.Subba Rao, learned counsel for the petitioner company, and Sri N.Vijay, learned counsel on caveat for the first respondent company.

Sri N.Subba Rao, learned counsel, would point out that the Act of 1996 was extensively amended by the Arbitration and Conciliation (Amendment) Act, 2015 (*for brevity*, 'the Amendment Act 2015'), with effect from 23.10.2015, and that Section 26 thereof provided that the said amendments would not apply to arbitral proceedings commenced in accordance with the unamended provisions of the Act of 1996 before commencement of the Amendment Act 2015, unless the parties otherwise agree thereto. He would contend that in the light of Clause 53 of the Development Agreement dated 16.12.2011, dealing with arbitration, which specifically provides that any statutory modification or re-enactment of the Act of 1996 would be applicable to the arbitration proceedings initiated thereunder, the amended provisions of the Act of 1996 would apply as the parties are deemed to have agreed thereto. He would contend that in terms of Section 29A which was inserted in the Act of 1996 by the Amendment Act 2015, an Award necessarily has to be made within 12 months from the date of entering upon the reference by the Arbitrator and as the second respondent Arbitrator, having entered upon the reference in September 2015, failed to pass an Award till date, he is deemed to have become *functus officio*. He would therefore argue that the order passed by the second respondent Arbitrator on 09.03.2017 is inherently invalid. He would alternatively contend that in the event the amended provisions of the Act of 1996 do not apply, the order passed by the Arbitrator, which clearly demonstrates that he relied upon amended Section 17 of the Act of 1996, would still be unsustainable. He would state that the said order practically amounts to an Interim Award and as

such a measure was not contemplated by the parties in their agreements, the Arbitrator ought not to have granted relief in terms of the said order.

Per contra, Sri N.Vijay, learned counsel, would assert that Clause 40 of the Development Agreement dated 16.12.2011 manifests that the petitioner company and the first respondent company were to be treated as owners and possessors of their respective shares in the constructed area, coupled with undivided/unspecified proportionate shares in the land allocated to each of them. He would therefore contend that the parties are deemed to be in possession of their shares and that is the reason why his client did not seek recovery of possession in his counter-claim in the arbitration proceedings. Learned counsel would further point out that the unamended provisions of Section 17 of the Act of 1996 empowered the Arbitrator to take such interim measures as were considered necessary by him in respect of the subject matter of the dispute and the amended provisions thereof merely elaborated on this vast power which already vested in the Arbitrator. He would state that the interim relief sought by his client was merely to deliver the constructed works in the flats which were allotted to it and no determination of the disputes between the parties was called for in this regard, whereby the order could be stated to be an Interim Award. He would contend that the amended provisions of the Act of 1996 have no application to the subject arbitral proceedings, which commenced long before the Amendment Act 2015. Alternatively, he would submit that if extension of the amended provisions of the Act of 1996 presents a textual impossibility, applying the same to the arbitral proceedings

on hand would not arise. On facts, he would point out that the petitioner company already sold away its share of flats, in terms of the agreements, and could not seek to restrain the first respondent company from doing so with its own share.

In reply, Sri N.Subba Rao, learned counsel, would submit that the claim of the first respondent company that the parties were already in possession of their shares is a misconception as Clause 23 of the Development Agreement specifically provides for delivery of the constructed area allotted towards the share of the first respondent company after completion of the residential complexes by the petitioner company. He would also place reliance on the Supplemental Agreement dated 21.11.2012, and more particularly Clauses 5 and 9 thereof, in support of his argument that the parties could not be said to be in independent possession.

Both the learned counsel addressed copious arguments on the issue as to whether the amended provisions of the Act of 1996, consequent upon the Amendment Act 2015, would apply to the case on hand or whether the unamended Act of 1996 alone should be applied to the subject arbitral proceedings. Abundant case law was also pressed into service in this regard.

The present *lis* traces its origin to the Development Agreement dated 16.12.2011 entered into by the petitioner company and the first respondent company with regard to development of six plots owned by the first respondent company, totally admeasuring 19,967 square metres equivalent to 23,881.08 square yards (Ac.4.93 cents), in various survey numbers of Rajamahendravaram. The petitioner company agreed thereunder to raise group-housing residential complexes on the said land within

36 months from the date of registration of the Development Agreement-cum-GPA, with a grace period of three months and a further period of three months for obtaining NOC/Occupancy Certificates. In the event of default, the petitioner company was required to pay Rs.5/- per square foot per month in respect of the constructed areas which were not delivered to the first respondent company, during the period of such delay upon expiry of the stipulated 42 months. Clause 53 of the said agreement is the arbitration clause and it reads as under:

