

(2001) 08 AP CK 0048

Andhra Pradesh High Court

Case No: A.A.O. No's. 2671, 2672 and 2677 of 2000

M. Manik Reddy and Another

APPELLANT

Vs

M. Anasuya Devi and Others

RESPONDENT

Date of Decision: Aug. 7, 2001

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 10, 31
- Registration Act, 1908 - Section 17, 17(1), 17(2)
- Stamp Act, 1899 - Section 2(15)

Citation: (2001) 5 ALT 367

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

Bench: Division Bench

Advocate: P. Rajender Reddy and Rakesh Sanghi, in CMA 2672/2000, for the Appellant; V. Venkata Ramana, for the Respondent

Judgement

B. Subhashan Reddy, J.

These three Civil Miscellaneous Appeals arise under the Arbitration and Conciliation Act, 1996. While C.M.A. Nos. 2671 and 2672 of 2000 are filed against the common order dated 4-8-2000 passed by the Court of IV Additional Chief Judge, City Civil Court, Hyderabad in O.P. Nos. 780 and 781 of 1998, C.M.A. No. 2677 of 2000 is filed against the order dated 4-8-2000 passed in I.A.No. 388 of 2000 in the said O.P. No. 780 of 1998, rejecting the plea of appointment of Receiver.

2. The parties are closely related and they referred the matter to Arbitrators for entering arbitration and rendering the Award. The Arbitration Agreement dated 16-5-1998 was entered into to resolve the disputes pertaining to the joint family properties belonging to the parties and particularly, the 1st petitioner and the 1st respondent as arrayed in O.P. No. 780 of 1998. Two Awards were rendered by the Arbitrators on 31-5-1998 and later on, they issued a clarification dt. 25-6-1998 stating that the Awards dated 31-5-1998 be read as having rendered on 10-6-1998.

Aggrieved by said Award, M/s. M. Manik Reddy and M. Vinod Reddy have filed O.P. No. 780 of 1998 to set aside the award while Smt. M. Amrutha has filed O.P. No. 781 of 1998 to set aside yet another Award. I.A. No. 388 of 2000 has been filed by Smt. Shashikala and Smt. M. Anasuya Devi to appoint a Receiver. O.P. Nos. 780 and 781 of 2000 have been dismissed upholding the contention of the respondents, while in I.A. No. 388 of 2000 the plea of respondents 1 and 2 to appoint a Receiver was negated. Aggrieved by the same, the above parties have filed these appeals.

3. There are several items of properties jointly owned by the parties and in view of the disputes, they have referred the matter to arbitration. Basing on the pleadings of the parties, the following were the issues framed by the Court below:

- (i) Whether the composition of arbitral Tribunal was not proper and it is not in accordance with the provisions of Section 10 of the Arbitration and Conciliation Act; as such, the impugned award dated 10-6-1998 passed by it is not valid ?
- (ii) Whether the petitioners are not given proper notice of arbitral proceedings and opportunity to represent their case?
- (iii) Whether the Arbitrators have acted beyond the scope for reference of the matter referred for arbitration?
- (iv) Whether the Award is not supported by reason, as such, bad u/s 31 of the Act?
- (v) Whether the Arbitrators have not acted impartially and played fraud on the parties?
- (vi) Whether the Award is inadmissible and unenforceable in law for want of proper stamp duty and registration?
- (vii) To what relief?

4. Out of the above issues, Issue No. 6 assumes significance, as, only when the Award is admissible in evidence, then the other issues can be gone into and as it strikes the root of the matter, we will deal with the said issue first.

5. In fact, on the said issue, there is already a Judgment rendered by the Court below, which was a subject matter before this Court in C.R.P.Nos. 487 and 1488 of 1999. The said revisions were filed against the Orders dated 30-3-1999 and 2-4-1999 passed in the Memos filed in O.P. Nos. 780 and 781 of 1998. The order passed by the lower Court that the Award was to be stamped on Rs. 100/- and that levy of penalty of Rs. 1,000/- + stamp duty of Rs. 100/- was enough, was set aside by this Court in the above revisions holding that the entire Award must be read as a whole and not piecemeal and then it should be construed as to whether it is an award simpliciter or Award directing partition, in which event, it has to be stamped as an instrument of partition and is also compulsorily registrable. The matter was remitted to the lower Court on that issue and as stated above, even though all the issues have been answered, we are only dealing with issue No. 6 as it strikes at the root of the matter,

as, in the event of the Award being held as inadmissible, then other issues need not be adverted to at all.

