THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL NO.158 OF 2018

ORDER: (per Hon'ble Sri Justice T.Amarnath Goud)

This Civil Miscellaneous Appeal is filed by the Appellants/Respondents, challenging the Order and Decree dated 08.01.2018, in Arbitration O.P.No.1980 of 2017, on the file of the Court of the X Additional Chief Judge, City Civil Court, Hyderabad (for short, the learned trial court).

2. The respondent/petitioner filed O.P.No.1980 of 2017 before the learned trial court under Section 9 of Arbitration and Conciliation Act, 1996 (for short, "the Act"), for seeking attachment of the petition schedule movables lying at the premises of the appellants/respondents and consequently direct them to deposit the revenue generated on operation of said equipment to the credit of the O.P.

3. The brief averments of the petition are that the petitioner in the above O.P., is a partnership firm, incorporated under the provisions of the Indian Partnership Act,, 1932. It is carrying on the business in providing medical services in oncology department; it has leading radiation, medical and surgical oncologists associated with them. The petitioner has been involved in the said business for the last fifteen years. On the other hand, the respondent No.1 is a reputed multi-specialty hospital providing health care services in major specialties including oncology.

4. The petitioner and respondents have entered into Memorandum of Understanding dated 28.03.2016 and the same has come into effect from 01.01.2016 keeping in view of business development scope and sharing of revenue generated from the oncology department, medical bills on medicines and other related aspects. They did business in terms of the Memorandum of Understanding and have generated revenue from oncology department. All the accounts relating to the business are under the custody of respondents. The respondents have been orally informed the business done to the petitioner. However, they never allowed access to the books of accounts and other records as the treatment was done in the hospital premises belonging to the respondents. As per the oral information given by the respondents, the petitioner has estimated the share of revenue due and receivable more than Rs.1,42,00,000/-, which can be ascertained only after the audit is conducted by an auditor.

5. As per the terms of the Memorandum of Understanding, the respondents have to settle the receivables of the petitioner soon after receipt of remittance from the parties, credit institutions and other Government and Semi-Government Organizations. But the respondents have misappropriated all the revenue received from the oncology department. Consequently, the petitioner has been regularly denied the revenue due as per Memorandum of Understanding. The respondents have stopped the operations, and as of now, there is absolutely no activity in the hospital. The

respondents have been disposing of the movables from the hospital and they are also looking for prospective buyers for purchase of the hospital including the petition schedule movables apart from equipment and there is no worth-while machinery which can make the petitioner to claim the amount. Monthwise revenue from 01.01.2006 to 31.03.2017 has been tabulated by the petitioner and the actual revenue is estimated to be more than Rs.1,42,00,000/-.

6. Although the petitioner has put efforts to sort out the issues on several occasions, the respondents have completely ignored all such efforts. Thus, the petitioner issued a legal notice dated 09.03.2017 expressing its willingness to invoke the dispute resolution clause and seek reference of the dispute to the arbitrator, namely Sri Dhulipalla V.S.Ravi Prasad, Advocate. But there was no response from the respondents.

7. The respondents have been disposing of the movables from the hospital, without giving notice to the petitioner as per the terms of Memorandum of Understanding. If the respondents succeed in their evil designs, the petitioner will be put to irreparable loss, which cannot be compensated later by any means. Therefore, the petitioner filed a petition under Order 38 Rule 5 of CPC., and also under Section 9 of Arbitration and Conciliation Act, 1996, seeking an order of attachment of movable assets as mentioned in the petition schedule property.

8. The respondents filed a counter, admitting about entering into Memorandum of Understanding on 28.03.2016 and also admitted that the petitioner is medical service provider in oncology department with a team of leading radiation, medical and surgical oncologists associated with them. The respondents also admitted with regard to the business done as per the Memorandum of Understanding and generation of revenue in oncology department. However, the respondents denied the other allegations made by the petitioner. Instead, the respondents contended that they are not trying to dispose of the movable properties of the hospital. In fact, the hospital is closed for renovation purpose. The respondents came to know that a huge amount of Rs.42,50,000/- is pending in respect of the patients who were discharged from the hospital without letter of treatment from Prime Minister Relief Fund, which has to be obtained by the petitioner. The order of attachment is contrary to the provisions of Order 38 Rule 5(1) of CPC. Therefore, they prayed for dismissing the petition.

9. During the course of enquiry, the trial Court marked Exs. P. 1 to P. 14 on behalf of the petitioner, and also marked Exs. R.1 to R. 7 on behalf of the respondents.

10. After hearing both the parties and considering the material, the trial Court came to the conclusion that the petitioner has made out grounds for seeking attachment of petition schedule equipments. Therefore, the learned trial court made absolute the order dated 30.08.2017, attaching the petition schedule properties

in terms of Section 9 of Arbitration and Conciliation Act, 1996. Aggrieved by the said order, the present appeal has been filed.

11. At the stage of hearing, the learned counsel appearing for the appellants filed a memo, dated 18.02.2018. It reads as under:-

> *It is submitted that the petitioner has admitted the liability of Rs.26,17,791/- and the same was withheld by them as the respondent herein failed to obtain the letter of treatment from PMRF for the treatments worth Rs.42,50,000/-. The respondent herein sought for the attachment of four machines, as evident from the schedule of the property. Without prejudice the rights of the appellants, the 1st appellant is willing to furnish the property mentioned at Sl.No.3 (Cathlab-GE-1) of petition schedule property towards security for the above mentioned amount till the disposal of arbitration proceedings.*

12. When this Court pointed out to the learned counsel appearing for the appellants, he expressed willingness to furnish the property mentioned at Sl. No. 3 of the petition schedule property towards security for the due amount till the disposal of the arbitration proceedings. For, it would serve the purpose of furnishing security as contemplated under Order 38 Rule 5 of CPC. The learned counsel appearing for the respondent/petitioner also agreed for the same.

13. In view of the consent given by the appellants, the order dated 08.01.2018, in Arbitration O.P.No.1980 of 2017, passed by the X Additional Chief Judge, City Civil Court, Hyderabad is modified by releasing item Nos.1 and 2 of the petition schedule property from the attachment, and by confining the attachment only to item

No.3 (Cathlab-GE-1) of the petition schedule property for a sum of Rs.60,00,000/-.

14. For the aforestated reasons, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above. There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 21.02.2019
Shr.