

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

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL MISCELLANEOUS APPEAL No. 1291 of 2017

JUDGMENT: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This civil miscellaneous appeal is filed by the respondents in Arb.O.P.No.1137 of 2016 on the file of Special Sessions Judge for trial of cases under SCs & STs (POA) Act-cum-VII Additional District Judge, Ranga Reddy District, at L.B. Nagar, whereby he has allowed the said O.P. filed by the respondent for injunction restraining the appellants from interfering with the developmental works over the petition schedule property pending initiation of arbitration proceedings.

2. Heard Mr. A. Venkatesh, Learned Counsel for the appellants, and Mr. P. Sri Raghu Ram, Learned Senior Counsel for the respondent.

3. The respondent, which is a registered company, was approached by the appellants and offered their land admeasuring Ac.9-20 guntas out of Ac.15-00 guntas (for short, the petition schedule property) in Survey Nos.45, 46/AA & 47/AA at Upperpally Village, Rajendranagar Mandal within the limits of Rajendranagar Municipality, Ranga Reddy District. The pleaded case of the respondent is that it has agreed to pay Rs.4.50 crores to appellants 1 to 3 as interest free returnable deposit and both the parties entered into a Memorandum of Understanding (MOU) dated

21.02.2014 for developing the land into group of houses as per the terms and conditions of the said MOU. The respondent further pleaded that it has paid Rs.3.00 Crores to the appellants through cheques and cash as mentioned in the MOU, and agreed to pay the balance sum of Rs.1.50 crores after obtaining permission from Greater Hyderabad Municipal Corporation (for short, 'GHMC'). He has further pleaded that out of the said amount, the appellants failed to encash Rs.45 lakhs and Rs.55 lakhs paid under two cheques, and that it has paid a sum of Rs.2,54,75,065/- to the GHMC for building permission and the same is awaited. The cause of action for the respondent to approach the lower Court was the alleged interference by certain persons at the instance of the appellants with the work being executed by the respondent through its labourers. The respondent, therefore, filed Arb.O.P.No.1137 of 2016 under Section 9 of the Arbitration and Conciliation Act, 1996, (for short, 'the Act') for an injunction restraining the appellants from interfering with the development works over the petition schedule property.

4. On behalf of the appellants, a counter affidavit was filed wherein they have admitted the execution of the development agreement dated 21.02.2014, and the respondent agreeing to pay Rs.4.50 Crores towards interest free refundable deposit, and payment of Rs.3.00 crores by the respondent through Cheques and Cash. However, the appellants pleaded that the respondents had grossly violated the terms of the MOU in payment of the balance amount within the stipulated time; and that they also suppressed the fact that the respondent has entered into MOU dated

24.02.2014 agreeing to pay Rs.4.70 Crores as goodwill to the appellants as they are unable to do agriculture in the petition schedule property. The appellants referred to the legal notice dated 07.09.2016 caused to them by the respondent for adhering to the terms of the registered MOU and to cooperate with it for smooth execution of the work. They have, however, denied the claim of the respondent that along with the said notice, it sent Demand Drafts for Rs.95.00 lakhs in lieu of cheques bearing Nos.394020 and 394022 of SBH, D.D. colony. It is further averred that the respondent has not approached the Court with clean hands and suppressed material facts. They have, therefore, sought for dismissal of the petition.

5. Considering the respective pleadings of the parties, and after hearing the counsel for both the sides, the Court below held that as the respondent has fulfilled the essential conditions, namely, proof of execution of agreement between the parties, and existence of Arbitration Clause therein it is entitled to the interim relief pending contemplation of arbitration proceedings in which the disputes between the parties are to be decided on merits.

6. At the hearing, the learned counsel for the appellants submitted that the respondent has failed to fulfil the essential condition of Section 9 of the Act under which it has to necessarily plead that it is in contemplation of initiating Arbitration proceedings and that such a plea was not taken before the lower Court by the respondent. Learned

counsel, however, fairly conceded that this plea was neither raised nor advanced before the lower Court, and invited a finding thereon. Realising this, the learned counsel did not press this plea. Learned counsel, however, relied upon Sub-Section (2) of Section 9 of the Act, and submitted that since the respondent has not ensured that arbitral proceedings are commenced within a period of 90 days from the date of the order of the Court passed under Section 9(1) of the Act, the said order would automatically end with the expiry of the said period and that, therefore, a finding to that effect may be given by this Court.