6. The lower Court has disposed of both O.P. Nos. 780 and 781 of 1998 by a common Judgment. On issue No. 6, the objections with regard to inadmissibility of the Awards passed by the Arbitrators on the ground that the said Awards directed partition to be made and they were liable to be stamped as such and not under Article 12 and that they were compulsorily registrable u/s 17 of the Registration Act, are negated by the lower Court. The Court below was of the view that the Awards or clarifications or Panchanamas do not create or extinguish any right and that something is reserved to be done in future and as such, the Award is simpliciter not directing the partition and not attracting either Section 2(15) of Stamp Act or Section 17 of Registration Act. The Award recites that the arbitrators were appointed to settle the disputes of the parties concerning the partition of the properties owned and managed by them and that they have entered upon arbitration and settled the matter. They have mentioned the assets of the parties for partition and they are the following:

- (i) Hyderguda house having 240 square yards with 4500 sft. built-up area bearing House No. 3-6-175/8/2.
- (ii) Abids house having 210 sq. yds. with 2000 sft. built-up area bearing House No. 5-4-486/487, Station Road.
- (iii) Kandi lands in Survey Nos. 521/1, 521/2, 521/3, 521/4 and 508/509 having Acs. 6.02 gts. at Sangareddy, Medak District.
- (iv) 30 Metric Tonnes Weigh Bridge within an area 917 sq. yds. with land and machinery.
- (v) 50 MT Weigh Bridge within an area of 3090 sq. yds. with land and machinery.
- (vi) Universal Engineering Corporation, a partnership firm located at Autonagar - 400 sq. yds. land with workshop.

The Arbitrators came to the conclusion that the partnership firm namely Universal Engineering Corporation was not functioning and became sick from the year 1994-95 onwards and the liabilities should be discharged by disposing of the firm or can be made over to any partner upon his taking-up the responsibility of clearing the debts and to share the balance of amount. It was also decided that Sri. M. Manik Reddy should relinquish his share in the above firm and his share was determined as Rs. 9.00 lakhs and the same has to be adjusted towards his dues payable to Smt. M. Anasuya Devi. Two lots were made in the Award described as Lot "A" and Lot "B". Under the Award, the properties mentioned in Lot "A" were allotted to Smt. M. Anasuya Devi and other parties were directed to put her in possession and enjoyment thereof. The properties mentioned in Lot "B" were allotted to Sri M. Manik Reddy and other parties were directed to put him in possession and

enjoyment thereof. Sri M. Manik Reddy was directed to pay the compensation of Rs. 9.00 lakhs to Smt. M. Anasuya Devi. While 50 Metric Tonnes Weigh Bridge was divided into 1700 sq. yds. (Lot "A") and 1400 sq. yds. (Lot "B"), 30 metric Tonnes weigh Bridge with the land and structures existing thereon was directed to be disposed of and after meeting the documentation-registration charges, Auditor's fee, Arbitrators expenditure and taxes (income tax and capital gains), the amount was to be shared equally by the said parties i.e., Smt. M. Anasuya Devi and Sri M. Manik Reddy. It is also stated in the Award that the Award came into force immediately and documentation and other legal procedures had to be completed within 15 days from the said date. In the clarification, apart from explaining the binding nature of the Award not only on Smt. M. Anasuya Devi and Sri M. Manik Reddy but also on their children, it is mentioned very clearly in Clause (5) that in view of the division made, Sri M. Manik Reddy relinquished his complete share in M/s. Universal

Engineering Corporation in favour of Smt. Anasuya Devi and in the result, the firm shall continue with Smt. M. Anasuya Devi, Sri Tirupathi Reddy and Sri Om Reddy with 60%, 20% and 20% shares respectively. In Clause-6 of the Clarification, the Arbitrators mentioned that "it is regretted to note that the implementation process is very slow and hence, parties are requested to implement the Award immediately by taking physical possession of their respective shares. It is further clarified that till the entire Award is implemented completely, both the Weigh Bridges i.e., 30 Ton Weigh Bridge at site S-6, Auto Nagar shall be under the management of both parties namely Smt. Shasikala, w/o Sri M. Tirupathi Reddy and Sri M. Vinod Reddy, s/o M. Manik Reddy and the income derived shall be shared equally on daily basis."

