
(2007) 12 AP CK 0006
In the Andhra Pradesh High Court
Case No : C.R.P. No. 4999 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

Satyanarayana Construction Company

RESPONDENT

Date of Decision : 28-12-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31, 31(5), 32, 33, 33(1)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(1), Order 21 Rule 2, Order 21 Rule 2(2), Order 21 Rule 2(3)
Limitation Act, 1963 — Article 125

Citation : (2008) 4 ALD 169 : (2008) 2 ALT 1

Hon'ble Judges : Ghulam Mohammed, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : S.R. Ashok for C.V. Vinitha Reddy, for the Appellant; A. Ramalingeswara Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This civil revision petition is directed against the order dated 22-10-2007 passed in E.P. No. 20 of 2005 on the file of III Additional Chief Judge, City Civil Court, Hyderabad, whereby and whereunder the learned Additional Chief Judge overruled the objections of the judgment-debtors and ordered further step with regard to sale of E.P. schedule property.

2. Background facts in a nutshell leading to filing of this civil revision petition by the judgment-debtors in E.P. No. 20 of 2005 are: This is second journey to the High Court by the judgment-debtors. The respondent/decreed-holder entered into an agreement with the Indian Railways for laying Pedddapalli - Karimnagar new railway line. Certain disputes arose in respect of executing the work. Therefore, the decreed-holder invoked the arbitration clause and filed A.A. No. 31 of 2001 seeking appointment of arbitrator to adjudicate the disputes. Sri K. Srinivasa Murthy, Advocate, came to be appointed as a sole arbitrator to resolve the disputes. The sole arbitrator passed an award dated 6-2-2004. The decreed-holder filed an application before the arbitrator u/s 33 of the Arbitration and Conciliation

Act, 1996, (for short, "the Act"), seeking certain modifications in the award. A supplementary award dated 3-3-2004 came to be passed by the arbitrator. The decree-holder submitted a representation dated 12-5-2004 to the Chief Administrative Officer (Construction), South Central Railway, Secunderabad, requesting for payment of the award amount. The Deputy Chief Engineer/Con.Plg/SC, South Central Railway, Secunderabad, informed the decree-holder that the sole arbitrator has rendered an award for Rs. 16.00 Lakhs towards cost of rock chiseling and Rs. 2.00 Lakhs towards overhead expenses without there being any proof and the South Central Railway is prepared to pay the amounts awarded by the arbitrator on other items except the amount awarded under the above two items. For better appreciation, we may extract the text of the letter dated 30-6-2004 and it is thus:

The award given by the Sole Arbitrator in the above subjected arbitration case along with supplementary award has been received by this office and is under consideration of the competent authority.

The Sole Arbitrator has rendered an award for Rs. 16 lakhs towards "cost of rock chiseling" vide page 67 of item No. 2 of the original award. There is no claim/dispute between Railways and you on this issue, yet the arbitrator has given award for this claim. It has been requested by you in your application to the Sole Arbitrator (cited under reference 3 above) to omit this item.

Similarly, the Sole Arbitrator has rendered an award of Rs. 2 lakhs towards overhead expenses for item No. 3 of page 67 of original award and page 5 of the supplementary award. The sole arbitrator while giving reasons towards this claim has mentioned that "hence they are discarded as not clinching evidence for proving expenditure on overhead chares claimed by the claimant contractor. In the absence of proof, claimant is not entitled for any sum towards overhead.

Since there is no dispute/claim for rock chiseling from either end and also since there is clear findings of the Arbitrator that in the absence of proof you are not entitled for any sum towards overhead, you are requested to give your unconditional "no claim certificate" foregoing the awards towards the above two items (Rs. 16 lakhs + Rs. 2 lakhs + interest thereupon), so that the balance award can be considered for acceptance by competent authority.

An early reply is requested.

