

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA**

CIVIL REVISION PETITION NO.1727 OF 2021

Between:

Sree Venkataraya Builders Private Limited,
A company incorporated under the Companies
Act, 1956, having its registered office at 12-23-1,
Old Town Industrial Area, Tanuku, West Godavari
District, rep.by its Director, Smt. Rukmini
Mullapudi, w/o. Rushyant Mulpuri, Aged about
26 years, occu: Director, R/o. Flat No.F-4,
H.No.8-2-309/1-8, Trendset Vantage, Road No.14,
Banjara Hills, Hyderabad.

..... Petitioner/
Respondent

And

M/s. Kausalya Shelters Limited, A Company
Incorporated under the Companies Act, 1956,
Having its registered office at Plot No.8,
2nd floor, Dharma Reddy Colony, Phase-I,
KPHB, Hyderabad and its corporate office at
Kapil Towers, 15th floor, Nanakramguda,
Gachibowli, Hyderabad, rep.by its Chairman,
Sri D.Ravinder Rao, s/o. Chokka Rao,
Aged about 49 years, occu: Business,
r/o.2, Madhupala Enclave, Akber Road,
Secunderabad.

.... Respondent/
Respondent

DATE OF JUDGMENT PRONOUNCED : 28.01.2022

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HON'BLE SMT JUSTICE P.SREE SUDHA

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 ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HON'BLE SMT JUSTICE P.SREE SUDHA**

+ CIVIL REVISION PETITION NO.1727 OF 2021

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.... Respondent/
Respondent

!Counsel for the petitioner : Mr. Botla Venkateswara Rao
representing Mr. M.V.Durga Prasad

Counsel for the Respondent: Mr. Bankatlal Mandhani

<Gist :

>Head Note:

? Cases referred:

(2000) 7 SCC 695
2015 (5) ALD 446 (FB)
(2002) 5 SCC 510
1996 (4) ALD 1225
(2019) 8 SCC 112

**THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE SMT JUSTICE P.SREE SUDHA**

CIVIL REVISION PETITION No.1727 of 2021

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

Petitioner claims to be the owner of land admeasuring Acs.2.08 guntas in Sy.No.144 of Nanakramguda village, Serilingampally Mandal, Ranga Reddy district. Petitioner entered into Development Agreement-cum-General Power of Attorney, registered on 12.01.2015, in the Office of Joint Sub-Registrar, Ranga Reddy district for construction of complex in the above extent of land. Supplementary Agreement was entered, where under it was agreed that 60% would fall to the share of the developer and 40% to the owner. As per clause-5 of the Development Agreement, respondent agreed to pay Rs.4 crores as interest free refundable deposit. This amount should be refunded on successful completion of the project.

2. It appears, differences arose between the parties to the agreement, resulting in petitioner invoking remedy under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act, 1996') by filing Arbitration O.P.No.62 of 2021 in the Court of XXIV Additional Chief Judge, City Civil Court, Hyderabad. Respondent filed Arbitration O.P.No.65 of 2021 in the Court of XXIV Additional Chief Judge, City Civil Court, Hyderabad, praying to grant injunction restraining the petitioner from alienating or encumbering built up area in the petition schedule 'B' property, fallen to the share of the petitioner herein, pending conclusion of the arbitration proceedings and to grant injunction restraining the

petitioner from interfering with the peaceful possession of the petition schedule 'A' property.

3. On 23.07.2021, while issuing urgent notice, returnable by 30.07.2021, by way of ad-interim injunction, the trial Court restrained the petitioner from making alienation of the property fell to its share till 30.07.2021. On 30.07.2021, the earlier interim order was extended till 11.08.2021 rejecting the memo filed by the petitioner for vacating the interim order observing that on a memo interim order cannot be vacated. Petitioner then filed I.A.No.73 of 2021 in Arbitration O.P.No.65 of 2021 praying the trial Court not to extend the interim order dated 30.07.2021 as the respondent failed to comply mandate of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 (for short, 'CPC'). The trial Court by order dated 27.09.2021 overruled the said objection and having found *prima facie* case and balance of convenience in favour of the respondent, dismissed the said I.A.