‘Arbitration

In the event of a disagreement or dispute between the “PARTIES” in relation to these “PRESENTS” the “PARTIES” shall attempt in good faith to resolve those differences, failing which, all disputes or differences whatsoever which shall at any time hereafter (whether during the continuance of these “PRESENTS” or upon or after its discharge or determination) arise between the “PARTIES” hereto shall be referred to arbitration in accordance with and subject to the provisions of the Indian Arbitration & Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force. Each party shall be entitled to appoint/nominate one Arbitrator and the two Arbitrators so appointed/nominated shall appoint the third Presiding Arbitrator. The awards of the Arbitrators shall be final and binding on the “PARTIES” to the reference. The arbitration proceedings shall be held in Rajahmundry only.’

It is pursuant to this clause that the petitioner company filed Arbitration Application No.156 of 2014 under Section 11(5) of the Act of 1996 before the Hon’ble The Chief Justice of this Court and by order dated 18.09.2015 passed therein, the then Hon’ble The Acting Chief Justice appointed the second respondent as the sole Arbitrator and directed that all the disputes between the parties be

referred to him. The Hon'ble The Acting Chief Justice also expressed the desire that the Arbitrator should complete the arbitration proceedings by publishing the Award within six months from the date of entering upon the reference.

While so, well after the Arbitrator entered upon the reference, the first respondent company filed I.A.No.1 of 2017 before him under Section 151 CPC seeking interim relief, *viz.*, to hand over possession of the flats allotted to its share as per the Development Agreement, without prejudice to its rights and contentions in the arbitral proceedings. It pointed out that during the pendency of the arbitral proceedings, the petitioner company reported completion of the work under Memo dated 12.10.2016 but had not delivered its share of flats and asserted that it was prepared to take possession of the same, without prejudice to its contentions in the arbitral proceedings, and sought relief.

In its counter to the aforesaid I.A., the petitioner company relied upon Section 7 of the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987 (*for brevity*, 'the Apartments Act') and contended that it was entitled to withhold delivery of the apartments until it realised its dues.

Upon considering the rival submissions, the Arbitrator referred to Section 17 of the Act of 1996 and reproduced the amended provisions thereof in Para 9 of his order. Holding that he had jurisdiction to exercise power under Section 17 of the Act of 1996 and that Section 7 of the Apartments Act had no relevance to the case, the Arbitrator went on to examine the claim of the first respondent company on merits. Finding that the first respondent company was the owner of the property, while the petitioner

company was merely a developer and had realised the fruits of its share of the property, the Arbitrator opined that the owner of the property should not be deprived of realising the fruits of its share. Observing that, even as per equity, both parties should enjoy their respective shares while honouring the agreements, the Arbitrator opined that the parties should strictly adhere to the terms and conditions of the agreements. Referring to the fact that both parties had made claims against each other, in as much as the petitioner company sought Rs.20.00 crore while the first respondent company put forth a claim for Rs.30.00 crore, the Arbitrator held that pending adjudication of their claims, depriving one party of its share of the property, in terms of its legal entitlement under the Development Agreement, would be unjust.

Significantly, the petitioner company was asked by the Arbitrator as to whether any conditional order regarding deposit of money or a bank guarantee for the value of the property that fell to the share of the parties was to be ordered, but the learned counsel for the petitioner company did not agree and requested the Arbitrator to pass appropriate orders. Thereupon, the Arbitrator held that in the totality of the circumstances the first respondent company was entitled to its share of apartments as per the Development Agreement and directed the petitioner company to hand over the same, as agreed, under acknowledgement. This order was passed by the Arbitrator without prejudice to the rights and contentions of both parties in the arbitration proceedings.

Thereupon, the petitioner company filed C.M.A.No.251 of 2017 before this Court, in the first instance, assailing the aforestated order dated 09.03.2017. The appeal was however

dismissed by this Court on 27.07.2017, holding that it was not maintainable but granting liberty to the petitioner company to challenge the order of the Arbitrator before the concerned Principal Civil Court of original jurisdiction. Pursuant thereto, the petitioner company filed C.M.A.No.22 of 2017 before the learned Principal District Judge, East Godavari at Rajamahendravaram. This appeal was dismissed by the order under revision. Perusal thereof reflects that the Court below agreed with the Arbitrator that Section 7 of the Apartments Act had no application to the case on hand, as it related to conveyance of an apartment by a promoter to an actual purchaser and there was no such relationship between the owner and the developer in the case on hand. Further, on facts, the Court below found that the order passed by the Arbitrator was justified and there was no impropriety therein, in the context of the agreement clauses. The Court below recorded that if the completed flats were not delivered, the mischief would be greater than the loss caused to the petitioner company, which was taking advantage of its physical possession over all the completed flats, without their being any such understanding in the agreement. The Court below opined that if the property was not delivered, even after completion of the construction, it would result in waste and dissipation of the asset value and frustrate the interest of the first respondent company and its purchasers, leading to multiplicity of litigation. Holding that the balance of convenience and irreparable injury were also in favour of the first respondent company, the Court below concluded that no tenable ground was made out for interference and dismissed the appeal.

