

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT JUSTICE JUVVADI SRIDEVI

CIVIL REVISION PETITION NO.1010 OF 2022

Date:07.02.2023

Between:

M/s. Srinivasa Civil Works Pvt. Ltd.,
Flat No.213, Sree Ramakrishna Towers,
Beside Image Hospital, Ameerpet, Hyderabad,
Rep., by its Managing Director,
P.Ramachandra Raju,
S/o.P.Sathya Seetharama Reddy,
Aged 65 yrs, Occu : Business

.....Petitioner

And

K. Sambasiva Raju S/o.Late K.A.N. Raju,
Aged 71 yrs, Occu : Business,
R/o.Plot No.118, NCL Enclave,
Near Balaji Hospital, Pet Basheerbad,
Hyderabad & another

.....Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SMT JUSTICE JUVVADI SRIDEVI

CIVIL REVISION PETITION NO.1010 OF 2022

ORDER : *(Per Hon'ble Sri Justice P.Naveen Rao)*

Briefly noted, petitioner herein is a private limited company and carrying on business in execution of civil contract works for Government and its instrumentalities. Petitioner entered into a contract in the combined State of Andhra Pradesh for the execution of works namely Package No.99-B Investigation, design estimate, execution and forming embarkment of right main canal Gudemdoddi balancing reservoir of Nettempadu Lift Irrigation Scheme in Mahaboobnagar District, which includes construction, maintenance of CM, CD works and Distributory network system along with field channels for irrigating the ayacut as demarcated in the plan covered by Agreement dated 20.06.2015.

2. Petitioner and 1st respondent entered into a MOU dated 04.10.2017 authorising the 1st respondent to monitor and supervise the works and in that regard, the 1st respondent was appointed as Project Manager/In charge. As per the MOU, service charges and consolidated miscellaneous expenditure of Rs.50,000/- per month was agreed to be paid to the 1st respondent. It is also agreed that the 1st respondent should pay an amount of Rs.28,00,000/- to the State Bank of India to clear the loan amount of petitioner and the 1st respondent should invest Rs.25,00,000/- for completing the part structure for preparation of 10th RA Bill. It appears

disputes arose between the parties to the MOU leading to referring the matter to the Arbitrator. In the application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') filed before this Court Sri G.Gopal Krishna Murthy, Retired District and Sessions Judge was appointed as sole Arbitrator. The Arbitrator conducted arbitral proceedings and passed Award on 23.10.2021 directing the petitioner herein to pay Rs.1,23,78,148/- to the claimant/1st respondent herein towards the amount due to him. It is also directed to pay 12% simple interest from the date of claim petition till the date of payment of Award amount. Further claim by the 1st respondent and counter claim by the petitioner were rejected. As earlier directed, the garnishee was directed to release a sum of Rs.1,23,78,148/- to the personal account of the 1st respondent out of the bill amounts payable to the petitioner and to release the balance amounts to the petitioner forthwith.

3. Aggrieved thereby the petitioner herein filed C.O.P.No.82 of 2021 in the Court of Principal Special Court in the Cadre of District Judge for Trial and Disposal of Commercial Disputes at Hyderabad. In the said C.O.P, petitioner filed I.A.No.616 of 2021 praying to suspend the operation of Award dated 23.10.2021. On due consideration of the respective submissions, the Court below, by order dated 09.03.2022 allowed the petition to stay the enforcement of Award on the condition of petitioner depositing 50% of the amount awarded with interest calculated till the date of the Award, by granting time for such deposit till 25.05.2022. Aggrieved thereby this revision is preferred.

4. We have heard learned counsel for the petitioner and learned counsel for the 1st respondent extensively.

5. Learned counsel for the petitioner sought to take us into merits of the dispute which is subject matter of C.O.P.No.82 of 2021 to contend that what was awarded by the Arbitrator was erroneous and that no amount is due to be paid by the petitioner.

6. According to learned counsel for the petitioner, this fact was not appreciated by the trial Court while considering the I.A, and grossly erred in directing the petitioner to deposit 50% of the amount awarded by the Arbitrator. Since there was no liability on the part of petitioner to pay any amount to the 1st respondent, the trial Court ought to have granted blanket stay instead of ordering depositing of 50% of the amount.

