

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

CIVIL REVISION PETITION NO.897 OF 2018

ORDER: (per SK,J)

This civil revision petition, filed under Article 227 of the Constitution, calls in question the order dated 28.12.2017 passed by the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad (*for brevity*, 'the Commercial Court'), in I.A.No.510 of 2017 in C.O.P.No.239 of 2017. By the said order, the Commercial Court granted interim stay of the arbitral Award which was subjected to challenge in C.O.P.No.239 of 2017 filed before it, upon deposit of 25% of the amount due under the said arbitral Award. Aggrieved by the quantum of the deposit, the first respondent in C.O.P.No.239 of 2017, being the claimant in the arbitration proceedings, filed this civil revision petition.

Heard Sri L.Prabhakar Reddy, learned counsel for the petitioner, and Sri Ravi Shankar Jandhyala, learned counsel appearing for the Oriental Insurance Company Limited and its officials, respondents 1 to 4.

C.O.P.No.239 of 2017 was filed by the respondent insurance company under Section 34 of the Arbitration and Conciliation Act, 1996 (*for brevity*, the Act of 1996'), to set aside the arbitral Award dated 23.06.2017. The respondent insurance company filed I.A.No.510 of 2017 in the said C.O.P. under Section 36(2) and (3) of the Act of 1996 seeking stay of the operation of the arbitral Award pending the disposal of the application filed under Section 34 thereof. It is in exercise of power conferred by these provisions that the Commercial Court passed the order which is presently under challenge.

In this regard, it may be noted that Section 36(3) of the Act of 1996 vests the Court with discretion to grant stay of the operation of the arbitral Award, subject to such conditions as it may deem fit, for reasons to be recorded in writing. The proviso to the aforestated provision states that while considering an application for grant of stay in the case of an arbitral Award for payment of money, the Court shall have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.

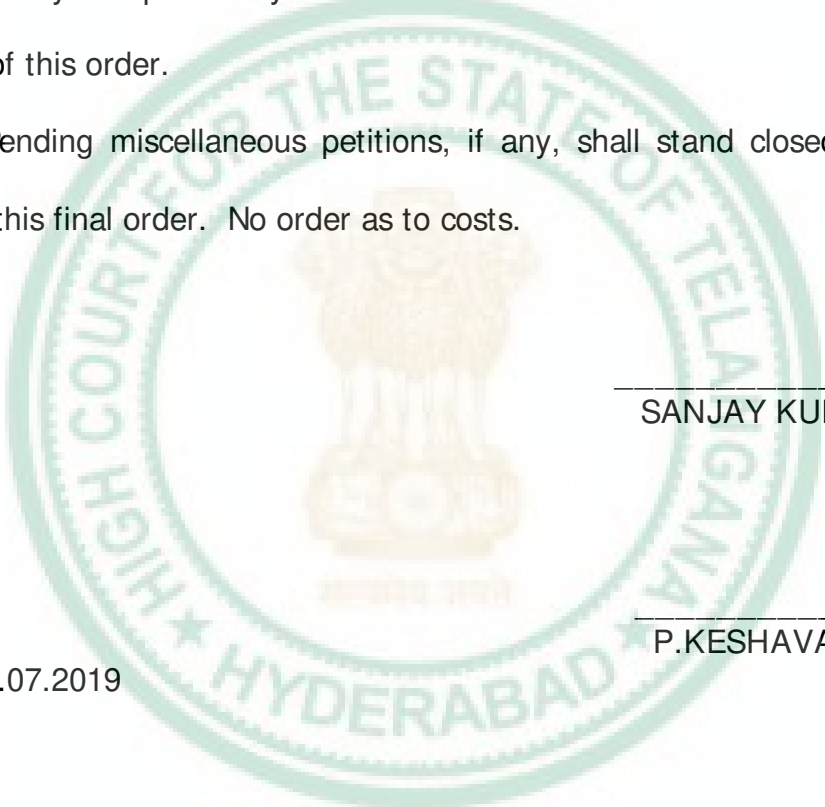
Sri L.Prabhakar Reddy, learned counsel, would point out that in an appeal arising out of a money decree, the usual order passed under the provisions of the Code of Civil Procedure, 1908, would be to direct deposit of 50% and permit withdrawal thereof. He would therefore assert that the Commercial Court erred in directing deposit of only 25% of the amount due under the arbitral Award dated 23.06.2017.

Sri Ravi Shankar Jandhyala, learned counsel, would contend otherwise.

Having perused the order under challenge, we are of the opinion that it would not be necessary for this Court to enter into the aforestated issue. We find from the order that no reasons whatsoever have been recorded despite Section 36(3) of the Act of 1996 categorically stating that reasons must be recorded. When the Commercial Court saw it fit to deviate from the usual approach in relation to appeals arising out of money decrees, as per the proviso to Section 36(3) of the Act of 1996, it necessarily had to record reasons to justify the same. The unreasoned order passed by the Commercial Court therefore does not satisfy the statutory requirement.

On that short ground, the civil revision petition is allowed setting aside the order dated 28.12.2017 passed in I.A.No.510 of 2017 in C.O.P.No.239 of 2017. The said I.A. is remitted to the file of the learned Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, for consideration afresh on its own merits and in accordance with law. Regard shall be had to the provisions of Section 36(2) and (3) and also the proviso to Section 36(3) of the Act of 1996 while dealing with the application. This exercise shall be completed expeditiously and preferably within four weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR,J

P.KESHAVA RAO,J

Date:08.07.2019

GJ