

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.2521 of 2017

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.18.01.2017 passed in I.A.No.1439 of 2016 in O.S.No.129 of 2016 on the file of the Principal District Judge, Karimnagar.

2. The petitioners herein are defendants in the above suit.
3. The respondent / plaintiff filed the said suit against petitioners alleging that a contract was awarded to it pursuant to a tender issued by petitioners vide order No.7600001590 dt.06.01.2009 to carry out certain works of Blast hole drilling, controlled blasting with shock tube initiation, excavation, loading, transportation and dumping, etc., of over burden at Medapalli Open-cast Project, Ramagumdam Area-1, Karimnagar District, Telangana State; and subsequently, disputes arose between the parties and Clause (4) of the order was invoked by petitioners which permitted them to vary the lead distance and also the price component, etc., even though the conditions precedent for invocation of the said clause were non-existent.

4. Therefore, in the suit, the following prayer was made :

(a) Declaring Clause 4 of the Order dated 06.01.2009 as inapplicable and inoperative in respect of the contract awarded to the plaintiff by the 1st defendant and consequently declaring the recovery / withholding of Rs.52,34,86,011/- tentatively from the work done bills

of the plaintiff up to 04.10.2015 by the defendants as illegal and contrary to the terms of the contract and direct the Defendants to release the same to the Plaintiff, by giving meaning of Clause 4 of the Order dated 06.01.2009;

(b) directing the 1st defendant to return the Bank Guarantee No.030/ILG/165/15-16 dated 16.07.2015 furnished by the Plaintiff for an amount of Rs.5.26 crores, which is part and parcel of the recovered / withheld amount of Rs.52,34,86,011/- and consequently restraining the 1st defendant from encashing the said Bank Guarantee by means of permanent injunction.

(c) Declaring the quantity of Over Burden executed by the Plaintiff as on 05.10.2015 to be the total quantity under Clause 5 of the Order dated 06.01.2009.

(d) Granting costs of the suit.”

5. Written statement was filed by petitioners opposing the suit claim, and objecting to the maintainability of suit itself on the ground that Section 34 of the Specific Relief Act, 1963 did not contemplate any such declaration as is being sought by the respondent.

6. Other pleas on merits of the contentions of respondent were also raised.

7. Thereafter, petitioners filed I.A.No.1439 of 2016 invoking Order VII Rule 11 of Civil Procedure Code, 1908 and sought rejection of the plaint on the ground that relief of declaration of a right under a private contract is not permissible under Section 34 of the Specific Relief Act, and so the main relief sought by respondent to declare that Clause (4) of the order dt.06.01.2009 is inapplicable and inoperative with a consequential relief, is not maintainable. According to them,

Section 34 thereof permits declarations only in respect of legal character or title of a person in respect of property.

8. Reliance was also placed on certain decisions.

9. Counter-affidavit was filed by respondent opposing this application and contending that in the order dt.06.01.2009 issued to respondent by petitioners, Clause (22) exists which provides for adjudication of disputes / differences arising between parties to be adjudicated only by a Civil Court of competent jurisdiction; and since the respondent had rightly availed the remedy provided in Clause (22) before the Civil Court, it cannot be said that the plaint is liable to be rejected. It was also contended that the contentions of petitioners cannot be adjudicated at this stage but can only be decided after framing of appropriate issues, and no grounds exist for rejection of the plaint.

10. By order dt.18.01.2017, the Court below dismissed I.A.No.1439 of 2016. It referred to Clause (22) of the Order dt.06.01.2009 and held that when the said clause specifically permitted for adjudication of disputes / differences arising out of the Order dt.06.01.2009 by approaching the Civil Court of competent jurisdiction, the petitioners cannot have the plaint rejected invoking Section 34 of the Specific Relief Act. It held that rival claims can be adjudicated after leading of evidence and after marking of the Order dt.06.01.2009 in evidence and observed that the issue is complex requiring finding to be given

on issues of fact and applicability of Clause (4) of the Order dt.06.01.2009 vis-à-vis application of Clause (22) of the Order dt.06.01.2009; and there is also a serious legal issue of application of Section 34 of the Specific Relief Act; and therefore, petitioners cannot seek for rejection of the plaint.

11. Assailing the same, the present Civil Revision Petition is filed.

12. The learned Additional Advocate-General, appearing for petitioners, sought to contend that the order passed by the Court below is erroneous; that the Court below ought to have rejected the plaint in view of Section 34 of the Specific Relief Act, and the fact that under the said provision a relief of declaration of a right under a private contract, cannot be sought or granted. It is also contended that other High Courts have taken similar view, and the Court below should have therefore rejected the plaint.

13. Section 34 of the Specific Relief Act, 1963 entitles a party to obtain declaration of any legal character or right to any property by filing a suit, and the Court has the discretion to grant relief or not.

14. Section 34 *per se* does not bar filing of any suit though it empowers the Court to deny relief if the Court feels that it is not a fit case to grant such relief. Therefore, by invoking Section 34 of the Specific Relief Act, 1963, the petitioners cannot contend that the suit itself is not maintainable by invoking Order VII Rule 11 of Civil Procedure Code, 1908. Of course, after the issues are framed and trial

concludes, the Court may consider the effect of Section 34, and decide whether or not to grant relief to the respondent. But the Court cannot be compelled to take any view on the maintainability of the suit before the trial has commenced on the legal issue of applicability of Section 34, more so, when the Order dt.06.01.2009 has not even been marked in evidence, and Clauses (4) and (22) contained in the said order, are not yet considered by the Court below.

15. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

16. Accordingly, the Civil Revision Petition fails and is dismissed. No order as to costs.

17. The Court below is directed to decide the suit uninfluenced by any observations made by it in its order dt.18.01.2017 in I.A.No.1439 of 2016 in O.S.No.129 of 2016, or by this Court in this Order.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05.03.2019

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