

HIGH COURT FOR THE STATE OF TELANGANA

CIVIL REVISION PETITION NOS.1354 AND 1934 OF 2021

C.R.P.NO.1354 OF 2021:

Between:

Roop Singh Bhatti, s/o. Narasimha Singh,
Aged 40 years, occu: Business, r/o.15-8-19,
Ramannapet, Warangal and others.

..... Petitioners/
Judgment Debtors

And

M/s. Shriram City Union Finance Limited,
having its Branch Office at Warangal rep.by
its GPA Holder, i.e., K.Srinivasulu,
s/o. Rangaiah, Aged 40 years, occu:Assistant
General Manager in DHR Company.

.....Respondent/
Decree Holder

DATE OF JUDGMENT PRONOUNCED : 08.04.2022

HON'BLE SRI JUSTICE P.NAVEEN RAO

&

HON'BLE DR JUSTICE G.RADHA RANI

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

*** HON'BLE SRI JUSTICE P.NAVEEN RAO**
&
HON'BLE DR JUSTICE G.RADHA RANI

+ C.R.P.NO.1354 OF 2021:

% 08.04.2022

Roop Singh Bhattu, s/o. Narasimha Singh,
Aged 40 years, occu: Business, r/o.15-8-19,
Ramannapet, Warangal and others.

..... Petitioners/
Judgment Debtors

Vs.

\$ M/s. Shriram City Union Finance Limited,
having its Branch Office at Warangal rep.by
its GPA Holder, i.e., K.Srinivasulu,
s/o. Rangaiah, Aged 40 years, occu:Assistant
General Manager in DHR Company.

.....Respondent/
Decree Holder

!Counsel for the petitioners : Sri P.V.Ramana in both CRPs
Counsel for the Respondents : Sri P.Gangaiah Naidu, appearing for
Sri N.Srikanth Goud for sole respondent
in CRP No.1354 of 2021 and for first
respondent in CrP No.1934 of 2021

<Gist :

>Head Note:

? Cases referred:

2013 (1) ALT 44 (SC)
AIR 2004 SC 716
2002 LawSuit(Cal) 338
2003 LawSuit(Cal) 304

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI
CIVIL REVISION PETITION NOS.1354 AND 1934 OF 2021

COMMON ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

CRP No.1354 of 2021:

The respondent, M/s.Shriram City Union Finance Limited has sanctioned a sum of ₹ 25,00,000/- to the first petitioner herein. Petitioners 2 and 3 are the Co-borrowers/Guarantors. The petitioners had agreed to repay the loan amount with financial charges, bringing the total payable amount to ₹ 45,62,250/- to be payable in 60 installments. The petitioners had failed to pay the full loan amount and committed default.

2. As loan is not discharged by the petitioners, the respondent invoked the arbitration clause. A Claim Statement was made by the respondents before the sole Arbitrator on 27.04.2016. The petitioners filed their defence statement on 21.12.2016. The Arbitrator passed the award on 27.12.2017.

3. As the amount quantified by the Arbitrator was not paid, the respondent-M/s. Shriram City Union Finance Limited filed E.P.No.1432 of 2018 in ARB Case No.220 of 2016 in the Court of III Additional District Judge at Warangal, seeking enforcement of the award. The Execution Court over-ruled the objection raised by the petitioners and declared that decree holder is entitled for recovery of amount and allowed Execution Petition. Aggrieved thereby, this revision is filed.

CRP NO.1934 of 2021:

4. The respondent, M/s. Shriram City Union Finance Limited has sanctioned a sum of ₹ 20,00,000/- to the first petitioner herein.

Petitioners 2 and 3 are Co-borrowers/ Guarantors. The petitioners had agreed to repay the loan amount with financial charges, bringing the total payable amount to ₹ 36,49,980/- to be payable in 60 monthly installments. The petitioners had failed to pay the full loan amount and committed default.

5. As loan is not discharged by the petitioners, the respondent invoked the arbitration clause. A Claim Statement was made by the respondents before the sole Arbitrator on 27.04.2016. The petitioners filed their defence statement on 18.10.2016. The Arbitrator passed the award on 09.08.2017.

