

(2012) 12 KL CK 0123
In the High Court Of Kerala
Case No : Arbitration A. No. 52 of 2009

K.G. Rathish Kumar and Others

APPELLANT

Vs

NPR Finance Ltd.

RESPONDENT

Date of Decision : 07-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, 17(1), 9

Citation : (2013) 2 ARBLR 570

Hon'ble Judges : P.S. Gopinathan, J;K. Hema, J

Bench : Division Bench

Advocate : V. Philip Mathew, for the Appellant; S. Sreekumar (Sr.), P. Prijith, Aneesh James and P. Martine Jose, for the Respondent

Final Decision : Disposed Off

Judgement

K. Hema, J.—The respondent herein moved an arbitration petition before the Additional District Court u/s 9 of the Arbitration and Conciliation Act, 1996 for attachment of immovable properties belonging to appellants as an interim measure. The Additional District Court passed an order of interim attachment and thereafter as per the impugned order, the attachment was made absolute. This appeal is filed against the final order in the arbitration petition. Heard both sides. At the very outset, learned counsel for appellants submitted that the impugned order is illegal and not sustainable since it does not show any reason to make the attachment absolute. The only order passed while disposing of the arbitration petition finally is "Attachment made absolute. Arbitration O.P. closed". Learned counsel for appellants submitted that validity of the agreement was challenged by him. Appellants also disputed the liability under the alleged arbitral agreement as well as the original agreement. But none of these contentions were looked into by the court and no findings are entered into by the court below on disputed facts.

2. We are satisfied that the impugned order is a non-speaking one and hence it is unsustainable. Further, learned counsel for respondent submitted that even if the

said order is set aside, the order of attachment may be allowed to continue for a particular or until respondent gets an order from the arbitrator. Admittedly, arbitration proceedings are initiated. Therefore, going by Section 17 of the Arbitration and Conciliation Act, 1996 any interim measure of protection can be afforded to a party by arbitral tribunal. The tribunal may also require the party to provide appropriate security in connection with the measure ordered u/s 17(1) of the Arbitration and Conciliation Act, 1996. Therefore, having initiated arbitral proceedings it is possible to obtain an order from the arbitral tribunal itself. On hearing both sides and on considering the fact that parties shall not suffer by the mistake committed by the court in not passing a speaking order, we find that some interim measure has to be made to protect the interests of the parties. But we make it clear that we have not gone into the merits of the contentions. Since proceedings are initiated, respondent, if so advised, will be at liberty to move arbitral tribunal for any appropriate interim relief. Hence, the following order is passed:

- (1) The impugned order is set aside.
- (2) Since the arbitration proceedings have been initiated, the aggrieved party is at liberty to get any interim measure of protection u/s 17 of the Arbitration and Conciliation Act, 1996.
- (3) Appellants are directed not to dispose of the property which is attached in the arbitration petition for a period of 20 days from today.
- (4) Return the records forthwith to the court below.

This appeal is disposed of accordingly.