Before advertng to the issues arising for consideration presently, it is necessary to take note of certain factual aspects of the matter. The 'Development Agreement-cum-General Power of Attorney dated 16.12.2011' executed by and between the petitioner company and the first respondent company provides to the effect that the first respondent company, being the absolute owner of the land admeasuring 19,967 square metres in six contiguous plots in Rajahmundry (now, Rajamahendravaram), agreed to permit the petitioner company, which was involved in the business of development and construction of residential apartments, villas, flats, etc., to develop the said land by constructing group-housing residential complexes thereon and the terms and conditions of such agreement were reduced to writing. Clause 23 therein details the consequences of failure on the part of the petitioner company to complete the construction within 36 months from the date of registration of the agreement, with a grace period of three months and a further period of three months for obtaining NOC/Occupancy Certificates. In this context, the clause only speaks of the petitioner company failing to 'deliver the constructed area' allotted towards the share of the first respondent company and provides for payment of damages at the rate of Rs.5/- per square foot per month in respect of the constructed areas which are not delivered to the first respondent company during the period of said delay. Clause 29 states that the total built up area (plinth area + common areas) of the proposed residential complexes is 2,73,000 square feet with stilt floors for car parking, admeasuring 50,000 square feet, and a club house of 8,000 square feet. The clause also provides that the first respondent company is entitled

to 33 1/3rd % share in these areas and the balance 66 2/3rd % share falls to the lot of the petitioner company. Clause 30 states that the petitioner company and the first respondent company are entitled to deal with their respective shares and are free to enter into agreements and receive sale consideration from prospective purchasers. Each party was left to its own devices for marketing its share. Clause 40 states that the petitioner company and the first respondent company are to be treated as 'owners and possessors' of their respective shares. Clause 43 states that the first respondent company permitted the petitioner company to enter upon 12,203.50 square metres out of the total extent of 19,967 square metres for the purpose of the development.

Clause 4 of the Supplemental Agreement dated 21.11.2012 entered into by and between the parties demonstrates that they allocated and distributed thereunder the entire constructed areas falling to their respective shares, with flat numbers, floor numbers and block numbers. Sub-clause (a) of Clause 4 details the flats in Annexure-A which fell to the share of the first respondent company while Sub-clause (b) covered the flats in Annexure-B allotted to the petitioner company. Sub-clause (c) refers to the flat in Annexure-C that fell to the joint share of the petitioner company and the first respondent company. Clause 5 states that each party shall be deemed to be the absolute and exclusive owner of the flats allotted to their respective share as shown and described in Annexures A and B with full rights, powers and freedom to deal with them in the manner as they like, including the power to sell or alienate, lease, mortgage, etc. Clause 6 states that as regards the flat in Annexure-C, wherein both parties had a joint share, they were required to

jointly execute a sale deed/agreement of sale/any other document relating to such flat and the sale proceeds were to be divided between them as per their respective shares. Annexure-C appended to the Supplemental Agreement indicates that only Flat No.501, admeasuring 1200 square feet, along with car parking area, fell to the joint share of both parties. Clause 9 states that the petitioner company shall stand discharged only after construction and delivery of the said flats/built up areas to the first respondent company as per the terms of the Development Agreement.

The aforestated agreement clauses manifest in no uncertain terms that delivery of 'legal possession of the flats' by the petitioner company to the first respondent company was not contemplated. On the other hand, Clause 5 of the Supplemental Agreement dated 21.11.2012, read with Clauses 23 and 40 of the Development Agreement dated 16.12.2011, puts it beyond the pale of doubt that the parties were deemed to be in independent possession of their respective share of flats. Notably, Clause 40 categorically states that each party shall be treated as the 'owner and possessor' of its respective share of the constructed areas. The first respondent company was therefore declared to be the 'owner and possessor' of its allotted flats without reference to the contemplated delivery of the constructed/built up areas of such flats by the petitioner company to it. Further, the independent right of each party in relation to its respective share of flats, as shown in Annexures A and B to the Supplemental Agreement dated 21.11.2012, including the power to lease, would not arise unless they are in independent possession. Only Flat No.501 was treated as being in their joint possession. Clause 9 of the Supplemental Agreement dated

21.11.2012 therefore cannot be construed contrary to these clauses and delivery therein, as set out in clear terms, was only with reference to the built up areas and did not mean that legal possession of the flats falling to the share of the first respondent company remained with the petitioner company. Thus, the contention of Sri N.Subba Rao, learned counsel, that legal possession of all the flats vested in the petitioner company, the developer, and that specific delivery of such possession was required to be made, cannot be countenanced.