6. As the amount quantified by the Arbitrator was not paid, the respondent- M/s.Shriram City Union Finance Limited filed E.P.No. 1125 of 2018 in ARB Case No.33 of 2016 in the Court of VII Additional District at Warangal, seeking enforcement of the award.

7. Heard Sri P.V.Ramana, learned counsel for the petitioners in both revision petitions, and Sri P.Gangaiah Naidu, learned senior counsel appearing for Sri N.Srikanth Goud, learned counsel for sole respondent in CRP No.1354 of 2021, and for first respondent in CRP No.1934 of 2021.

8. As the issue raised in both revision petitions is same, both revisions are considered together.

9.1. The learned counsel for the petitioners contended that as the award was not passed within one year from the date of filing claim by the first respondent, M/s. Shriram City Union Finance Limited, the award is a nullity and therefore cannot be enforced. He contended that the execution Court failed to consider the objection raised by the petitioners on the issue of nullity of the order passed by the sole Arbitrator in the

Arbitration Claim Petition Nos.220/2016 and 33/2016, respectively, on the face of Section 29A(1) and Section 29A(3) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996').

9.2. He would submit that plea of nullity can be raised in execution proceedings. Further, scope of challenge to the award under Section 34 is limited and this plea could not be urged. The learned counsel for petitioners argued that as per Section 29A(1) of the Act, 1996, as in force, an award should be made within a period of twelve months from the date of Arbitral Tribunal enters upon the reference. Section 29A(3) of the Act, 1996 gives power to the parties to extend this time period for a further period not exceeding six months. Section 29A(4) of the Act, 1996 specifies that if the award is not passed within the time period prescribed in clause-1 or clause-3 then the mandate of arbitrator would terminate. Since arbitrator was not competent to pass award, as it is a nullity, question of enforcement does not arise.

9.3. Learned counsel placed reliance on the decision of Hon'ble Supreme Court in the case of **State of Haryana and another Vs. Kartar Singh (D) through LRs**¹ arising out of Land Acquisition Act, 1894. He would submit that the Execution Court failed to appreciate this aspect and has committed grave illegality.

10.1. *Per contra*, the learned senior counsel Sri Gangaiah Naidu appearing for learned counsel for the respondent-Chit Fund company, contended that the Claim Statement was filed before the sole Arbitrator on 27.04.2016; the petitioners dragged on the matter deliberately and willfully; the petitioners refused to receive notices and delayed the process for a span of eight months and three months respectively. They finally filed their defence statement on 21.12.2016 and 18.10.2016

¹ 2013 (1) ALT 44 (SC)

respectively. The learned senior counsel for respondent-Chit Fund Company further contended that the petitioners took very long time to file their defence as against the permissible time of six months and hence the period of twelve months should be reckoned from 21.12.2016 and 18.10.2016 respectively and the period of twelve months expires by 21.12.2017 and 18.10.2017 respectively. Thus, within one year after filing the written statement, the award was passed.

10.2. Learned senior counsel further contended that Section 29A of the Act, 1996, as it stood earlier was substituted and as per the amendment the award was passed within one year. He would further submit that O.P. filed by the petitioners was dismissed and the award has become final and therefore they cannot raise their plea at the stage of enforcement of the award.

10.3. Learned senior counsel placed reliance on the decision of Hon'ble Supreme Court in the case of **Mallikarjun vs. Gulbarga University**², the decision of Division Bench of this Court in **P.Swamy Reddy vs. M/s.Shriram City Union Finance Limited, Nirmal Branch (CRP No.1904 of 2019, dated 14.08.2019)**, the decisions of Calcutta High Court in the cases of **Fingertips Solutions Pvt. Ltd., vs. Dhanashree Electronics Limited (C.O. 3955 of 2015 dated 27.04.2016)**, **Narendra Kumar Anchalia vs. Krishna Kumar Mundhra**³, **Krishna Kumar Mundhra vs. Narendra Kumar Anchalia**⁴, and the decision of Allahabad High Court in the case of **Larsen and Tourbo Ltd vs. Maharaji Educational Trust (Civil Revision Case No.213 of 2010 dated 24.09.2010)**.

10.4. According to learned senior counsel, Section 29A of the Act, 1996, only lays down procedure and non-compliance thereof does not vitiate the award.

