
(2006) 08 AP CK 0042
In the Andhra Pradesh High Court
Case No : C.R.P. No. 1815 of 2005

Sri Paravathi Parameshwara Cables, K.M. Valasa and Others	APPELLANT
Vs	
A.P. Transmission Corpn. Ltd. and Another	RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2(4), 2(5), 34, 37, 40(1)
Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 — Section 10, 3, 4, 5, 6(1)

Citation : (2006) 6 ALD 365 : (2006) 5 ALT 647 : (2007) 135 CompCas 581

Hon'ble Judges : M. Venkateswara Reddy, J; Bilal Nazki, J

Bench : Division Bench

Advocate : V. Venkataramana, for the Appellant; M. Vinobha Devi, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—All these revisions raise common questions of law and fact and therefore, they are being disposed of by this common order.

2. Heard learned Counsel for the parties and perused the record.

3. Several applications were filed before the trial Court and the trial Court passed a common order, which is challenged by way of these revisions. It appears that an award was passed in terms of Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Arbitration Act") by respondent No. 1 in these revisions. The present petitioners filed applications seeking a direction to the applicants in applications u/s 34 of the Arbitration Act to deposit 75% of the amount awarded or to dismiss the main O.Ps. for non-compliance of Section 7 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (hereinafter referred to as "the 1993 Act"). The applications were dismissed by the Court. Therefore, these revisions are being filed.

4. An interesting question was raised before the Court below and it has been contended by the learned Counsel appearing for the petitioners that in terms of the 1993 Act, no award can be questioned unless 75% of the amount awarded by the arbitrator is deposited. Though this argument appears to be attractive, but on analysis, the argument cannot be accepted. Before analyzing the submissions made, it may be pointed out that the 1993 Act was enacted to provide for and regulate the payment of interest on delayed payments to small scale and ancillary industrial undertakings and for matters connected therewith or incidental thereto. u/s 3 of the 1993 Act, liability is placed on buyers to make the payment. u/s 4 of this Act, dates from which and the rates at which the interest is payable, are mentioned. Section 6 of the 1993 Act lays down-

The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a suit or other proceeding under any law for the time being in force.

Sub-section (2) of Section 6 of this Act is not relevant for the purpose of the present controversy.

Section 7 of the 1993 Act lays down-

No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or as the case may be, other order in the manner directed by such court or, as the case may be, such authority.

5. The learned Counsel for petitioners contends that once recovery is sought either by way of filing of a suit or by way of any other proceedings including arbitration under the Arbitration Act, and an award or decree is obtained and if such award or decree is challenged by the other side, Section 7 of the 1993 Act comes into operation and no appeal against any decree, award or order could be entertained unless 75% of the awarded amount or decreed amount is deposited. According to him, an application u/s 34 of the Arbitration Act would be an appeal within the meaning of Section 7 of the 1993 Act, and the remedy u/s 34 of the Arbitration Act is nothing but an appeal against the award.

6. To appreciate this argument, one has to see as to what is meant by an appeal and whether an application u/s 34 of the Arbitration Act could be termed as an appeal. The dictionary meaning of the word "appeal" is, "Removal of the cause or a suit from an inferior Court to a superior Judge or Court for re-examination or review." This is a settled law that appellate jurisdiction involves re-hearing on law as well as on facts and is being invoked by an aggrieved person. In Wharton's Law Lexicon, the word "appeal" is defined as, "The judicial examination of the decision by a higher Court of the decision of an inferior Court". As such, appeal is the judicial examination of a judgment passed by an inferior Court, by a superior Court. The definition of the appeal is not found in

CPC or any other law, but it was defined as early as in the year 1932 by Privy Council in AIR 1932 165 (Privy Council) . in following terms--

There is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal because it is irregular or incompetent.

This definition has been consistently followed by the Courts in India. It is also well settled that appeal is a statutory right and if appeal is provided by law, the right to appeal follows, and if no such right is provided by law, there cannot be any appeal. The learned Counsel for petitioners submits that in fact, what Section 34 of the Arbitration Act does is that it considers setting aside of an award. If we apply the tests whether an application u/s 34 of the Arbitration Act would amount to an appeal or not, one would come to the conclusion that it cannot be termed as an. appeal. Whereas, the appeal is heard on questions of fact as well as on questions of law, an application for setting aside the order of award u/s 34 of the Arbitration Act can be heard on limited grounds, which are mentioned in Section 34 of the Arbitration Act. As a matter of fact, generally speaking, the questions of fact decided by an arbitrator cannot be gone into by the Court while hearing an application for setting aside an arbitral award. Secondly, where there is an appeal provided, it lies to a higher Court from the decision of a lower Court, the application u/s 34 of the Arbitration Act lies to a Court against an award passed by an arbitrator and arbitrator cannot be termed as a Court inferior to the Court of appeal.

7. The learned Counsel for petitioners also contended that if Section 7 of the 1993 Act did not encompass any differences in itself an award passed in the arbitration, then it was unnecessary to mention in Section 7 of the 1993 Act that, "No appeal against decree, award or other order shall be entertained". Specifically, "award" was mentioned in Section 7 of the 1993 Act and therefore, an application u/s 34 of the Arbitration Act cannot be entertained unless the conditions laid down in Section 7 of the 1993 Act are complied with. The words like "decree or award" used in Section 7 of the 1993 Act, in our view, are not superfluous and the meaning becomes clear when one has a look over Section 37 of the Arbitration Act. u/s 37 of the Arbitration Act, appeals can be filed against certain orders: (1) Appeals can be filed against an order granting or refusing to grant any measure u/s 9 of the Arbitration Act, which is no relevant for the purpose of present controversy, and (2) Appeals can also be filed against an order setting aside or refusing to set aside an arbitral award u/s 34 of the Arbitration Act. When the Court refuses to set aside an arbitral award u/s 34 of the Arbitration Act and an appeal is filed before an appellate Court, Section 7 of the 1993 Act would operate and not at the stage when an application u/s 34 of the Arbitration Act has been moved.

8. The learned Counsel for petitioners further contended that in terms of Section

10 of the 1993 Act, there is an over-riding effect over the Act. We do not think that makes any difference. The 1993 Act has over-riding effect notwithstanding anything inconsistent therewith contained in any other law. But we do not find any inconsistency between the provisions of the 1993 Act and the provisions of the Arbitration Act.

9. The learned Counsel for respondents, on the other hand, submits that Sub-section (2) of Section 6 of the 1993 Act incorporates the provisions of the Arbitration Act. Sub-section (2) of Section 6 of the 1993 Act lays down--

Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or as conciliator in respect of the matters referred to in that sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as the arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act.

He submits that this was interpreted by the Supreme Court in a judgment in the case of *Secur Industries Ltd. v. Godrej and Boyce Mfg. Co. Ltd.* : AIR2004SC1766 . In paragraphs 9 and 10 of this Judgment, the Supreme Court held--

9. Sub-section (2) of Section 6 expressly incorporates the provisions of the 1996 Act. Apart from such express incorporation, Sub-section (2) of Section 6 goes further and creates a legal fiction whereby disputes referred are to be deemed to have been made pursuant to an arbitration agreement as defined in Sub-section (1) of Section 7 of the 1996 Act.

10. Incorporation of the provisions of the 1996 Act into Section 6(2) of the Act has also been effected by Sub-sections (4) and (5) of Section 2 of the 1996 Act which say:

2. (4) This part except Sub-section (1) of Section 40, Sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except insofar as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of Sub-section (4), and save insofar as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

10. For these reasons, we do not find any merit in these revisions, which are accordingly dismissed.