Further, the argument that Section 7 of the Act of 1987 would have application to the case on hand is utterly misconceived. This provision only protects a promoter/builder of apartments, by requiring payment of the entire amount due in respect of the price before delivery of possession of the apartments by such promoter/builder to the transferee. This provision can have no application as between an owner and developer of flats, as in the case on hand. The argument advanced to the contrary therefore does not merit acceptance.

Though Sri N.Subba Rao, learned counsel, vehemently argued that the second respondent Arbitrator became *functus officio* by the time he passed the order under revision, in view of Section 29A of the Act of 1996, which was inserted therein by the Amendment Act 2015, we find that this aspect of the matter was never raised at all before the second respondent Arbitrator. The counter filed by the petitioner company to the subject I.A. was extracted *in extenso* by the Arbitrator in Para 4 of the order under revision and not a whisper is found therein on this aspect of the matter. Even before the learned Principal District Judge, East

Godavari at Rajamahendravaram, in its appeal filed under Section 37 of the Act of 1996, the petitioner company did not choose to raise this issue. All that was stated before the Court below was that the Arbitrator's tenure was only six months and as the said period was not extended, he had no power to continue the arbitration proceedings. However, as rightly pointed out by the learned Principal District Judge, East Godavari at Rajamahendravaram, the then Hon'ble The Acting Chief Justice did not specifically fix a time schedule of six months for passing of the Award by the second respondent Arbitrator at the time of his appointment but merely observed that he desired that the Arbitrator should complete the arbitration proceedings by making the Award within six months from the date of entering upon the reference. Mere voicing of a desire does not amount to a mandate and it cannot therefore be said, by any stretch of imagination, that this Court fixed a time schedule for passing of the Award, much less six months. The question of the Arbitrator becoming *functus officio* on this ground therefore does not arise.

In this regard, Sri N.Subba Rao, learned counsel relied upon ***HARYANA PACKAIDS PVT LTD V/s. INDIAN OIL CORPORATION LTD¹***, wherein a learned Judge of the Delhi High Court was dealing with the question as to whether the Arbitrator therein had become *functus officio*. Though there was no provision in the Act of 1996, as it then stood, fixing a time limit for conclusion of the arbitration proceedings it was found, on facts, that six months had been fixed by the Court in exercise of its inherent power and the parties, by mutual consent, extended the period fixed by one more month to enable the Arbitrator to render a decision. But even within this

¹ 2015 LawSuit(Del) 982

extended period, the Arbitrator failed to do so. As the parties had resorted to the procedure in the arbitration agreement for enlargement of time, it was held that the Court could not exercise its inherent power to further extend the time fixed by the parties, in the absence of their consent. In these circumstances, it was held that the Arbitrator had become *functus officio*. **N.B.C.C. LTD V/s. J.E.ENGINEERING PVT. LTD²** was also a case where the Arbitrator became *functus officio* due to his failure to pass an Award within the stipulated time.

Both these judgments are distinguishable on facts as we find that there was no binding stipulation of a time frame for passing of an Award when the second respondent Arbitrator was appointed.

Further, when applicability of the amended provisions of the Act of 1996, consequent upon the Amendment Act 2015, was never put in issue by the petitioner company either before the second respondent Arbitrator or before the learned Principal District Judge, East Godavari at Rajamahendravaram, in its appeal under Section 37 of the Act of 1996, it is not open to it to raise it for the first time before this Court in this civil revision petition filed under Section 115 CPC. Section 115 CPC reads as under:

‘115. Revision.- (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears —

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

² AIR 2010 SC 640

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation .- In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.’

Be it noted that revisionary jurisdiction under Section 115 CPC is not plenary and in exercise of such revisionary jurisdiction, this Court would only examine as to whether the Court below exercised a jurisdiction not vested in it by law or failed to exercise a jurisdiction so vested or acted in exercise of its jurisdiction illegally or with material irregularity.

Significantly, in **FOOD CORPORATION OF INDIA V/s. YADAV ENGINEER & CONTRACTOR**³, the Supreme Court held that a point not raised before the trial Court and the appellate Court should not be allowed to be raised in a revision under Section 115 CPC for the first time.