The decree-holder issued unconditional no claim certificate on 12-7-2004. Based on the said unconditional no claim certificate an amount of Rs. 6,69,053.92ps. came to be paid to the decree holder by the South Central Railway. The decree-holder accepted the said amount. Thereafter, the decree-holder filed E.P. No. 20 of 2005 for recovery of Rs. 24,45,615/-. The judgment-debtors filed counter resisting the execution petition. The principal contention of the judgment-debtors is that the decree-holder accepted Rs. 6,69,053.92 ps. towards full and final settlement of the award and therefore, execution petition is liable to be dismissed. They also filed E.A. No. 23 of 2006 to recall the order of attachment

of E.P. schedule property. The executing court overruled the objection of the judgment-debtors on the ground that no efforts have been made by the judgment-debtors by way of filing a petition to record the adjustment within 30 days of the payment, by orders datd 13-7-2006/ 30-8-2006. The said orders came to be challenged by the judgment-debtors through C.R.P. Nos. 4596, 4597, 4598 and 4892 of 2006. Those C.R.Ps. came to be allowed remitting the matter back to the executing court for fresh consideration after giving an opportunity to both parties, by common order dated 17-1 -2007. The relevant portion of the common order, dated 17-1-2007 passed in CRP Nos. 4596,4597,4598 and 4892 of 2006 reads as hereunder:

The entire issue revolves around the no claim certificate alleged to have been issued by the Decree holder foregoing the claim under the award and accepting the amount arrived at between the parties. The same has been thrown out on the ground that no efforts have been made by the judgment debtor by way of filing a petition so as to record the same within 30 days.

The main contention of the judgment debtors, is that the provisions of Order 21, Rule 2(2) C.P.C. have not been properly appreciated while rejecting to consider the no claim certificate.

In view of the provisions of Order 21, Rule 2(2) C.P.C. and in the present facts and circumstances of the case on hand, without expressing any opinion on the merits of the case, we feel it a fit a case wherein all the matters be remitted back for fresh disposal in accordance with the provisions.

Accordingly, all the C.R.Ps. are allowed and thereby the order impugned in each C.R.P. is set aside. However, the matters are remitted back to the Court below for fresh consideration after giving an opportunity to both the parties.

However, it is needless to observe that genuineness or otherwise of the no claim certificate, besides being its binding nature on the parties, shall have to be adjudicated, so as to avoid the multiplicity of the proceedings as well as to have an effective adjudication of the issue involved.

On remand, the executing court took up E.A. No. 23 of 2006 and E.P. No. 20 of 2005 together and allowed the parties to adduce further evidence in support of their respective contentions. The judgment-debtors marked six documents on their behalf. On hearing the rival contentions of the parties, the executing court formulated the following points for consideration:

- (1) Whether the "no claim" certificate is true and valid?
- (2) Whether the amount due under the award is fully satisfied by means of adjustment under the "no claim" certificate issued by the Decree Holder?
- (3) To what relief?

The executing Court, on considering the material brought on record, came to the conclusion that Ex.A-1 No claim certificate dated 12-7-2004 is true and it is acted

upon. However, since judgment-debtors failed to get the payment/adjustment certified or recorded under Sub-rule (3) of Rule 2 of Order XXI C.P.C. they cannot be permitted to plead discharge of the decretal debt. With the above observations, the executing court proceeded to order further step for sale of the E.P. schedule property, by order dated 22-10-2007. For better appreciation, we may refer paras 14 and 15 of the order impugned in this revision and they are thus:

14. Thus, the objection raised by the Judgment Debtor basing on the plea of adjustment by virtue of Ex.A-1, dated 12-7-2004 which is not recorded within a period of 30 days by the missionary provided under Order XXI, Rule 2 C.P.C., the plea of adjustment is liable to be rejected even though the adjustment is true. The options open to the Judgment Debtor are otherwise and certainly not in this petition.

15. Therefore, the objections taken by the Judgment Debtor in E.P.20/2005 are overruled and further step in the execution, for sale papers in order to issue sale notice has to be issued. So far as the result in E.A.23/2006 is concerned, no separate order is to be passed in that petition, because the said petition is only to review the orders of this Court dt. 13-7-2006. But in the CRPs the orders dated 13-7-2006 are already set aside by the High Court. Objections overruled. For sale papers call on 7-11-2007.

Hence, this civil revision petition.

3. Heard Sri S.R. Ashok, learned senior Counsel appearing for the petitioners/judgment-debtors and Sri A. Ramalingeswara Rao, learned Counsel appearing for the respondent/decreet-holder.