4. Heard Mr.Botla Venkateswara Rao representing Mr. M.V.Durga Prasad appearing for the petitioner and Mr. Bankatlal Mandhani learned counsel for the respondent.

5. Learned counsel for the petitioner submitted that in an application filed under Section 9 of the Act, 1996, Civil Court is bound by the provisions of Code of Civil Procedure in all its vigour and application and non-compliance thereof, vitiates the orders passed by the civil Court. According to the learned counsel, Order XXXIX Rule 3 of CPC mandates that if an *ex parte* ad-interim injunction is granted with a direction to the plaintiff to serve notice on the defendant, it is mandatory for the plaintiff to serve notice by

enclosing copy of arbitration application and the documents filed by the respondent before the date fixed for hearing. Admittedly, respondent has not served all the documents relied upon by him, but only gave copy of arbitration application. Therefore, the mandate of Order XXXIX Rule 3 of CPC is not complied and on that ground alone the *ex parte* ad-interim injunction stands dissolved. The trial Court erred in overruling the objection.

6. He further submitted that trial Court erred in not going into the aspect of *prima facie* case and balance of convenience and merely noting that another arbitration application filed by the petitioner is pending, granted *ex parte* injunction depriving the right of the petitioner to enjoy his share of the property.

7. In support of his contention, learned counsel for petitioner placed reliance on the following decisions:

i) Decision of Hon'ble Supreme Court in **Mahanagar Telephone Nigam Ltd. Vs. M/s.Applied Electronics Ltd., (Civil Appeal Nos.11584 of 2016)**;

ii) **A.Venkatasubbaiah Naidu vs. S.Chellappan and others**¹;

iii) **East India Udyog Ltd., Ghaziabad, U.P. vs. Maytas Infra Ltd., Hyderabad and another**²;

iv) **ITI Ltd., vs.Siemens Public Communications Network Ltd.**³;
and

v) **Nikesh vs. Malathi Bai and others**⁴.

8. *Per contra*, according to the learned counsel for respondent, respondent has complied with the requirements of Order XXXIX Rule 3 of CPC by serving notice. As it is not a civil case, but it is an arbitration application governed by the provisions of the Act,

¹ (2000) 7 SCC 695

² 2015 (5) ALD 446 (FB)

³ (2002) 5 SCC 510

⁴ 1996 (4) ALD 1225

1996, merely because all the documents relied upon by the respondent are not served for the Court to consider to continuation of the earlier interim order granted in his favour. Further, the documents relied upon by the respondent were all within the knowledge of the petitioner and the notice served on the petitioner disclosed the documents relied upon by the respondent. There was no surprise element. The petitioner was given ample opportunity to oppose the continuation of the interim order.

9. According to the learned counsel, the Full Bench decision relied upon by the petitioner clearly holds that Order XXXIX Rule 3 of CPC does not impose any restraint on the Court in granting/ extending the interim order granted earlier if the Court is convinced of *prima facie* case and balance of convenience in favour of the plaintiff.

10. He would further submit that as evident from Rule 12 of the Rules made under the Act, 1996, all the provisions of CPC are not made applicable to the arbitration proceedings, and therefore, the entire gamut of CPC is not attracted. He further submitted that Rule 12 also envisages the principle of prejudice. Thus, merely because all the documents were not served on the petitioner, the interim order granted cannot dissolve unless petitioner satisfies the Court that grave prejudice was caused to him to defend himself. In the instant case, petitioner was aware of the documents on which reliance was placed by the respondent and all the documents referred to in the application are within his knowledge and possession. He further submitted that after service of notice, counter-affidavit was filed on 16.11.2021. Thirteen adjournments

were granted. Therefore, in the facts of this case, no prejudice was caused to petitioner.

11. The issue for consideration is whether it is mandatory to comply Order XXXIX Rule 3 of CPC in Arbitration Application to further continue the *ex parte* injunction order?