² AIR 2004 SC 716

³ 2002 LawSuit(Cal) 338

⁴ 2003 LawSuit(Cal) 304

10.5. He would submit that if there is anomaly it must be reconciled having regard to the purpose and object of the Act. A litigant who deliberately avoids taking notices and does not file written statement for a long time cannot take advantage of statutory provision on limitation after the award was passed depriving the respondent fruits of his success.

11. The issue for consideration is whether the awards of the Arbitrators are sustainable and Execution Petitions are maintainable?

12. The issue raised in this revision revolves on scope of Section 29A⁵ of the Act 1996, as it was in force at the relevant time. This provision was introduced by way of amendment notified on 01.01.2016 with retrospective effect from 23.10.2015.

13. Section 29A of the Act, 1996, as it stood when awards were passed mandates that the award should be passed within a period of twelve months from the date Arbitration Tribunal enters appearance. The explanation appended to the provision as it stood at the relevant point of time explains that arbitrator is deemed to have entered appearance when he received notice in writing of his appointment. It is not in dispute that arbitrators entered appearance on 27.04.2016 in both claims. They were

⁵ **Section 29A. (1)** The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation:- For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

therefore required to pass awards within one year from that date and admittedly they did not finalize arbitral proceedings by 27.04.2017.

14. The provision as it stood was in mandatory terms and leaves no scope to infer otherwise. The intention of the Parliament is made abundantly clear from the reading of Sub-sections (3) and (4). Sub-section (3) enables parties by consent to extend the time by further period of six months. But it also makes it clear that it should not be extended beyond six months. According to sub-section (4), after the initial period of one year and extended period of six months, if extended by consent, the mandate of the arbitrator terminates. Thus, he becomes *functus-officio* after that period and, therefore, ceases to be an arbitrator. An arbitrator is a creature of the statute and has to work within the four corners of the Act.

15. Section 29A as introduced by Amendment Act notified on 01.01.2016 was substituted by way of Amendment Act dated 09.08.2019⁶. The amendment takes care of the drawbacks in the earlier provision.

16. We see no merit in the contention of learned senior counsel that the effect of substitution of Section 29A of the Act, 1996, operates retrospectively and, therefore, award made is legal. As held consistently, merely because word substitution is used, the amended provision does not relate back to the date of original provision that was amended. It depends on the language employed, effect of the amendment and the intendment of the legislature. This issue need not detain further having

⁶ “**Sec.6.** In Section 29A of the principal Act,- (a) for sub-section (1), the following sub-section shall be substituted, namely:-“(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-Section (4) of Section 23.”;

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:-

“Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced”.

regard to the intendment of the Parliament. Section 29-A was amended vide Section 6 of the Amendment Act dated 9.8.2019. By notification dated 30.08.2019 the effective dates of commencement of amendments is notified. It reads as under:

“S.O. 3154 (E):- In the exercise of the powers conferred by sub-section (2) of Section 1 of the Arbitration and Conciliation (Amendment) Act, 2019 (33 of 2019), the Central Government **hereby appoints the 30th August, 2019 as the** date on which the provisions of the following sections of the said Act shall come into force:-

- (1) Section 1;
- (2) **Section 4 to Section 9 (both inclusive);**
- (3) Section 11 to Section 13 (both inclusive);
- (4) Section 15”

17. The disputes raised in these two revisions were covered by unamended Section 29-A. From the dates and events of these two cases, it is apparent that the concerned arbitrators passed awards after one year of entering appearance. They became *functus officio* one year after entering appearance and were wholly incompetent to deal with the disputes and pass awards. Thus, awards passed by the arbitrators are nullity and void *ab initio*. In law there do not exist awards and therefore question of enforcement of the awards do not arise. The execution Court grossly erred in not appreciating this aspect.

18. The Civil Revision Petitions are allowed. However, no order as to costs. It is made clear that it is open to respondent-Chit Fund Company to avail appropriate remedy as available in law to recover the money, if any due. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

Dr.JUSTICE G.RADHA RANI

Date: 08.04.2022

Kkm/tvk

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

CIVIL REVISION PETITION NOs.1354 & 1934 OF 2021

Date: 08.04.2022

kkm