When the issue of applicability of the amended provisions of the Act of 1996 was never raised before the Court below, the question of the Court below failing to exercise jurisdiction or exercising jurisdiction illegally or with material irregularity, in relation thereto, does not arise. The *proviso* to Section 115(1) CPC is also of guidance in this regard as it indicates that varying or reversing of an order in exercise of revisionary jurisdiction should

³ (1982) 2 SCC 499

be in the context of such order being 'made' or 'deciding an issue'. Therefore, when the issue itself has not been raised and decided, the question of exercising revisionary jurisdiction in relation thereto would not arise. We are therefore not inclined to go into the applicability or otherwise of the amended provisions of the Act of 1996 to the subject arbitral proceedings. Case law cited in this regard is accordingly eschewed from consideration. It is left open to the parties to raise this issue at the proper stage before the appropriate forum.

That being said, it is a fact that the second respondent Arbitrator extracted the amended provisions of Section 17 of the Act of 1996 in his order dated 09.03.2017. However, as rightly pointed out by Sri N.Vijay, learned counsel, even the unamended Section 17 of the Act of 1996 was wide enough to empower the Arbitrator to take all appropriate interim measures in relation to the subject matter of the dispute. The unamended Section 17 of the Act of 1996 reads as under:

‘17. Interim measures ordered by arbitral tribunal.—

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.

(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1).’

In **HYDERABAD CRICKET ASSOCIATION GYMKHANA GROUNDS, SECUNDERABAD V/s. VISAKHA INDUSTRIES LTD.,**

MEDAK DISTRICT⁴, a Division Bench of this Court considered the unamended provisions of Section 17 of the Act of 1996 and held:

‘10. The types of interim measures of protection could be ordered by an arbitral Tribunal under sub-section (1) of Section 17 of the Act have not been specified. The expression “interim measures of protection” is wide enough to mean and include all those measures which the parties themselves could have achieved by agreement. Examples of interim measures designed to prevent or mitigate loss include the measures for preservation, custody or sale of goods which are the subject-matter of the dispute, measures designed provisionally to determine and ‘stabilise’ the relationships of the parties in a long term project. Orders of the latter type include the use or maintenance of machines or works or the continuation of a certain phase of a construction if necessary to prevent irreparable harm.’

It is manifest that the interim prayer of the first respondent company fell squarely within the ambit of the unamended provisions of Section 17 of the Act of 1996 as it could have been one of the measures which the parties themselves could have achieved by agreement. Be it also noted that the second respondent Arbitrator specifically asked the learned counsel for the petitioner company as to whether any provision should be made for deposit of money or furnishing of a bank guarantee in connection with the areas to be delivered to the first respondent company. However, the learned counsel turned it down and asked the Arbitrator to pass appropriate orders on merits. Therefore, mere mentioning of the amended provisions of Section 17 of the Act of 1996 is not sufficient in itself to invalidate the order dated 09.03.2017 passed by the Arbitrator. Even if the relief sought by the first respondent company, by way of the subject I.A., is

⁴ 2012 (1) ALD 701 (DB)

considered under the unamended provisions of Section 17 of the Act of 1996, we are of the opinion that a direction to the petitioner company to deliver physical possession of the flats allotted to the share of the first respondent company cannot be said to be beyond jurisdiction.

Further, we are also of the opinion that the order dated 09.03.2017 did not amount to an Interim Award under Section 31(6) of the Act of 1996. The said provision empowers an Arbitrator to make an Interim Award on any matter with respect to which he may make a Final Award. In the present case, the interim relief sought did not form part of the main relief claimed by the first respondent company in its counter-claim in the arbitration proceedings. Mere delivery of physical possession of the flats cannot therefore be brought within the ambit of the main disputes between the parties, which would be addressed by the Arbitrator in his Final Award. The provisions of Section 31(6) of the Act of 1996 are therefore not attracted.

Finally, it is not in dispute that the petitioner company, having completed the construction of the residential complexes in terms of the Development Agreement, is enjoying the flats that fell to its share, but the same benefit is sought to be denied to the first respondent company, When the agreement clauses bear out that the parties had independent ownership and possession over their individual shares to the extent of even entering into leases or sales in relation thereto, withholding of physical possession of the share that fell to the lot of the first respondent company by the petitioner company cannot be accepted. The agreement clauses, as drawn up

by and between the parties, do not support the stand that is now sought to be taken by the petitioner company.

We therefore find no error in the order dated 01.11.2017 passed by the learned Principal District Judge, East Godavari at Rajamahendravaram, in CMA.No.22 of 2017. The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

J. UMA DEVI, J

2nd FEBRUARY, 2018

**Note: L.R. copy to be marked
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