7. Coming to Panchanamas, which are 3 in number, all are dated 25-6-1998. They recite that in the house at Abids Sri M. Manik Reddy has released his share in favour of Smt. M. Anasuya Devi and that complete house has been allotted to Smt. M. Anasuya Devi and that it is confirmed that she was already in possession of the same and likewise it is recited that Hyderguda house has been allotted in favour of Sri M. Manik Reddy and Smt. Amrutha and that it was already in their possession. Insofar as Kandi lands are concerned, it is recited that the said lands have been allotted to Smt. M. Anasuya Devi and the same have been in her possession and they stand transferred in her name as per the Award. Coming to the firm property, the Panchanama recites that complete movable and immovable properties of M/s. Universal Engineering Corporation with its factory at Autonagar, Hayathnagar with 4000 sq. yds., sheds, machinery, structures, stocks and office premises located at 2-4-9397 3,6,7, and 8, Nimboliadda, Kachiguda Station Road and the business, furniture etc., have been completely allotted to M/s. M. Anasuya Devi, M. Tirupathi Reddy and K. Om Reddy and 30% share of Sri M. Manik Reddy has been allotted to Smt. M Anasuya Devi consequent to Sri M. Manik Reddy's complete relinquishing of his share in her favour. Thus, the shares of the continuing partners, namely Smt. Anasuya Devi, Sri M. Tirupathi Reddy and Sri K. Om Reddy were restated as 60%,

20% and 20% respectively. It is recited that the possession of the said properties has been delivered to the said partners under the said Panchanama dated 25-6-1998. The third panchanama, which is of the same date i.e, 25-6-1998, relates to the weigh Bridge and it is recited that Plot-A property, which has been allotted to Smt. M. Anasuya Devi has been given possession to her daughter Smt. M. Shasikala; likewise, plot-B property which has been allotted to Sri M. Manik Reddy has been given possession to his son Sri M. Vinod Reddy.

8. The above recitals in the Awards, Clarification as also Panchanamas were construed as not effecting partition attracting Section 2(15) of the Stamp Act or the provision of Section 17 of the Registration Act and the Award was held to be simpliciter and treating the stamp duty of Rs. 100/- and penalty of Rs. 1,000/- as sufficient.

9. The legal principles relating to interpretation * of the Award of the Arbitrators are well settled and directly on the point are two decisions rendered by the Supreme Court, one in Ratan Lal Sharma Vs. Purshottam Harit, and the other in Mrs. Tehmi P. Sidhwa and Others Vs. Shib Banerjee and Sons Pvt. Ltd. and Another, . There is no conflict in the legal principles stated in the above decisions. The law laid down in the above two decisions is to the effect that if the Award of the Arbitrator does not direct the partition but it only indicates that the parties shall enter into agreement to share the properties in the proportions stated and the terms of the said award have to be implemented in future by further documentation etc., then the said Award cannot be treated as one directing partition and not (sic. as) attracting Section 2(15) of the Stamp Act and Section 17 of the Registration Act. The Court below has relied upon the Judgment rendered by the Supreme Court in Tehmi P. Shdhwa's case (2 supra). In the said case, a lease of the property situated at Najafgarh Road, Delhi has been granted by the Delhi Improvement Trust to Shib Banerjee and Sons Private Limited, the respondent therein, and the property stands in their name. In the disputes referred to arbitration, 1/4th share has been claimed by the appellants therein and the same was awarded by the Arbitrators that the appellants therein were entitled to 1/4th share in the rents and profits of the said property from 1-1-1960 and the respondents were directed to execute documents as may be necessary for transferring the said property and the lease from Delhi Improvement Trust (subject to the existing tenancy of Delhi Floorings Private Limited) to the joint names of both the appellants and respondents indicating the quantum of shares. Construing the above Award as not one creating a right or extinguishing the same as contemplated u/s 17(15) of the Registration Act, it was held that the Award merely created a right to obtain another document falling u/s 17(2)(v) of the Registration Act. The said Judgment is not applicable to the facts of these cases. In fact, the said Judgment itself makes it explicit by quoting the earlier 5-Judge Judgment of the Supreme Court in Sheonarain Lal v. Rameshwari Devi, C.A. No. 296/60, dated 6-12-1962 of Supreme Court of India in which it was held that if the arbitrators had directed by the award itself that the disputed property should go to

some party without any further document, then the same shall amount to partition itself. The above decision of the Supreme Court advances the cause of the appellants rather than advancing the cause of the respondents in C.M.A. Nos. 2671 and 2672 of 2000.