12. Parties to an agreement can seek resolution of the dispute by means of arbitration. Such course enables the parties to resolve the disputes in an effective manner, expeditiously and saves costs. The Act, 1996 is brought out to give statutory backing and to encourage the medium of arbitration. It is a comprehensive legislation dealing with all aspects of arbitration. The primary object of the Act is to ensure resolution of the disputes through the medium of arbitration and conciliation instead of resorting to avail civil law remedy. The Act provides remedies from the movement a dispute arises between parties to a contract till enforcement of the award of arbitrator. Section 82 of the Act, 1996, vests power in the High Court to make Rules to give effect to the provisions of the Act. Section 84 of the Act, 1996 vests power in the Central Government to make Rules for carrying out the provisions of the Act. In exercise of power under Section 82 of the Act, the High Court notified the Andhra Pradesh Arbitration Rules, 2000 (for short, the Rules, 2000). It is a complete Code on all aspects of arbitration. The Act, 1996 is made in supersession of the Arbitration Act, 1940. It is moulded on UNCITRAL structure.

13. Section 9⁵ of the Act, 1996, Rules 11⁶ and 12⁷ of the Rules, 2000, need consideration to appreciate the issue.

14. When a party invokes arbitration clause, appointment of an Arbitrator may take considerable time. The arbitration clause in a contract may not envisage remedy to protect his interests till commencement of arbitration proceedings. A party to a contract who seeks to invoke arbitration clause on a dispute arising out of contract may require to safeguard his interest in the meanwhile can file an application under Section 9 of the Act, 1996 before Civil Court/Commercial Court to seek interim protection.

15. Section 9 of the Act, 1996 in broad terms vests in the Court to deal with interlocutory applications filed before commencement of arbitration proceedings, during the arbitration proceedings and after the arbitral award and to pass appropriate orders. Clause (ii)

⁵ **Section 9. Interim measures, etc, by Court:**

(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the Court to be just and convenient; and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

⁶ **Rule 11.** The Court to which an application is presented shall direct notice thereof to be given to the opposite party and to such other persons as are likely to be affected by the proceedings requiring to show cause within a time to be specified in the notice why the relief sought in the application be not granted. The notice shall be accompanied by a copy of the application and documents filed by the applicant.

⁷ **Rule 12.** (1) Save as other wise expressly provided in the Act or these Rules the following provisions of the Code of Civil Procedure, 1908 (V of 1908) shall apply to the proceedings before a Court in so far as they may be applicable thereto; namely;

- (i) Sections 28, 31, 35, 35-A, 35-B, 107, 133, 135, 144, 148-A, 149, 151 & 152 and
- (ii) Orders III, V, VI, IX, XIII, XIV to XIX, XXIV and XLI.

(2) (a) For the purpose of facilitating the application of the provisions referred to under sub-section

- (1) the Court may construe them with such alterations, into affecting the substance, as may be necessary or proper to adapt the matters before it; and

- (b) The Court may, for sufficient reasons, proceed other wise than in accordance with the said provisions if it is satisfied that the interests of the parties will not thereby be prejudiced.

of Section 9(1) of the Act is comprehensive and deal with all aspects of a dispute and more particularly Clause-(ii)(e) vests wide discretion in the Court to deal with any other unforeseen contingency, not covered by clauses 'a' to 'd'. While doing so, the Court shall have the same powers as exercisable in dealing with interlocutory applications in a civil dispute/commercial dispute. It reads, ***“the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it”***.

16. In any civil dispute a Court has wide spectrum of powers to deal with various aspects of litigation and at various stages of litigation. In a civil dispute parties file interlocutory applications seeking reliefs at various stages of litigation. They may be on, delay in filing a case; to grant *ex parte* injunction; to reject plaint; to appoint a Commissioner to ascertain factual aspects on ground; to implead/to delete a defendant; to recall a witness; to make a document, to say a few. Various provisions of CPC guide the Courts to deal with such applications.

