

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

CIVIL REVISION PETITION No.6418 OF 2017

DATED:30-04-2018

Between:

M/s. Advanced Mining Technologies Pvt. Ltd.

A company registered under the provisions of
the Companies Act, 1956, having its

Registered Office at
Plot No.668, Road No.33,
Jubilee Hills, Hyderabad

Rep. by its Managing Director ... Petitioner

And

M/s. The Singareni Collieries Company Ltd.,
Kothagudem Collieries P.O., Kothagudem
Khammam District

Rep. by its Chairman and Managing Director ... Respondent

COUNSEL FOR THE PETITIONER: Mr. C.V. Mohan Reddy
Senior Counsel, for
Mr. S. Vivek Chandrasekhar

COUNSEL FOR THE RESPONDENT: Mr. J. Sreenivasa Rao,
Standing Counsel for
Singareni Collieries
Company Ltd.

THE COURT MADE THE FOLLOWING:

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

This civil revision petition arises out of order dt.19.01.2017 in E.P. No.186 of 2016 on the file of the Principal District Judge, Khammam.

By the aforementioned order, the Court below has closed the E.P. on the ground that the respondent has filed A.R.B.O.P. No.1492 of 2016 questioning the Arbitration Award and that as the arbitration proceedings were commenced prior to the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (for short, "the Amendment Act"), the execution proceedings do not lie till the disposal of the O.P.

At the hearing, Mr. C.V. Mohan Reddy, learned Senior Counsel for the petitioner, placed before us the judgment of the Apex Court in **Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd.**¹ in support of his submission that the amended provisions of Section 36 of the Act would apply even to applications filed under Section 34 of the Act at the time of passing of the Amendment Act. In the said judgment, the Supreme Court has laid down as follows:

“53. From a reading of Section 26 as interpreted by us, it thus becomes clear that in all cases where the Section 34 petition is filed after the commencement of the Amendment Act, and an application for stay having been made under Section 36 therein, will be governed by Section 34 as amended and Section 36 as substituted. But, what is to happen to Section 34 petitions that

¹ 2018 SCC Online SC 232

have been filed before the commencement of the Amendment Act, which were governed by Section 36 of the old Act? Would Section 36, as substituted, apply to such petitions? To answer this question, we have necessarily to decide on what is meant by “enforcement” in Section 36. On the one hand, it has been argued that “enforcement” is nothing but “execution”, and on the other hand, it has been argued that “enforcement” and “execution” are different concepts, “enforcement” being substantive and “execution” being procedural in nature.”

“58. 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 the light of the aforementioned judgment holding that the Amendment Act applies to Section 34 applications before the commencement of the said Act, the order under revision is liable to be set aside and the same issued accordingly set aside. E.P. No.186 of 2016 is restored to file with the direction to the lower Court to dispose of the same on its own merits as expeditiously as possible.

The civil revision petition is accordingly allowed.

As a sequel to allowing the civil revision petition, CRP MP No.8260 of 2017 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

D.V.S.S. SOMAYAJULU, J

30-4-2018

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