THE HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE P. KESHAVA RAO

CIVIL REVISION PETITION No.7184 OF 2018

Date:23.04.2019

Between:

M/s. Advanced Mining Technologies Pvt. Ltd.,
Plot No.668, Road No.62, Jubilee Hills, Hyderabd,
Represented by its Managing Director.

… Petitioner

v.

M/s. The Singareni Collieries Company Ltd.,
(Government Company) represented by its General
Manager, Kothagudem Collieries Singareni Bhavan
and others.

... Respondents

For Petitioner : Mr. S. Vivek Chandrasekhar

For Respondents : Additional Advocate General,
Mr. J. Srinivas Rao, SC for
Singareni Collieries.

Gist :

Head Note :

Cases Referred : Nil

C/15

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CIVIL REVISION PETITION No.7184 OF 2018

ORDER: ***(Per Hon'ble Sri Justice V. Ramasubramanian)***

Aggrieved by a blanket stay granted by the Commercial Court in an application under Section 34 of the Arbitration and Conciliation Act, 1996 for the enforcement of an award, the award holder has come up with the above writ petition.

2. Heard Mr. C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioner and Mr. Sanjeev Kumar, learned counsel appearing on behalf of Mr. J. Srinivas Rao, learned counsel for the 1st respondent.

3. The 1st respondent awarded a contract for extraction of coal using a technology known as "Highwall Mining Technology". The contract awarded on 15.11.2006, was scheduled to commence on 15.05.2008, but the time for commencement was extended to 10.04.2010. A dispute arose between the petitioner and the 1st respondent, which was referred to an Arbitral Tribunal comprising of a retired Judge of the Madras High Court and two Members. The Tribunal passed an award dated 12.02.2016 directing the 1st respondent to pay to the petitioner a sum of Rs.87.42 crores.

4. Challenging the award, the 1st respondent filed OP No.1492 of 2016 before the appropriate Court. It was later transferred to the file of the Commercial Court and renumbered as COP No.90 of 2017.

5. It appears that the 1st respondent did not file an application for stay along with the petition under Section 34 of the Act. Therefore, the petitioner filed EP No.186 of 2016. But, the EP was closed under the wrong impression that stay was automatic. Therefore, the petitioner filed CRP No.6418 of 2017. The same was allowed by an order dated 30.04.2018, In the light of the amendment to the Act in 2015.

6. Thereafter, the 1st respondent moved an application for stay in I.A No.365 of 2018. The same was allowed by the Commercial Court by an order dated 31.07.2018, granting absolute stay. Aggrieved by the said order, the award holder is before us.

7. The law is well settled that while considering an application for stay, pending disposal of a petition under Section 34 of the Act, the Court should apply the principles behind Order 41 Rule 5(3) CPC. In fact, the scope of interference in a regular appeal is much larger than the scope of interference in an application under Section 34 of the Act. Therefore, rigors of Order 41 Rule 1(3) CPC read with Order 41 Rule 5(5) CPC should apply more forcefully to an application for stay pending a petition under Section 34 of the Act. But, unfortunately, the Commercial Court did not even take note of order 41 Rule 1 (3) CPC. The Commercial Court was persuaded to think that since the first respondent is a Government Company the petitioner would not be prejudiced by the grant of stay. But, the fact that the 1st respondent is a Government Company is no sufficient

ground to deprive the award holder of the fruits of the award fully. The Commercial Court ought to have applied other parameters such as *prima facie* case, balance of convenience etc. The Commercial Court failed to do so. Therefore, the order of the Commercial Court is liable to be interfered with.

8. That takes us to the next question as to the conditions subject to which a stay could be granted, if the 1st respondent deserves stay. Though according to the learned senior counsel for the petitioner, the 1st respondent does not have a *prima facie* case or balance of convenience for the grant of stay and that the entire award amount should be directed to be paid, we do not agree. The award is for payment of a sum of Rs.87.42 crores, together with interest. But, it appears that there was a mobilization advance paid by the 1st respondent to the petitioner to the tune of Rs.37.50 crores. After recovering a portion of the advance from the running bills, a balance of Rs.26.83 crores is still left to be recovered from the petitioner.

9. According to Mr. C.V. Mohan Reddy, learned senior counsel for the petitioner, this amount is being recovered from out of the bills payable in respect of other contracts. But, we do not know whether the same would be in accordance with the terms of the contract. If the Arbitral Tribunal has ordered the adjustment of this amount, as against the final amount arrived at by the Tribunal, the Award would have been reduced perhaps to a little over Rs.60 crores.

10. The petitioner has filed a calculation memo showing that together with interest, the award amount payable as on date may come to somewhere around Rs.150.00 crores. But, we do not wish to take into account the interest calculations.

11. For the purpose of disposing of this revision, it is suffice for us to take note of two figures, *viz.,* the award amount of Rs.87.42 crores and the balance of mobilization advance available with the petitioner to the extent of Rs.26.83 crores. This will leave a balance of Rs.60.00 crores. Therefore, if the normal rule of 50% is applied, the 1st respondent may be granted the benefit of stay subject to payment of 50% of the balance.

12. Therefore, the revision petition is allowed and the impugned order of the Commercial Court is set aside. There will be an interim stay of enforcement of the award passed by the Arbitral Tribunal subject to the condition that the 1st respondent pays to the petitioner a sum of Rs.30.00 crores (approximately representing half of the award amount after adjusting balance of mobilization amount). This amount shall be paid within a period of eight (8) weeks from the date of receipt of a copy of this order.

The miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 23, 2019
KTL