Sri S.R. Ashok, learned senior Counsel appearing for the petitioners/judgment-debtors submits that the executing court thoroughly misread the provisions of Order XXI, Rule 2 C.P.C. and thereby erred in overruling the objections of the petitioners/judgment-debtors. A further contention has been raised that mere intimation of passing of the award to the South Central Railway cannot be construed as "received" by the party, unless a copy of the award is served on a person directly connected with and involved in the proceedings and who is in control of the proceedings before the arbitrator. Learned senior Counsel narrated the sequence of events right from the passing of the award by the sole arbitrator till accepting of the amount of Rs. 6,69,053.92 ps. by the decree-holder on furnishing "No claim certificate." In support of his submissions, reliance has been placed on the following decisions:

- (1) Sultana Begum Vs. Prem Chand Jain, .
- (2) Industrial Finance Corporation of India Ltd. Vs. The Cannanore Spinning and Weaving Mills Ltd. and Others, .
- (3) Shree Ram Mills Ltd. Vs. Utility Premises (P) Ltd., .

(4) Chintala Bhovana Vs. Collector and District Magistrate and Others, .

(5) I.R. Coelho (dead) by LRs. v. State of Tamil Nadu and Ors. 2007 (2) ALT 1 (SC) : 2007(1) SCJ 694 : 2007 (1) DSC 45 (Cons. Bench).

(6) Ramanathan Chettiar v. Venkatachalam AIR 1923 Mad. 619.

(7) AIR 1931 33 (Privy Council) , and

(8) Obhoy Churu Mookerjee v. Mussannut Pearee Dossir 1874 Vol. XXII of the Weekly Reporter Civil Rulings pages 270 and 271.

4. Learned Counsel appearing for the respondent/decreed-holder submits that the respondent/decreed-holder received Rs. 6,69,053.92 ps. without prejudice to his rights and therefore, it cannot be construed as the amount towards full satisfaction of the award. He further submitted that any adjustment not certified or recorded in accordance with the provisions of Rule 2 of Order XXI of CPC cannot be looked into by the executing court. He emphasized Order XXI, Rule 2 of CPC and Article 125 of the Limitation Act to convince that the judgment debtor, who does not get the payment made by him outside the court recorded and certified under Sub-rule (2) of Rule 2 of Order XXI of CPC cannot be permitted to plead such payment, after the expiry of period of 30 days prescribed under Article 125 of the Limitation Act. In support of his submissions, reliance has been placed on the decision of our High Court in P. Narasaiah Vs. P. Rajoo Reddy, , wherein it has been held that any payment or adjustment which has not been certified or recorded in accordance with Rule 2 shall not be recognized by any court executing the decree, any such payment or adjustment not certified or recorded is no payment or adjustment in law. It is further held that any such payment or adjustment cannot be recognized by the court executing the decree - unless, of course, the decree-holder himself admits the same. Para 9 of the judgment reads as hereunder:

9. Part -II of the CPC containing Sections 36 - 74 deals with execution of decrees and orders. Order XXI in the First Schedule to the Code also deals with the same subject. There can be no conceived inconsistency between Sections 36 - 74, and the several Rules contained in Order XXI. Indeed, Order XXI merely elaborates and provides detailed provisions to carry out the intent and purposes of the provisions contained in Sections 36 - 74. The Rules in the First Schedule to the Code, including Order XXI, are referable to Part-X containing Sections 121 to 131. Section 121 says that the Rules in the First Schedule shall have effect as if enacted in the body of the Code until annulled or altered in accordance with the provisions of the said Part. Section 122 empowers the High Courts in the country to make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and that the Rules so made may annul, alter or add to all or any of the Rules in the First Schedule. Rules 1 and 2 of Order XXI are evidently based on the assumption that a judgment-debtor would not, ordinarily, pay the amount due under the money decree passed against him outside the Court without ensuring proper proof of such payment. Rules 1 and 2,