17. Order XXXIX of CPC is one such provision. It is a comprehensive provision dealing with temporary injunctions pending litigation. It deals with various contingencies of temporary injunction, viz., to grant, to vary the order already granted, to seek enforcement of the order so made, interim custody/protection/sale of suit property/assets, etc. In this case, the focus is on Rule 3. Therefore, it is suffice to notice, Rules 1 and 3. Rule 1 comprehends circumstances when Court can grant temporary injunction and the scope of order of the Court. Rule 3 requires that before granting temporary injunction, the opposite party

should be put on notice. However, it also carves out exception, granting discretion to the Court to pass *ex parte* injunction order even before ordering notice. If Court is adopting such course, it must assign reasons in support of its decision. It also requires the applicant to deliver to the opposite party copy of the application together with affidavit in that application, plaint and copies of the documents on which applicant relies. The ad-interim injunction is subject to compliance of Rule 3 of Order XXXIX of CPC.

18. On a plain reading, Section 9 of the Act implies that the Court should be guided by CPC on various aspects of interlocutory applications in arbitration proceedings. Further, from the scheme of the Act, it is apparent that the primary objective of the Act is to ensure that *inter se* dispute is resolved by means of arbitration. However, an Arbitrator may not be in a position to deal with various aspects that require judicial intervention. Further, before Arbitrator is appointed there has to be some forum to seek redress of a dispute and/or to seek interim protection. Thus, prior to commencement of arbitration proceedings Civil Court steps into deal with interlocutory claims flowing out of Section 9(1) of the Act. The role of civil Court is comprehensive before arbitration proceedings commence and guarded/supervisory during the proceedings.

19. Learned counsel for petitioner placed heavy reliance on Supreme Court decision in **ITI Ltd.** (supra) and Full Bench decision of this Court in **East India Udyog Ltd.** (supra) to contend that not complying Order XXXIX Rule 3 of CPC is fatal to continue *ex parte* injunction order. In **ITI Ltd.**, the question considered was

whether a revision under Section 115 of the Code of Civil Procedure lies to the High Court against an order made by Civil Court in an appeal filed under Section 37 of the Act, 1996. The Supreme Court also considered question as to whether there was an express prohibition against the application of the CPC to a proceeding arising out of the Act before a Civil Court. Supreme Court answered the question holding that, *'We find no such specific exclusion of the Code in the present Act. When there is no express exclusion, we cannot by inference hold that the Code is not applicable'*.

20. In **Mahangar Telephone Nigam Ltd.** (supra), the Hon'ble Supreme Court disagreed with the opinion expressed in **ITI Ltd.** (supra). The Supreme Court observed that, *"The analysis made in ITI Ltd. (supra) to the effect that merely because the 1996 Act does not provide CPC to be applicable, it should not be inferred that the Code is inapplicable seems to be incorrect, for the scheme of the 1996 Act clearly envisages otherwise and the legislative intendment also so postulates"*.

21. Full Bench of this Court in **East India Udyog Ltd.** (supra) considered reference by a Division Bench on following questions:

"(a) Whether the Court as defined under Section 2(e) of the Act, is entitled to dispose of the application filed under Section 9 of the Act before initiation of the arbitral proceedings under Section 21 of the Act, *ex parte* without giving notice to the respondents, if the facts and circumstances so warrant ?

(b) Whether the Court as defined under Section 2(e) of the Act, is entitled to grant any interim order pending disposal of the interim measure application under Section 9 of the Act ?

(c) Whether further application pending disposal of the interim measure under Section 9 of the Act, is maintainable ?"

21.1. The Full Bench answered the reference as under:

“36. Thus, we answer the questions as framed in the order of reference as follows:

“the Court as defined under Section 2(e) of the Act, is undoubtedly entitled to dispose of the application filed under Section 9 of the Act even before initiation of the arbitral proceedings under Section 21 of the Act. The Court, however, cannot dispose of such application *ex parte* without giving notice to the respondents, but Court can pass *ex parte ad-interim* order pending the application filed under Section 9 of the Act.”

