

(2010) 09 AP CK 0021

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No"s. 2264 and 2298 of 1997 and Civil Revision Petition No"s. 4842 of 1997 and 367 of 1998

Rashtriya Ispat Nigam Limited
(Visakhapatnam Steel Project)

APPELLANT

Vs

Ch. Venkayya (died per L.Rs.) and
Others

RESPONDENT

Date of Decision: Sept. 20, 2010

Acts Referred:

- Arbitration Act, 1940 - Section 39
- Civil Procedure Code, 1908 (CPC) - Section 151

Citation: (2011) 6 ALT 272

Hon'ble Judges: B. Seshasayana Reddy, J; B. Prakash Rao, J

Bench: Division Bench

Advocate: V. Ravinder Rao, for the Appellant; N.V. Suryanarayana Murthy for P. Suresh, for the Respondent

Final Decision: Dismissed

Judgement

B. Prakash Rao, J.

Since common questions, arising out of the very same proceedings between the same parties in Arbitration, are involved, these matters are taken up together for disposal. Rashtriya Ispat Nigam Limited (Visakhapatnam Steel Project), which is incorporated under the provisions of the Companies Act, 1956, is the Appellant and the Petitioner in these matters, whereas the contesting Respondents are the claimants/contractors. For the sake of convenience, the parties shall hereinafter be referred to as Appellant and Respondents.

2. Heard Sri V. Ravinder Rao, learned Counsel for the Appellant, and Sri N.V. Suryanarayana Murthy, the learned Senior Counsel appearing on behalf of Sri P. Suresh, learned Counsel for the Respondents.

3. The appeal in C.M.A. No. 2264 of 1997 is filed u/s 39 of the Arbitration Act, 1940 aggrieved by the judgment and decree, dated 11.07.1997, in O.P. No. 118 of 1987, on the file of II Additional Subordinate Judge, Visakhapatnam.

4. The appeal in C.M.A. No. 2298 of 1997 is filed u/s 39 of the Arbitration Act, 1940 against the judgment and decree, dated 11.07.1997, in O.P. No. 117 of 1987, on the file of II Additional Subordinate Judge, Visakhapatnam.

5. The revision in C.R.P. No. 4842 of 1997 is filed u/s 151 of Code of CPC inter alia seeking to assail the correctness of the judgment and decree, dated 11.07.1997, in O.S. No. 104 of 1987, on the file of II Additional Subordinate Judge, Visakhapatnam.

6. The revision in C.R.P. No. 367 of 1998 is filed u/s 151 of Code of CPC aggrieved by the judgment and decree, dated 11.07.1997, in O.S. No. 105 of 1987, on the file of II Additional Subordinate Judge, Visakhapatnam.

7. The brief facts, which gave rise to the present proceedings in Arbitration, are that in pursuance of the agreement entered into between the parties on 21.05.1981, the Respondents have undertaken the contract work i.e., "Construction of Diversion Channels at Visakhapatnam Steel Plant - Reach No. 3" and the prescribed period for completion of the same is six months. However, since some disputes have arisen, the Respondents have set forth claims before the authorities on 19.01.1984, which were rejected on 17.02.1984. The matter was referred to the Arbitrator, who passed the award on 19.10.1986 accepting certain claims.

8. Aggrieved thereon, both sides have approached the Court by filing the aforementioned proceedings one for setting aside the award and another to make the same as Court of law. Apparently, the proceedings to set aside the award are at instance of the Appellant and the other seeking to make the Court of law are at instance of the Respondents.

9. As mentioned earlier, the matter was already referred for Arbitration in pursuance of the orders passed in O.P. No. 91 of 1994, at the instance of the Respondents.

10. Apart from other objections, the main objection raised on behalf of the Appellant is to the effect that the additional works, which the Respondents claimed to have executed, are excepted matters and that all the claims of the Respondents were settled fully and finally on 17.12.1986 itself. Therefore, the learned Counsel contended that the impugned award could not have been passed in favour of the Respondents and the same needs to be set aside.

