HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K.LAKSHMAN

CIVIL REVISION PETITION NO.1298 OF 2019

O R D E R
(*Per Honourable Sri Justice M.S.Ramachandra Rao*)

Heard Sri S.Niranjan Reddy, learned counsel appearing for Smt. Rubaina S.Khatoon, learned counsel for the petitioner and Sri Vedula Srinivas, learned counsel appearing for Sri K.Sarath, learned counsel for the respondents.

2. This Revision is directed against the order dt.05.03.2019 in CEA No.33 of 2018 in CEP No.23 of 2018 of the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.

3. Admittedly, there were disputes between the petitioner and the respondents which culminated in Arbitral Award dt.23.04.2018 and correction Memorandum dt.26.05.2018. The claims made by the petitioner against the respondents were allowed and the respondents were directed to pay Rs.798.23 crore to the petitioner apart from costs and interest thereon.

4. The petitioner thereafter approached the Court below by filing CEA No.33 of 2018 invoking Order XXI Rule 41 of the CPC for grant of an ad interim direction to the respondents to disclose their assets, liabilities and charges to the petitioner, since the petitioner did not have knowledge about the assets of the respondents. The petitioner contended that details of the assets of the respondents from publicly available records may not be reliable, it would not be known whether they are

encumbered or not and it would cause difficulty to the petitioner to execute the Award. It therefore contended that it is necessary to direct the respondents to disclose the said details.

5. Only the 1st respondent herein filed a counter-affidavit before the Court below and other respondents did not file any counter-affidavit.

6. In the said counter-affidavit, the 1st respondent contended that the petitioner had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 being OMP No.I/Commercial/225/18 and the High Court of Delhi had granted an ad interim order restraining the respondents from selling, transferring, encumbering or alienating their shares in the 1st respondent company and that the said order had been extended from time to time and continues to operate against the respondents. The 1st respondent further contended that the High Court of Delhi had directed the Judgment Debtors to file a statement of their assets and liabilities including the location and approximate value of the assets. But subsequently, the said order was modified and a direction was given to Judgment Debtors 2 to 11 to file a statement of their assets and liabilities in a sealed cover which has to be kept in safe custody by the Registry of the High Court of Delhi. It is also stated that the 1st respondent was directed by the Delhi High Court to file an affidavit disclosing price of its assets and liabilities and the other respondents have filed the statement of their assets and liabilities with the Registry of the Delhi High Court in a sealed cover. It is contended that after filing of the said application under Section 9 of the Arbitration and Conciliation Act, 1996, the instant application under Order XXI Rule 41 CPC is not

maintainable. It is also contended that the respondents filed application under Section 36(2) and (3) of the Arbitration and Conciliation Act, 1996 before the High Court of Delhi seeking stay of the Award and that the respondents have good grounds to succeed in the petition under Section 34 of the said Act.

7. After quoting Order XXI Rule 41(1) CPC and also Order XXI Rule 41(2) CPC, the Court below in the impugned order referred to the events which happened before the Delhi High Court in the Section 9 application filed by the petitioner in that High Court and the fact that the respondents and others had filed particulars of their assets in a sealed cover. It then concluded that there is no prejudice caused to the respondents herein if they are directed to comply with the same procedure adopted by the Delhi High Court. It therefore directed the 1st respondent to furnish its assets by way of filing a copy of the affidavit which was filed before the High Court of Delhi and also directed respondents 2 to 8 to file a copy of the particulars of the assets filed in a sealed cover before the Delhi High Court by 18.03.2019.

8. Assailing the same, this Revision is filed by the petitioner.

9. A reading of Order XXI Rule 41(1) CPC empowers the Court to direct a Judgment Debtor in a suit for payment of money or where the Judgment Debtor is a corporation and an officer thereof to be orally examined on the question as to the debts of the Judgment Debtor and whether the Judgment Debtor has any and what other property or means of satisfying the decree. Sub-Rule (2) of Rule 41 of Order XXI CPC also empowers the Court to direct the Judgment Debtor, on an application

filed by the Decree Holder without prejudice to its power under Sub-Rule (1), to file an affidavit stating the particulars of the assets of the Judgment Debtor. Form No.16A of Appendix E to the CPC gives the format of the affidavit of the assets to be filed by a Judgment Debtor.

10. The Court below having noted the contents of Order XXI Rule 41(1) and (2) CPC, in our considered opinion, erred in directing the 1st respondent to file a copy of the 'affidavit' filed by it before the Delhi High Court as compliance of its direction under Order XXI Rule 41(2) CPC instead of asking the 1st respondent to furnish the details of assets as mentioned in Form No.16A of Appendix E to the CPC.

11. Its further direction to respondents 2 to 8 to also file a copy of the particulars of assets filed in a 'sealed cover' before the High Court of Delhi also, in our opinion, cannot be sustained because they would have to comply with Order XXI Rule 41(2) CPC by filing an affidavit of assets as per Form 16A of Appendix E to the CPC.

12. Learned counsel for the respondents is unable to point out any provision in the CPC which empowers filing of details of assets or liabilities by a Judgment Debtor in a 'sealed cover'. Merely because the Delhi High Court has chosen to adopt "sealed cover procedure", the Court below could not have simply adopted it when the CPC does not permit it.

13. It is also not the case of the respondents that any privilege is claimed by the respondents from disclosing to the petitioner their assets and liabilities warranting those details to be put in a 'sealed cover'.

12. Therefore, the order dt.05.03.2019 in CEA No.33 of 2018 in CEP No.23 of 2018 of the Judge, Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad is modified and it is directed that all the respondents shall file affidavit of assets and liabilities as per Form No.16A of Appendix E to the CPC, 1908 and also serve a copy thereof on the petitioner. This exercise shall be done within one week from the date of receipt of a copy of this order.

13. The Civil Revision Petition is allowed accordingly. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

M.S.RAMACHANDRA RAO, J

K. LAKSHMAN, J

2nd DECEMBER, 2019

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