therefore, make detailed provisions providing the manner in which the payment or adjustment outside the Court should be made. They also provide that if any such payment or adjustment is made outside the Court, it should promptly be got recorded and certified by the Court which is competent to execute the decree, either at the instance of the decree-holder or the judgment-debtor. It also declares that a payment or adjustment made outside the Court, which has not been certified or recorded in accordance with Rule 2, shall not be recognized by any Court executing the decree. Rule 2 of Order XXI does not deal with the payment or adjustment of the decree in Court, i.e., in execution proceedings taken by the decree-holder. (The judgment-debtor may well wait for execution proceedings, and go and pay the money - In case it is a money decree - or satisfy the decree in the appropriate manner where it is the decree of any other kind. The payment so made, or the satisfaction provided by him will naturally be recorded by the executing Court. There can be no controversy about his payment/adjustment in such a situation). A judgment-debtor need not wait for the decree-holder to take out execution. As soon as the decree is passed, or at anytime thereafter, the judgment-debtor can himself pay the money due under a decree; but this has to be done in any one of the three modes mentioned in Order XXI, Rule 1(1). Now, the law says further that if money is paid or adjustment of decree of any kind is arrived at outside the Court, it should be promptly got recorded and certified as contemplated by Rule 2. This can be done either by the J.Dr. or by the decree-holder; but in the very nature of things, a judgment-debtor should be more concerned in having such payment or adjustment recorded and certified by the Court. Article 125 of the Limitation Act provides a period of 30 days for applying to the Court for recording an adjustment or satisfaction of the decree, from the date of payment or adjustment. There is no provision for extending the said period. Since by virtue of Sub-rule (3) of Rule 2 of Order XXI "a payment or adjustment, which has not been certified or recorded as aforesaid (in accordance with Rule 2) shall not be recognized by any Court executing the decree", any payment or adjustment not certified or recorded in accordance with Rule 2 of Order XXI is no payment or adjustment in law. Any such payment or adjustment cannot be recognized by the Court executing the decree - unless, of course, the decree-holder himself admits the same. Therefore, when a decree-holder takes out execution, the judgment-debtor will not be entitled to plead - if by the date of his plea a period of thirty days has expired from the date of payment or adjustment, as the case may be - that he has paid the money due, or has otherwise adjusted the decree, outside the Court. It is, no doubt, that the use of the expression "may" in Sub-rule (2) of Rule 2 has given room for controversy and argument; but, in my opinion, the said expression has to be construed and understood in the light of Sub-rule (3) of Rule 2, and if so read, the expression "may" is liable to be construed and understood as "shall". By placing this construction no inconsistency arises between Order XXI, Rule 2 and Section 47. When Section 47 declares that all questions relating to execution, discharge or satisfaction of a decree shall be enquired into and determined only by the Court executing the decree and not by

a separate suit, it does not mean that the provisions in Order XXI, Rule 2 read with Article 125 of the Limitation Act should be ignored. Indeed, one should read them together harmoniously. As stated hereinbefore, the several Rules in Order XXI supplement, illustrate and elaborate the provisions contained in part-II of the Code. The object behind Sub-rule (3) of Rule 2 of Order XXI is to shut out any plea of payment, or adjustment, which is not promptly got recorded and certified under the said Rule. The idea is to preclude any such pleas and leave no room for them.

5. In response, learned senior Counsel submits that had the decree-holder not submitting "No claim certificate" foregoing his claim under two items viz., rock chiseling for Rs. 16.00 Lakhs and overhead expenses for Rs. 2.00 Lakhs, the judgment-debtors ought to have proceeded to file an application u/s 34 of the Act, to challenge the award. The decree-holder having accepted the amount towards full satisfaction of his claim lost remedy to recover any further amount by the principle of estoppel. He would also contended that obligating the judgment-debtors to file application to record adjustment is an impossibility of performance since there being no execution application as on 12-7-2004 i.e., the date on which the decree-holder accepted Rs. 6,69,053.92 ps. towards full satisfaction of the award. The learned senior Counsel took me to Sub-sections (1) and (3) of Section 34 of the Act.

6. At the cost of repetition, we may mention few relevant dates. An award came to be passed on 6-2-2004. The decree-holder filed application before the arbitrator for correction of the award and thereupon the learned Arbitrator passed a supplementary award dated 3-3-2004. The decree-holder submitted a representation dated 12-5-2004 to the Chief Administrative Officer (Constitution), South Central Railway, Secunderabad, with a request to arrange for payment of the amount awarded to him by the arbitrator. The Deputy Chief Engineer/ Con.Plg/SC, South Central Railway, Secunderabad, responded to the representation of the decree-holder and addressed a letter dated 30-6-2004 which has been extracted supra. The decree-holder submitted "No claim certificate" to the Deputy Chief Engineer/Con.Plg/SC, South Central Railway, Secunderabad, foregoing his claim in respect of rock chiseling for Rs. 16.00 Lakhs and overhead expenses for Rs. 2.00 Lakhs. The "No claim certificate" tendered by the decree-holder reads as hereunder:

Further to the letters cited above, I hereby submit my unconditional "No claim Certificate". I am prepared to forego the Award in the 2 Claims viz., Award in Claim towards Rock Chiseling for Rs. 16.00 lakhs (Rupees Sixteen Lakhs Only) and Award in Claim No. 3 towards Overhead Expenses for Rs. 2.00 lakhs (Rupees Two Lakhs Only), Total Rs. 18.00 Lakhs (Rupees Eighteen Lakhs Only). I will not make any further Claims in respect of the above Award in future. Therefore, I request you to accept my unconditional "No Claim Certificate" and arrange the payment of the balance Award Amounts at the earliest.