11. On the other hand, Sri V. Suryanarayana Murthy, learned Counsel for the Respondents, contended that the claims pertaining to the excepted matters go to the very root and jurisdictional level and therefore, the same cannot be permitted now at this stage, especially where no such plea was raised at any point of time earlier. He further contended that in the narrow scope of the appeals and revisions,

the same cannot be entertained nor can be gone into.

12. In reply, Sri V. Ravinder Rao, learned Counsel for the Appellant, submitted that since the matter pertains to excepted matters, as rightly contended by the learned Counsel for the Respondents, it goes to the jurisdictional level and therefore, it can always be permitted, as it is purely a question of law and does not amount to error of jurisdiction.

13. In view of the aforesaid detailed submissions made by both sides and on perusal of the entire material available on record, at the instance of both the Counsel, the point which ultimately narrows down for consideration is as to whether in the facts and circumstances, the plea of excepted matters is permissible at this stage in these appeals and revisions.

14. As already stated above, according to the learned Counsel for the Appellant, the claims in the impugned order pertain to excepted matters, and therefore, they are squarely barred and nothing could have been awarded in favour of the Respondents. That apart, though there is an attempt on the part of the Appellant to press into service the plea that already settlement was arrived at as mentioned above, as could be evident from the aforesaid letter and telegram, dated 08.09.1983, no further claims could have been entertained at much later point of time. Coming back to the question as to whether it is really an excepted matter and bar applies against the Respondents, there is no dispute that the Appellant has raised the said plea nor was it an issue for consideration before the Court below or even before the Arbitrator. On perusal of the proceedings before the Arbitrator as well as the Court below, especially the pleadings part, it is evident that no such plea was specifically taken on behalf of the Appellant and therefore, necessarily it follows that there could not have been any discussion or consideration thereof. It is also not the case of the Appellant that such a plea was raised and argued, but the same has remained unconsidered. Therefore, no complaint as such can be made by the Appellant.

15. In the circumstances, it is amply clear that this plea is put forth at the instance of the Appellant for the first time in these appeals and revisions. Even on perusal of the entire grounds of appeal and memorandum of revisions, it is seen that no such plea is specifically raised. Therefore, neither before the Court below nor before this Court in any of the pleadings, much less, in the grounds of appeals or memorandum of revisions, such plea finds place and therefore, the Appellant cannot take any leave as such for the first time.

16. No doubt, the learned Counsel for the Appellant sought to place reliance on the decisions reported in Associated Engineering Co. Vs. Government of Andhra Pradesh and another, , J.G. Engineer's Private Limited v. Calcutta Improvement Trust and Anr. 2002(2) ALD 43 (SC) , Steel Authority of India Limited Vs. J.C. Budharaja, Government and Mining Contractor, and Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, to substantiate his contention that such plea in fact goes

to the root of the case. However, on a perusal of those decisions, it is clear that none of those decisions lay down any principles for allowing such pleas for the first time in the higher level of hierarchy, at the stage of appeals or revisions. Therefore, it can safely be concluded that neither in the facts nor on law, the Appellant has succeeded in making out a case on the aspect of excepted matters and any bar therefore and thus, the same cannot be accepted.

17. On behalf of the Respondents, the learned Senior Counsel places reliance on the principles laid down in [McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others](#), and [Andhra Pradesh State Trading Corporation Vs. S.G. Sambandan and Company](#), in support of his contention that in the matter arising out of the arbitration proceedings, that too, after passing two stages i.e., one before the Arbitrator and another before the Court below, no such plea can, for the first time, be permitted to be raised.

18. In view of the above-settled legal position, we hold that no such plea can be permitted to be taken for the first time at this stage and thus, the same is rejected.

19. Accordingly, we do not find any merit in these appeals and revisions and the same are dismissed, however, in the circumstances, no costs.