

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE Dr. JUSTICE SHAMEEM AKTHER

COM.C.A.No. 25 of 2018

JUDGMENT: (*per V. Ramasubramanian, J*)

1) This Commercial Court Appeal is filed under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, challenging the dismissal of an application filed by the appellants under Section 9 of the Arbitration and Conciliation Act, 1996.

2) Heard Mr.P.Vishnuvardhan Reddy, learned counsel for the appellants and Mr.Hari Sreedhar, learned counsel appearing for respondents 1 and 2.

3) The appellants herein filed a petition in O.P.No.2674 of 2014 on the file of the Chief Judge of the City Civil Court, Hyderabad, under Section 9 of the Arbitration and Conciliation Act, 1996, praying for the following reliefs:

“It is therefore, prayed that this Court may be pleased to pass a judgment and decree in favour of the plaintiffs and against the defendants.

- a) to preserve the stock of the firm of an extent of Ac.34.06 in Sy.Nos.67, 79, 81, 82, 83 situated at Pulimamdi Village, Kandukur Mandal, Rangareddy District by restraining the respondent No.1 from alienating the same in favour of the third parties

until the claim petitions that are to be filed before the Arbitral Tribunal and decided.

- b) To restrain the respondent Nos.1 and 2 from altering the nature of land of extent of Ac.34.06 in Sy.Nos. 67, 79, 81, 82 and 83 situated at Pulimamdi Village, Kandukur Mandal, Panga Reddy District which is the stock of the firm till the Arbitral Tribunal renders award on the claim-petition of each of the petitioners and the claim petitions if any on behalf of respondent Nos.1 and 2.”

4) After the constitution of a Commercial Court the said petition was transferred to the Commercial Court and re-numbered as C.O.P.No.42 of 2017. After hearing both the parties, the Commercial Court dismissed the application under Section 9 of the Arbitration and Conciliation Act, for various reasons. Aggrieved by the said order, the appellants have come up with the above appeal.

5) At the outset, it should be pointed out that the application under Section 9 of the Arbitration and Conciliation Act, seeking an injunction was filed way back in August, 2014. No exparte order of injunction was granted by the first Court. The Commercial Court also did not grant any interim protective order. Eventually the petition under Section 9 of the Arbitration and Conciliation Act, was dismissed. In this process a period of more than 4 ½ years has elapsed without the appellants having the benefit of any interim protection.

6) It is needless to point out that the object behind Section 9 of the Arbitration and Conciliation Act is to preserve the property which is subject matter in dispute and it is only by way of an interim measure. The protection which the appellants could not get for the last 4 ½ years, would cease to be an interim measure due to the efflux of time. Therefore, the question of granting an injunction after 4 ½ years does not arise.

7) The learned counsel for the appellants took pains to point out that the property was admittedly the property of a registered partnership firm and that there was no dispute about the ownership or the identity, but the Commercial Court went overboard and questioned the identity of the property and thereafter denied an injunction.

8) According to the learned counsel for the appellants, an application under Section 11 (6) of the Arbitration and Conciliation Act, is pending on the file of this Court. Therefore, it is not as though the appellants cannot seek any interim measure from the arbitrators, the moment their application under Section 11 of the Arbitration and Conciliation Act is allowed. To the good fortune of the appellants, no attempt has been made so far by the respondents to alienate the property. Therefore, except leaving it open to the appellants to move the arbitrators, as and when they are appointed, no relief can be granted to the appellants in this appeal, due to efflux of time.

9) Therefore, the appeal is dismissed, leaving it open to the appellants to raise all issues before the Arbitral Tribunal.

10) As a sequel, miscellaneous petitions, if any, pending in the appeal stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 25, 2019
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Date: 25.02.2019

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