

HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.R.P.No.1774 of 2021

ORDER: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This Civil Revision Petition is filed aggrieved by the orders passed by the Special Court for Trial and Disposal of Commercial Disputes, Hyderabad in C.E.P. S.R. No.1762 of 2021 dt.08-09-2021.

2. Heard Sri Dishit Bhattacharjee, learned counsel for the petitioner, Sri G. Vasantha Rayudu, learned counsel for the respondent and Sri P.Sri Raghuram, learned Amicus Curiae.

3. It has been contended by the petitioner that it is a registered company engaging in the business of manufacturing steel and other allied products and during the year 2017, the respondent has approached the petitioner for purchase of TMT Bars manufactured by it and upon discussion, it was

agreed between the parties, that the petitioner company would sell and deliver diverse quantities of steel product and TMT Bars to the respondent company at its site subject to the issuance of purchase order by the respondent company from time to time.

4. During the course of business transactions, the respondent was deemed to pay an amount of Rs.38,23,819.55 ps to the petitioner and gradually, the dues liable to be paid by the respondent-company accumulated to Rs.5,32,43,522/-. As there was a dispute between the parties, the petitioner has invoked arbitration clause and when there was no response from the respondent, Application No.128 of 2019 is filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short 'the Act, 1996') before the High Court for the State of Telangana, and the Hon'ble the Chief Justice vide orders dt.25-02-2020, has allowed the

application and appointed Hon'ble Sri Justice V.Eswaraiah as sole Arbitrator and the learned Arbitrator was pleased to pass award on 19-01-2021 in favour of the petitioner. In spite of the Arbitrator passing award in favour of the petitioner, the respondent was not complying the Award. In those set of circumstances, the petitioner has filed an application under Section 9 of the Act, 1996 vide COP No.109 of 2019 before the XXIV Additional Chief Judge-cum-Commercial Court, City Civil Court, Hyderabad and the same was numbered as COP No.32 of 2021 and sought interim protection pending Arbitration.

5. When the respondents were not complying the award passed by the learned Arbitrator, the petitioner has filed Execution Petition under Order 21 Rules 43, 64 and 66 of CPC before the Court at Kukatpally on 17-08-2021, under whose jurisdiction, the respondent company is situated and functioning.

The Court at Kukatpally has returned the EPSR No.6735 of 2021 on 24-08-2021 with an endorsement that “E.P. does not come under the territorial jurisdiction and it is to be filed before the proper Court. Hence, returned.”

6. Thereafter, the petitioner has filed CEP SR No.1762 of 2021 before the Commercial Court, but the Court below vide orders dt.08-09-2021 has returned the CEP SR No.1762 of 2021 with an observation that it should be presented before the proper Court having territorial jurisdiction. The learned counsel for the petitioner had contended that action of Commercial Court at Hyderabad in not entertaining CEP SR No.1762 of 2021 is without application of mind and it has every jurisdiction to entertain the E.P. Therefore, learned counsel for the petitioner has contended that appropriate orders be passed in the Revision Petition by setting aside the orders of the Commercial Court in COP SR No.1762 of

2021 dt.08-09-2021 and further direct the Commercial Court to entertain the E.P. as it has territorial jurisdiction.

7. Learned counsel for the respondent had contended that as per Section 3 of the Act, 1996, the Commercial Court has no jurisdiction and it has rightly returned the E.P. Therefore, there are no merits in the Revision Petition and the same is liable to be dismissed.

8. Learned Amicus Curiae has contended that Section 2 (e) of the Act, 1996 defines Court which reads as under:

“(e) “Court” means—

(i) in the case of an arbitration other than international commercial arbitration, the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]

(f) “international commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—

(i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv) the Government of a foreign country;”

Further, the Commercial Court is a designated Court in the instant case and the Award passed by the learned Arbitrator was not challenged by the respondent under Section 34 of the Act, 1996. Hence, the Award becomes executable under Section 36 and as per Section 36 (2), and it becomes a decree

within the meaning of CPC and Section 36 of the Act, 1996, reads as under:

*“**36. Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908) :]

⁴⁹*[Provided further that where the Court is satisfied that a prima facie case is made out that,—*

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)”

and as per Section 38 of the CPC, a decree executed either by Court which passed it or by the Court to which it is sent for execution. Section 38 of the CPC reads as under:

“.38. Court by which decree may be executed.—A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.”

Further, the Commercial Court at Hyderabad is having jurisdiction to be tried and the learned Amicus Curiae has further drawn our attention to the

judgment rendered in **Ashok Leyland Finance Limited, Hyderabad vs. P.Vengal Rao & another**¹ and in the said case, it was held that Court within the meaning of Section 2 (e) of the Act, 1996 does not include the court before which an execution petition has been filed. The Court had in this case had differentiated between the court which passed the decree and one which can execute the same and the Supreme Court in **Sundaran Finance Limited v. Abdul Samad and Another**² concludes that the Execution Petition can be filed in front of any court at any place in the country. However, courts should have the requisite jurisdiction to execute the same by way of attachment of property. This jurisdiction depends on the judgment debtor and where such J.Dr is located. Even if the properties are outside the territorial jurisdiction of Commercial Court, a petition can be filed under Order 21 Rule 46 CPC for

¹ (2009) 3 APLJ 17 (SN)

² (2018) 3 SCC 622

attachment of property and the bank account in the present case instantly accessible from anywhere and physical presence of a person to operate and attach the same is not necessary. Therefore, the Commercial Court at Hyderabad has jurisdiction.

9. This Court, having considered the rival submissions made by the parties, is of the considered view that the Court below has erroneously returned the CEP SR No.1762of 2021 dt.08-09-2021 is set aside and the Commercial Court shall entertain the E.P. preferred by the petitioners and pass appropriate orders in the E.P. after hearing all the necessary parties.

10. With these observations, the Civil Revision Petition is allowed. There shall be no order as to costs.

11. Before parting with the case, this Court appreciates the efforts made by Sri P.Sri Raghuram, learned Amicus Curiae in assisting the Court.

12. Pending miscellaneous applications, if any, shall stand closed.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

06.06.2022
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