22. From these decisions, following aspects are noticed: firstly, the Courts were not considering the applicability of Order XXXIX Rule 3 of CPC to application under Section 9 of the Act, 1996 before a Civil Court; secondly, in the **ITI Ltd.** (supra), rules similar to Rules, 2000 notified by this High Court were not under consideration; thirdly, issue considered in **ITI Ltd.** is different from the issue in this revision; fourthly, the issues referred to Full Bench of this Court in **East India Udyog Ltd.** (supra) are not the same as in this case; and finally, the Full Bench has not considered the scope of Rules 11 and 12 of the Rules. Therefore, those two decisions do not come to the aid of petitioner. Further, as noticed above, in **Mahanagar Telephone Nigam Ltd.** (supra), the Hon'ble Supreme Court doubted the view taken in **ITI Ltd.**

23. In **Pam Developments Private Limited vs. State of West Bengal**⁸, opposing application filed under Section 36 of the Act to enforce arbitral award and order of attachment it was urged for the State of West Bengal that application under Section 34 is pending and in view of provision in Order XXVII Rule 8-A of CPC the State need not be compelled to pre-deposit as a condition precedent to avail the remedy of appeal/application and, therefore, order of

⁸ (2019) 8 SCC 112

attachment was illegal. To answer the said plea, the Hon'ble Supreme Court considered the issue of applicability of CPC to proceedings arising out of Act, 1996.

23.1. Hon'ble Supreme Court held as under:

“20. In our view, in the present context, the phrase used is “having regard to” the provisions of CPC and not “in accordance with” the provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision of the Arbitration Act inapplicable. ***The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.***

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26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money decree — award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution of dispute through arbitration would be defeated as the decree-holder would be fully deprived of the fruits of the award on mere filing of objection under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34 of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act.

27. It may be true that CPC provides for a differential treatment to the Government in certain cases, but the same may not be so applicable while considering a case against the Government under the Arbitration Act. For instance, Section 80 CPC provides for a notice of two months to be given before any suit is instituted against the Government. Further, it also provides that no ex parte injunction order can be passed against the Government. Whereas on the other hand, under the Arbitration Act no such special provision has been made with regard to arbitration by or against the Government. There is no requirement under the Arbitration Act for a notice of two months to be given to the Government before invoking arbitration proceeding against the Government. Further, Sections 9 and 17 of the Arbitration Act also provide for grant of ex parte interim orders against the Government.” (Emphasis supplied)

24. From the above extracts, it is seen that Hon'ble Supreme Court held that *‘the provisions of CPC are to be followed as a guidance’*, and that *‘CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act’*

(paragraph-20). In this context, when we look at Section 9 of the Act, 1996, it only envisages that '*the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceeding before it*'. It has not mandated application of entire gamut of Order XXXIX, more particularly Rule 3, of CPC.

25. According to Rule 11 of the Rules, 2000, serving of notice on the opposite party before considering an interlocutory application is mandatory. It also requires that the notice should accompany copy of application and documents filed along with the application. While Rule 11 only envisages notice before an application is considered, Section 9 is comprehensive and vests wide discretion to deal with any contingency and a situation that may require dispensing prior notice.

26. Further, from Rule 12 of the Rules, 2000, it is apparent that whole gamut of CPC is not extended to arbitrations, but only selective provisions are made applicable. One of the provisions conspicuously excluded is Order XXXIX. Thus, it is not mandatory to follow entire gamut of Order XXXIX. However, Court can still be guided by the scheme of Order XXXIX while considering *ex parte* injunctions as is the case with any other part of CPC to consider any other application filed under Section 9 of the Act.

27. Reading of Rule 12 (2) of the Rules makes the scheme very clear. It vests complete discretion in the Court to suitably modify the requirements of provisions of CPC adopted by Sub-Rule (1) or to ignore them and proceed otherwise. Only requirement to proceed otherwise is Court must assign reasons. Further, the party complaining of lack of notice and opportunity and that procedural

formalities were not observed by the opposite party/by the lower Court, must satisfy the Court how prejudice is caused to him. It is not automatic to set aside an order made under Section 9 of the Act only on the ground that documents were not supplied unless the petitioner shows prejudice caused to him. Thus, the scheme of the Act and the Rules make it apparent that the Act is self-contained Code; that they comprehensively deals with all aspects of arbitration; that the Act and the Rules do not envisage application of whole gamut of CPC; that CPC is applicable only to a limited extent as provided in Rule 12 of the Rules; and that CPC can only guide the Court in dealing with Section 9 applications with complete discretion to adopt its own procedure.