7. Per contra, according to learned counsel for the 1st respondent what is claimed by the petitioner is not correct and what is awarded by the Arbitral Tribunal is just and equitable and this being a money decree the order passed is a normal order passed in all money decrees and no exception is carved out to permit the petitioner not to deposit any amount awarded by the Arbitrator.

8. We have carefully considered the respective submissions and gone through the record placed before us.

9. From a reading of order in I.A.No.616 of 2021, it is seen that the trial Court has appreciated all the issues raised before it and having regard to the

law on the subject regarding the scope of Section 34 application, the trial Court was inclined to grant limited relief of directing the petitioner to deposit only 50% of the amount awarded by the Arbitrator. The trial Court exercised its discretion on due consideration of the respective submissions and did not warrant interference in the discretion exercised by the trial Court in exercise of revisional jurisdiction by this Court.

10. Learned counsel for the petitioner also sought to contend that in the affidavit filed in support of I.A.No.616 of 2021, petitioner has referred to several documents in support of his claim that no amount is due to be paid to the 1st respondent and even though the documents were already filed along with C.O.P.No.82 of 2021, the trial Court has not marked those documents and such action of the trial Court is contrary to the circular instructions issued by the High Court in ROC.No.2750/OP CELL/2021 dated 28.09.2021 and contrary to the order passed by the Division Bench of this Court in C.M.A.No.55 of 2022.

11. It has to be remembered at this stage that revision is preferred against the interlocutory order of the Special Court in C.O.P.No.82 of 2021 filed under Section 34 of the Act, 1996 against the Award passed by the Arbitrator. The entire gamut of Civil Procedure Code is not applicable to the arbitral proceedings and in matters arising out of Award passed by the Arbitrator. The Act 1996 is a self contained Court and the provisions of the Code of Civil Procedure are applicable as guiding principles in considering the matters arising out of the Act, 1996. Therefore, the rigor of Civil Procedure Code is not attracted in deciding the arbitral proceedings.

12. Be that as it may, even assuming that circular instructions of the High Court are binding on the Presiding Officer of the Special Court, this circular instructions only rest on what is contained in Rules 51 and 60 of the Civil Rules of Practice. According to Rule 51 the documents referred to in the affidavit filed in support of the application are to be marked in the same manner as exhibits admitted by the Court and shall bear the certificate in Form No.16. According to Rule 60 of the Civil Rules of Practice any fact required to be proved upon an interlocutory proceeding should unless otherwise provided by these rules or ordered by the Court, be provided by affidavit but the Judge may, in any case, direct evidence to be given orally and thereupon, the evidence should be recorded in the same manner as in a suit and lists of the witnesses and exhibits shall be prepared and annexed to the judgment.

13. From a reading of the order passed by the Court below it is seen that though petitioner has referred to various documents, in the affidavit filed in support of interlocutory application, he has not requested the trial Court to look into those documents and has not prayed for marking of those documents. The trial Court has also not referred to the documents mentioned in the affidavit filed in support of the application. The trial Court has only referred to the actual pleadings raised by the petitioner in his affidavit filed in support of the application for granting interlocutory orders. In C.M.A.No.55 of 2022 the Division Bench of this Court noticed that in the Court below request to grant injunction was turned down referring to large

number of documents, but not a single document was marked as an exhibit. In that context the Division Bench found fault with the decision of the trial Court. As noticed above, in the instant case, there is no such request made by the petitioner. Merely because petitioner filed documents along with the C.O.P., does not automatically would mean that those documents should be taken into consideration by the Court below, even while considering the interlocutory application, more so, in matter arising out of arbitral proceedings. Thus, the circular instructions and the directions of the Division Bench in C.M.A.No.55 of 2022 do not come to the aid of the petitioner in the instant case.

14. Since it is a money decree, the usual order passed in all the appeals against money decree is to deposit atleast 50% of the amount awarded by the lower court/in the instant case, the Arbitral Tribunal. We do not see any error in the discretion exercised by the Court below in directing depositing 50% of the amount awarded, warranting our interference.

15. Civil Revision Petition is accordingly, dismissed. Pending miscellaneous applications, if any, shall stand closed.

P.NAVEEN RAO,J

JUVVADI SRIDEVI, J

7th February, 2023
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