

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE J. SREENIVAS RAO
COMMERCIAL COURT APPEAL No.8 of 2022**

Date:12.09.2022

Between:

CHAMUNDI CONSTRUCTIONS
Office at No. 10-1-214/A1, A2,
Sai Nivas, Above State Bank of India,
3rd Floor West Marredpally,
Secunderabad 500 026,
Represented by its., Managing Partner,
Sri M Nageswara Rao.

.....Appellant

And

M/s. C.Suresh Reddy and Co,
Represented by its., Partner,
C. Sukesh Reddy. Office at Plot No.1364,
Road N.45, Jubilee Hills, Hyderabad - 500 033,
And others.

.....Respondents

The Court made the following:

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ORDER :

Heard learned counsel Sri S.V.S.Chowdary for appellant and learned counsel Sri T.Ramulu for respondents.

2. Appellant is the Sub-Contractor of the works entrusted to the 1st respondent by the Indian Railways. According to appellant, the Sub-Contract Agreement was entered on 11.04.2018 and he has executed the entire work by 30.01.2020 and submitted the final bill through e-mail dated 11.10.2021 and was prosecuting the settlement of final bill. The amount due to the appellant was to a tune of Rs.3,54,15,606.73/- and after adding the interest the total amount payable was Rs.4,84,91,410.66/- with a further interest payable to him. Alleging that deliberately and wilfully, 1st respondent is not settling the bills due to appellant even though the Indian Railways have already paid the amounts to him, by taking recourse to Arbitration Clause incorporated in the Contract Agreement, appellant filed application under Section 9 of the Arbitration and Conciliation Act, 1996, (for short 'Act, 1996') bearing COP.No.72 of 2021 in the Special Court for Trial and Disposal of Commercial Disputes, at Hyderabad, praying to grant interlocutory protection pending commencement of arbitral proceedings; prayed to direct the 1st

respondent to furnish security for the amount of Rs. 4,84,91,410.66/- together with interest at the rate of 18% per annum with effect from 01.12.2021; and pending furnishing of the said security to order conditional attachment of money due from the respondents/garnishees from the South Central Railway, Secunderabad, to the extent of Rs. 4,84,91,410.66/-. On detailed consideration of the respective claims, the Special Court by order dated 21.03.2022 declined to grant injunction prayed by the appellant herein and dismissed C.O.P.No.72 of 2002. Hence, this appeal.

3. In an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'Act, 1996') Special Court/Civil Court on due consideration of three basic ingredients, viz., *prima facie* case, balance of convenience and irreparable injury that is likely to be caused if no injunction is granted, in exercise of discretionary jurisdiction, the Court may grant interim protection.

4. In the instant case, it cannot be said that a *prima facie* case was made out as apparently there is a dispute between the appellant and the 1st respondent arising out of the Sub-Contract Agreement dated 11.04.2018 and that dispute is to be resolved in the arbitration proceedings. The Court is informed that Section 11 application is pending consideration before this Court.

5. On due assessment of parameters required to grant interlocutory order under Section 9 of the Act, 1996, the trial Court declined to grant the relief as prayed for by assigning detailed reasons in support of the decision.

6. As can be seen from the order of the Court below, the Court noted that 1st respondent is disputing the quantity and quality of work undertaken by the appellant and having analysed the facts on record, the Court observed that *prima facie* case was not made out by the appellant. The Court below has also noticed that the amount due under the contract is already paid by the Railways and in so far as Railways are concerned, no further amount is required to be paid. Whereas, the relief sought by the appellant would result in freezing of the amounts payable by the Railways to the 1st respondent in any other contract that may be executed. The Court below observed that in such an event, the execution of other works would suffer and it would not be in the public interest to stop the execution of infrastructure works of the Railways and therefore, garnishee order was not warranted. The Court also observed that no case was made out to establish that the 1st respondent was acting in such a manner so that the decree that could be passed against the 1st respondent would not be executed owing to the conduct of the 1st respondent.

7. We are also informed by the learned counsel appearing for 1st respondent that 1st respondent is also executing several other contracts with the Railways. That being so, if appellant succeeds in establishing his case before the Arbitrator, he can always seek the enforcement of payment due to the appellant from the amounts due from the Railways.

8. Having regard to the facts of this case, we do not see any error committed by the trial Court, warranting interference of this Court. Accordingly, the Commercial Court Appeal is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

P. NAVEEN RAO, J

J. SREENIVAS RAO, J

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