

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE K.LAKSHMAN**

CRP.No. 2631 of 2019

ORDER: *(Per the Hon'ble Sri Justice M.S.Ramachandra Rao)*

1. Heard both sides.
2. This Civil Revision Petition is directed against the order dt.11.09.2019 in IA.No.465 of 2019 in COP.No.253 of 2017 on the file of Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad.
3. In the said order, the Court below directed the petitioners to deposit 50% of the amount awarded by the learned Arbitrator-2nd respondent, as a condition precedent for staying the enforcement of the Award in exercise of its power under Section 36(2) of the Arbitration and Conciliation Act, 1996.
4. It is the principal contention of the counsel for the petitioners that they had not agreed to the appointment of the Arbitrator and they had not even received any notice of the proceedings before the Arbitrator.
5. Counsel for the 1st respondent refutes the said contentions and states that a notice was issued to the petitioner on 17.12.2013 initiating arbitration proceedings against the petitioners in compliance with Clause 11 of the Contract dt.30.03.2012, and that there was no response from the petitioners to the same. But the counsel for the 1st respondent

did not dispute that the petitioners had not agreed to the person nominated by the respondents as the Arbitrator.

6. In such an event, it is incumbent on the part of the 1st respondent to invoke Section 11(4) of the Act and approach the High Court for appointment of an Arbitrator.

7. Admittedly, this did not happen.

8. Therefore, *prima facie*, in the absence of consent of the petitioners to the appointment of the 2nd respondent as the Arbitrator, the Arbitrator could not have proceeded and rendered an Award even if the petitioners had to some extent participated in the proceedings before him.

9. In this view of the matter, we are of the considered opinion that the petitioners have strong *prima facie* case to succeed in the proceedings under Section 34 (COP.No.245 of 2017).

10. Though we normally do not interfere with the interim orders passed by the Commercial Courts under Section 36(2) of the Act, in the instant case, having regard to the points mentioned supra, we allow this *Civil Revision Petition* setting aside the order dt.11.09.2019 in IA.No.465 of 2019 in COP.No.253 of 2017 of the Commercial Court-cum-XXIV Additional Chief Judge, City Civil Court, Hyderabad, and stay the enforcement of the Award of the 2nd respondent-Arbitrator till disposal of the COP.No.245 of 2017. No order as to costs.

11. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K.LAKSHMAN, J

28th November, 2019.

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