THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
&
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.7137 of 2018

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

Aggrieved by the grant of absolute stay of enforcement of an arbitral award, the award-holder has come up with the above revision challenging the order of the Commercial Court.

2. Heard Mr. B. Vijaysen Reddy, learned counsel for the petitioner and learned Special Government Pleader appearing for the respondent company.

3. The respondent entrusted with the petitioner, a contract for providing technology known as Longwall Technology and the equipment for operating the project known as Kakatiya Longwall Project, Bhupalpally, Warangal District, under an agreement dated 07.04.2012. The contract contained a clause for arbitration, whenever disputes arose between the parties.

4. The disputes arose and the matter was referred to arbitration by a three member arbitral tribunal, presided over by a former Judge of the Supreme Court and two retired Honourable Judges of this Court.

5. By an award passed on 21.06.2017, the arbitral tribunal directed the respondent herein to pay a sum of Rs.6,02,06,164/- towards excess encashment of bank guarantee and a sum of Rs.11,26,40,655/- towards expenditure, apart from interest at 6% per annum.

6. Challenging the said award, the respondent filed a petition in Arbitration COP.No.220 of 2017 under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'). Pending the application

under Section 34 of the Act, the respondent also sought interim stay of execution, in IA.No.520 of 2018. This application was allowed by the Commercial Court, granting absolute stay. Contending that the principles behind Order 41 Rule 5(3) of the Civil Procedure Code have not been followed, the award-holder has come up with the above revision.

7. It is seen from the order of the Commercial Court that the Commercial Court primarily went by the fact that the respondent is a public sector undertaking partly owned by the State of Telangana and partly owned by the Central Government. Therefore, the Commercial Court thought that there was sufficient security for the enforcement of the award in the event of the application under Section 34 of the Act being decided against the respondent.

8. But the availability of sufficient security alone is not the criteria that should weigh in the mind of the Court deciding the application under Section 36(2) of the Act. There are also other parameters. As a matter of fact, even in a first appeal filed under Section 96 of CPC, the normal rule is to impose conditions, though the same is also subject to certain exceptions. Therefore, any application under Section 34 of the Act where the scope of the jurisdiction is extremely limited than the one available to the normal civil appellate Court, the application for stay has to be considered on stricter parameters.

9. It is no use or solace for the holder of an arbitration award that the respondent is financially sound to satisfy the award amount. His success before the arbitral tribunal cannot become completely meaningless merely because of the pendency of an application under Section 34 of the Act.

10. It is seen from the operative portion of the award that the award comprises of three portions viz. (1) a decree for payment of money representing the excess encashment of bank guarantee, (2) a decree for payment of amount towards the expenditure incurred in the project and (3) the award for payment of interest.

11. Out of the above amounts, at least the first portion of the amount represents the money that was made available by the petitioner towards bank guarantee. Therefore, the Commercial Court should have at least granted the said amount to the petitioner, while granting stay. The failure of the commercial Court to pass such a condition is contrary to the principles behind Order 41 Rule 5(3) CPC.

12. Therefore, the civil revision petition is allowed. The impugned order is modified and an interim stay of execution of the award, pending disposal of Arbitration C.O.P.No.220 of 2017 is granted subject to the respondent paying to the petitioner, without prejudice to their contentions, a sum of Rs.6,02,06,164/-, which represents one portion of the award. The said amount shall be paid within a period of six (6) weeks from the date of receipt of a copy of this order. If the respondent fails to make payment, the stay will stand vacated.

Consequently, pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

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V. RAMASUBRAMANIAN, J

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Dr. SHAMEEM AKTHER, J

February 18, 2019
DSK