10. Going by the facts the case in Ratan Lal Sharma (1 supra), is squarely applicable to the facts of this case. In the said case, the dispute relating to sharing of New Bengal Engineering Works comprised of a factory and various movables and immovables, was referred to arbitrators, who have rendered the Award as mentioned infra:

- (i) The factory and all assets and properties of New Bengal Engineering Works are exclusively allotted to Dr. Ratan Lal Sharma, who is absolutely entitled to the same. He will pay all liabilities to the factory.
- (ii) Dr. Ratan Lal Sharma shall have no claim for the receipts signed by Sri Purushottam Harit.
- (iii) Payment of all cheques issued by Dr. Ratan Lal Sharma on behalf of Modern Processors to Shri Purushottam Harit shall be treated invalid.
- (iv) Dr. Ratan Lal Sharma shall pay Rs. 17,000/- (Rs. Seventeen thousand only) to Shri Purushottam Harit.
- (v) Shri Purushottam Harit shall render all assistance to Dr. Ratan Lal Sharma for realising all the dues of the said firm as and when necessary and for transfer of tenancy right of the Factory in favour of Dr. Ratan Lal Sharma.
- (vi) All papers and documents in respect of the said business shall be made over to Dr. Ratan Lal Sharma.
- (vii) The following sums when realised shall be divided equally between Dr. Ratan Lal Sharma and Shri Purushottam Harit.

	Amount
	Rs. 284.17
	Rs. 1,079.28
	Rs. 47.25
	Rs. 514.18
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Total	Rs. 1,924.88
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N.B. (viii) The factory should not be run by Dr. Ratan Lal Sharma until and unless the payment of the award is not made to Shri Purushottam Harit.

The exclusive allotment of the assets of the partnership firm including the factory and liabilities to the appellant, Dr. Ratan Lal Sharma, subject to the rights of the

respondent to receive Rs.17,000/- and also to share equally the amount mentioned above, was construed as creating rights in immovable property worth more than Rs.100/- in favour of the appellant and accordingly held that the Award was registrable u/s 17 of the Registration Act. In the instant case too, exclusive right is created in favour of Smt. M. Anasuya Devi party by extinguishing the right of Sri M. Manik Reddy party and separate possession thereof. The partition has been effected by the Award itself specifying the shares and conditions such as payment of the amount of Rs.9.00 lakhs to Smt. M. Anasuya Devi and to sell 30 Metric Tons weigh bridge property and to meet obligations and share the profits equally and also conducting Panchanama with a view to finally recognise the respective parties as absolute owners of the properties in their respective possession, proved beyond any manner of doubt whatsoever, that the Award directed partition and separate possession for the immovable properties worth more than Rs.100/- and as such, attracting the levy of stamp duty as an instrument of partition as defined in Section 2(15) of the Stamp Act and also requiring compulsory registration u/s 17 of the Registration Act and the finding of the Court below on issue No. 6 is reversed and it is held that the Award is inadmissible in evidence as even though the deficit stamp duty can be cured by impounding the award, non-registration cannot cure the defect. In view of this, probe into other issues than issue No. 6 as also into the plea of appointment of Receiver are rendered unnecessary.

11. In the result, C.M.A. Nos. 2671 and 2672 of 2000 are allowed and C.M.A. No. 2677 of 2000 is dismissed. No costs.

12. After the judgment is delivered, the learned Senior Counsel appearing for the respondents submits that 50 Metric Tonne Weigh Bridge, which has been handedover as an ad hoc arrangement pending the disposal of the appeal has to be restituted to the respondents 1 and 2, namely, M. Manik Reddy and M. Vinod Reddy. It is needless to mention that as C.M.A. No. 2677/2000 itself has been dismissed, whatever interim arrangement has been made, the same gets extinguished and whatever benefit has been conferred upon the appellants has to be restituted to the respondents in the above C.M.A., be it 50 Metric Tonne Weigh Bridge or the compensation at the rate of Rs.40,000/- per month for the period of retention of Weigh Bridge.