28. Having regard to this assessment of the statutory scheme, question for consideration is whether not observing strictly the Order XXXIX Rule 3 of CPC/Rule 11 of the Rules vitiates the order of the lower Court in continuing the *ex parte* ad-interim injunction granted on 23.07.2021 ?

29. At this stage, it is necessary to briefly recapitulate facts. In Arb.O.P.No.65 of 2021, respondent sought interim protection in the form of injunction against interference in his possession of petition schedule 'A' and 'B' properties. Respondent contended that petitioner is making efforts to alienate property fallen to the share of petitioner and in such an event he would be forced to fight litigation with third parties and that the petitioner cannot sell the schedule 'B' property. While issuing urgent notice on petitioner through Court and Registered Post returnable on 30.07.2021, by order dated 23.07.2021 restrained the petitioner from alienating

the petition schedule 'B' property till the next date of hearing. Petitioner filed Memo opposing extension of injunction order by contending that Order XXXIX Rule 3 of CPC was not complied. The trial Court observed that such Memo was not maintainable. Then, petitioner filed I.A.No.73 of 2021 under Order XXXIX Rule read with Section 151 of CPC praying not to extend the injunction order.

30. In the affidavit filed in support of the application, petitioner only contended that all the documents filed in Arb.O.P., were not served on him by the respondent, thereby violating the mandate of Order XXXIX Rule 3 of CPC and, therefore, injunction order has to be dissolved. However, petitioner admits that later all the papers (documents) were served on him. In other words, I.A.No.73 of 2021 is filed opposing further continuation of injunction order only on the ground that respondent did not comply with Order XXXIX Rule 3 of CPC. In the counter-affidavit filed by respondent in I.A.No.73 of 2021, he has contended that no prejudice was caused and the conduct of petitioner from 30.07.2021 disentitles him from raising that plea. The trial Court noted that its order was not made under Order XXXIX Rule 2 of CPC, that it did not mandate respondent to comply with Order XXXIX Rule 2 of CPC, and that Order XXXIX Rule 3 of CPC is not applicable to arbitration proceedings and rejected the plea of petitioner.

31. Even now petitioner has not demonstrated how prejudice is caused to him. The burden of song is only on violation of Order XXXIX Rule 3 of CPC.

32. Having regard to scheme of the Act and the Rules, merely because all the documents were not served along with notice under Rule 11, the *ex parte* injunction order cannot be nullified unless petitioner pleads and proves prejudice is caused to him. As rightly observed by the trial Court, while granting ad-interim *ex parte* injunction, the trial Court ordered notice to be sent by the Court and did not compel the respondent to take out notice. Therefore, if the Office of the Court did not send all the documents, petitioner cannot seek to penalize the respondent.

33. As consistently held by the Hon'ble Supreme Court a person complaining non-observance of procedural fairness must satisfy the revisional Court how prejudice is caused to him. No prejudice is pleaded and proved.

34. The trial Court having found *prima facie* case and balance of convenience in favour of the respondent granted the injunction order pending arbitration proceedings. No application is filed to seek vacation of the said order.

35. The Court is also reminded that the jurisdiction of this Court against orders of civil Court under Section 9, is supervisory, revisional and not an appellate jurisdiction. It is intended to correct grave errors in exercising jurisdiction/application of law/complying procedural safeguards, but not to reassess the decision on merits. We are of the opinion that the trial Court has not committed error in rejecting the I.A.

36. For all the aforesaid reasons, the Civil Revision Petition is liable to be dismissed. It is accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.

JUSTICE P.NAVEEN RAO

JUSTICE P.SREE SUDHA

Date: 28.01.2022
KKM

THE HON'BLE SRI JUSTICE P.NAVEEN RAO
&
THE HON'BLE SMT JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO.1727 OF 2021

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