

**HON'BLE SRI JUSTICE R.SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

CIVIL MISCELLANEOUS APPEAL No.349 of 2015

JUDGMENT : (per Hon'ble Sri Justice R.Subhash Reddy)

As the Civil Miscellaneous Appeal is directed against ad-interim order dated 31.03.2015 in Arbitration O.P.No.566 of 2015 filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act"), with the consent of both the learned counsel, the appeal itself is heard and being disposed of.

2. This Civil Miscellaneous Appeal is filed by the appellant/respondent No.2 aggrieved by the ad-interim order dated 31.03.2015 in Arbitration O.P.No.566 of 2015, passed by the XI Additional Chief Judge, City Civil Court, Hyderabad.

3. The 1st respondent herein has filed Arbitration O.P.No.566 of 2015 under Section 9 of the Act seeking directions against respondent Nos.1 and 2 therein to furnish monetary securities towards full outstanding as on 15.1.2015 amounting to Rs.3,81,46,145/- in its favour. The Court below, while posting the matter to 15.4.2015, passed ad-interim order dated 31.3.2015 directing the appellant and 2nd respondent herein to furnish monetary securities severally and jointly towards full outstanding amount claimed by the petitioner therein as on 15.1.2015 amounting to Rs.3,81,46,145/-, within a period of 72 hours, failing which, the Court below has ordered for attachment of the petition schedule properties. After receipt of the said order, the appellant herein has filed an

undertaking affidavit before the Court below to maintain a minimum balance of Rs.3,81,46,145/- in the account held by it in the Bank, so as to secure the claim of the 1st respondent herein.

4. In this appeal, it is contended by Sri S. Niranjan Reddy, counsel representing Sri D. Pawan Kumar, learned counsel for the appellant, that there is no contract containing Arbitration clause between the appellant and the 1st respondent herein and, as such, the very petition filed under Section 9 of the Act is not maintainable. It is further contended that the contract is only between respondent Nos.1 and 2.

5. On the other hand, it is submitted by the learned counsel for respondent No.1 that though there is no direct contract between the appellant and respondent No.1 herein, the minutes recorded in various meetings show that, only at the instance of the appellant herein, such agreement was entered into between respondent Nos.1 and 2 and in view of the same, the petition filed by respondent No.1 is maintainable under Section 9 of the Act. It is further submitted that having regard to the minutes of the meeting also, a petition under Section 9 of the Act can be maintained against the appellant also.

6. It is to be noticed that the impugned order is passed as early as on 31.3.2015 and the appellant herein has already filed an undertaking affidavit before the Court below to secure interest for an amount of Rs.3,81,46,145/-, as claimed by the 1st respondent herein. As the appellant was not heard at the time of passing the impugned order dated 31.3.2015 and

further, pursuant to the said order, an undertaking affidavit has already been filed by the appellant to secure the interest of the claim made by the 1st respondent herein, this Court is of the view that it is not necessary to delve into the merits of the petition, at this stage.

7. For the aforesaid reasons, we deem it appropriate to dispose of the appeal, permitting the appellant to file counter affidavit in the aforesaid O.P., by duly serving a copy of the same to the 1st respondent herein, within a period of one week from today. On filing such counter affidavit, the XI Additional Chief Judge, City Civil Court, Hyderabad, is directed to dispose of Arbitration O.P.No.566 of 2015 within a period of four weeks from the date of receipt of a copy of this judgment, after affording an opportunity of hearing to the appellant and the respondents herein without granting any further adjournments.

8. Subject to the above directions, this civil miscellaneous appeal is disposed of. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A. SHANKAR NARAYANA

17.06.2015.

NOTE: Issue C.C. in two days.

(B/O)
Msr

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