Indisputably the judgment-debtors paid Rs. 6,69,054/- by way of Pay Order and

the decree-holder accepted the same without any murmur.

7. At this juncture, it is trite to note Sub-sections (1) and (3) of Section 34 of the Act and they are reproduced hereunder:

34. Application for setting aside arbitral award: (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Sub-section (2) and Sub-section (3).

(2) x x x x

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

8. Form and contents of arbitral award are provided by Section 31 of the Act. The arbitral award drawn up in the manner prescribed by Section 31 of the Act has to be signed and dated. According to Sub-section (5), "after the arbitral award is made, a signed copy shall be delivered to each party". The term "party" is defined by Clause (h) of Section 2 of the Act as meaning "a party to an arbitration agreement". The definition is to be read as given unless the context otherwise requires. Under Sub-section (3) of Section 34 the limitation of 3 months commences from the date on which "the party making that application" had received the arbitral award. What is the meaning to be assigned to the term "party" and "party making the application" for setting aside the award in the context of the State or a department of the Government, more so a large organization like the Railways came up for consideration in *Jambula Ravinder Reddy Vs. Jambula Raghunandan Reddy and Others*, wherein it has been held that the delivery of an arbitral award under Sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage u/s 31 has passed, then the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days u/s 33, an application for making an additional award under Sections 33 and an application for setting aside an award u/s 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end of the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

It is further held that in the context of a huge organization like Railways the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under Sub-section (1) or (5) of Section 33 or under Sub-section (1) of Section 34.

9. The decree-holder submitted a representation dated 12-5-2004 to the Chief Administrative Officer (Construction), South Central Railway, Secunderabad, with a prayer to arrange for payment of the amounts awarded by the arbitrator. Indisputably a supplementary award came to be passed on 3-3-2004. The date on which the supplementary award came to be served on the judgment-debtors is not indicated. Even assuming the date of supplementary award as the date of service, the judgment-debtors have time till 3-6-2004 and with a delay condonation petition till 3-7-2004. Even before the expiry of the limitation provided u/s 34(3) of the Act, the decree-holder submitted representation dated 12-5-2004 foregoing certain claims and made the judgment-debtors to pay the amount.

10. The only issue that survives for consideration is whether the decree-holder accepted Rs. 6,69,053.92 ps. towards full satisfaction or part satisfaction. The executing court misdirected itself as if the issue is with regard to recording or certifying of the payment made outside the court. The dispute is not with regard to recording the payments made outside the court. The decree-holder himself admits of receiving Rs. 6,69,053.92 ps. Indeed in Col. No. 4(b) of the execution petition the decree-holder acknowledges the receipt of Rs. 6,69,053.92 ps. When once the part payment is shown by the decree-holder himself, the requirement of certificate as contemplated under Sub-rule (2) of Rule 2, Order XXI CPC pales into insignificance. Therefore, the enquiry is with regard to execution, discharge or satisfaction of the decree as contemplated u/s 47 C.P.C. Section 47 of CPC reads as under:

47. Questions to be determined by the Court executing decree-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.

(2) [* *]

(3) Where a question arises as to whether any person is or is not the representative of a party such question shall for the purposes of this section, be determined by the Court.

Explanation 1. For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.

(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

Uttar Pradesh. - In Section 47 of the Principal Act, Expl. II as inserted by the U.P. Civil Laws (Reforms and Amendment) Act, 1954 (U.R. Act 24 of 1954) shall be omitted.

The object underlying Section 47 of CPC is to ensure that all questions relating to execution, discharge or satisfaction of the decree should be determined only by the executing court. The object is to avoid multiplicity of proceedings.

11. Ex.A-1 no claim certificate has been extracted supra. Indeed the executing Court on thorough consideration of the material brought on record came to the conclusion that no claim certificate issued by the decree-holder foregoing the amounts under two claims, totalling Rs. 18.00 Lakhs is true and valid. Once that finding goes in favour of the judgment-debtors, the E.P. is liable to be dismissed.

12. Accordingly, this civil revision petition is allowed and the order assailed in the revision overruling the objections of the judgment-debtors is unsustainable and accordingly, the same is set aside. Consequently, E.P. No. 20 of 2005 stands dismissed. No orders as to costs.