7. Learned Senior Counsel for the respondent submitted that though his client does not have any issues for adjudication with the appellants, the necessity for his client to approach the lower Court for interim injunction under Section 9 of the Act arose as the appellants started interfering with the developmental works undertaken by the respondent, and that with the grant of interim relief, no further disputes remained and, hence, the respondent did not take steps for getting arbitral proceedings initiated. However, alternatively, he submitted that Sub-Section (2) of Section (9) has stipulated 90 days from the date of passing of the order or within such time as the Court may determine for initiation of arbitration proceedings and that this appeal being continuation of the O.P., this Court may permit the appellant to initiate the arbitral proceedings in a time-bound manner.

8. In **Firm Ashok Traders and Anr. etc. etc. v. Gurumukh Das Saluja and Ors**¹, on which heavy reliance has been placed by Mr. A. Venkatesh, the Apex Court held that it is incumbent upon the person who obtained an order for interim protection to commence arbitral proceedings within a reasonable time, and that, what is reasonable time will depend upon the facts and circumstances of the case and the nature of interim relief sought for would itself give an indication thereof.

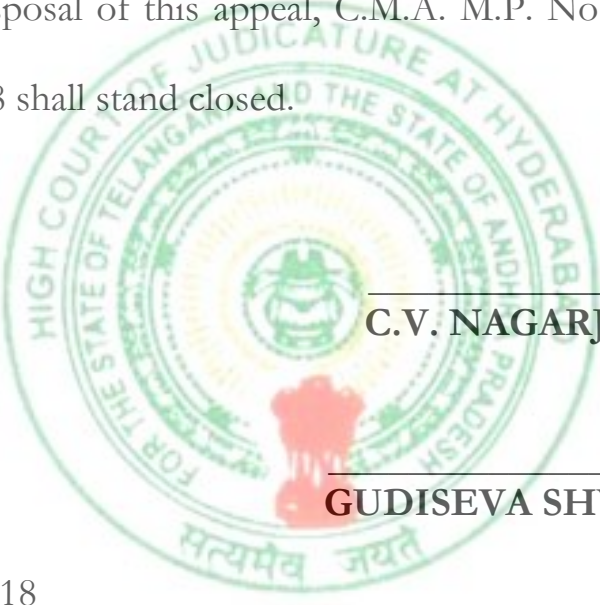
9. It is to be noted that what was expressly held by the Supreme Court in the said case has been specifically contemplated by the Act with the addition of Sub-Section (2) to Section (10) with effect from 23.10.2015. Therefore, there is no gainsaying of the fact that if a party does not commence arbitration within three months, he cannot have the benefit of protection order. While interpreting Section (9) of the Act, in the manner as observed hereinbefore in **Ashok (1 supra)**, the Supreme Court, however, directed the applicant under Section (9) to take steps for appointment of Arbitrator/s, without any further loss of time.

10. Ordinarily it is for the 'Court' as defined under Section 2(1)(e) of the Act, which, in the present case, means the principal Court of original Civil Judge i.e., the Court below which passed the order, to determine the time period within which arbitral proceedings may be initiated, if the party has approached it.

¹ (2004) 3 SCC 155

11. We are however not inclined to relegate the respondent to the lower Court for determining the period for reference, in the peculiar facts and circumstances of the case. As directed by the Supreme Court in **Ashok (1 supra)**, we direct the respondent to commence Arbitration proceedings within two weeks, failing which the protection order granted by the lower Court, which is the subject matter of this appeal, will automatically cease to exist.

12. Subject to the above direction, this appeal is disposed of. As a sequel to the disposal of this appeal, C.M.A. M.P. No.2329 of 2017 and I.A.No.1 of 2018 shall stand closed.



C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

01st February, 2018

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