High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Civil Revision Petition No.212 of 2019

Date: 01-03-2019

Between:

A.Madhusudhan Reddy

…Petitioner

and

National Research Centre on Meat
Through Director
Chengicherla, Hyderabad.

…Respondent

Counsel for the petitioner: **Mr. T.Sharath**

Counsel for the respondent: **Sri S.Nyaya Murthy**

The Court made the following:

Order: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The judgment debtor, Mr. A. Madhusudhan Reddy, has challenged the legality of the order dated 19-11-2018, passed by the Motor Accidents Claims Tribunal –cum- XXV Additional Chief Judge, City Civil Court, Hyderabad, whereby the learned Judge has allowed the Execution Petition, namely EP.No.69 of 2018, filed by the respondent, decree holder, under Order XXI Rules 54, 64 and 66 of the Civil Procedure Code, 1908 (CPC), and has directed the attachment of the property belonging to the petitioner, the judgment debtor.

Briefly, the facts of the case are that, the decree holder, the National Research Center on Meat, had granted a work order to the judgment debtor for construction of a slaughter house in Mahaboobnagar, Andhra Pradesh (now Telangana). However, despite the repeated requests of the decree holder, the judgment debtor did not construct the slaughter house. Therefore, relying on the arbitration clause in the work order, the decree holder filed a claim for Rs.29,49,300/- before the Arbitrator. By award dated 28-05-2014, the Arbitrator awarded the said sum in favour of the decree holder along with interest @ 12 % p.a., for the pre-reference period from 03-10-2011 till the date of reference *i.e.,* till 26-09-2012.

Since the judgment debtor was aggrieved by the award dated 25-08-2014, it filed an appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). Notwithstanding the pendency of the said appeal, on 11-11-2014, the decree holder filed the Execution Proceedings. Subsequently, during the Execution Proceedings, the impugned order was passed. Hence, this revision petition before this Court.

The learned Counsel for the respondent, decree holder, has raised a preliminary objection with regard to the maintainability of the present revision petition *inter alia* on the ground that the proviso to Section 115 of CPC clearly states 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.*" According to the learned Counsel, the present impugned order is merely an interlocutory order, and would not amount to final disposal of the execution proceedings. Therefore, the revision petition is not maintainable. In order to buttress this plea, the learned Counsel relies on the judgment of

Board of Control for Picket vs. Cochi Cricket Private Limited[1].

The learned Counsel for the petitioner, judgment debtor, on the other hand, pleads that this revision petition is, indeed, maintainable under Section 115 of CPC. For, according to him, since the execution proceedings were initiated at the time when Section 36 of the Act had not been amended, and since the appeal had been filed prior to the amendment of the Act in 2015, there was an automatic stay of the impugned arbitral award. Therefore, while attaching the property, the learned executing court has exercised a jurisdiction not vested in it by law.

Heard the learned counsel for the parties.

In the case of **Indian National Centre for Ocean Information Sciences vs. M/s. Unity Infra Projects Limited**[2], this Court had already opined that, an order passed under Order XXI Rules 54, 64 and 66 of CPC is an interlocutory order as it would not finally dispose of the suit or other proceedings as contained in proviso to Section 115 of CPC. Therefore, under Section 115 of CPC, the present petition would

[1] **2018 (6) SCC 287**
[2] **2019 (1) ALT 471 (D.B.)**

not even be maintainable, and it deserves to be dismissed on this ground alone.

Even on merits, the petitioner does not have any case. For, in the case of **Board of Control for Picket vs. Cochi Cricket Private Limited and other**, the Hon'ble Supreme Court had clearly opined that, even if an appeal under Section 34 of the Act were filed prior to the amendment, even if the execution proceedings were initiated prior to the amendment, the judgment debtor does not have the right to claim that there is an automatic stay of the impugned arbitral award. Even in such a situation, the judgment debtor is required to seek for a stay of the arbitral award. In the present case, admittedly, the judgment debtor did not have any stay granted in the appeal filed by him. Since the arbitral award was in operation, the learned executing court was justified in attaching the property belonging to the judgment debtor.

For the reasons stated above, both on the ground of maintainability and on the ground of lack of merit, the petition is, hereby, dismissed.

As a sequel to dismissal of the civil revision petition, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 1st March, 2019
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HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD