

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

WRIT PETITION NO.4845 OF 2021 (GM-CPC)

BETWEEN

M/S. ABHIRAM INFRA PROJECTS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES
ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT
FLAT NO.1A/4, 8-2-618/2/2, R K RESIDENCY ROAD
NO.11, BANJARA HILLS, HYDERABAD-500 034.

(REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
MR. SUNKARA VENKATA RAMANA REDDY)

...PETITIONER

(BY SRI SAMAKSH SOOD, ADVOCATE FOR
SR SUNDARA RAMAN M V, ADVOCATE)

AND

THE COMMISSIONER
KARNATAKA SLUM DEVELOPMENT BOARD
NO.55, ABHAYA COMPLEX
RISALDAR STREET, SHESHADRIPURAM
BENGALURU-560 020.
REPRESENTED BY THE COMMISSONER

....RESPONDENT

(NOTICE TO RESPONDENT SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DATED 18TH FEBRUARY, 2021 (ANNEXURE-A) PASSED IN

COMMERCIAL EXECUTION PETITION NO.3835 OF 2019 PASSED BY THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This Writ Petition is filed by the Decree holder in Execution No.3835 of 2019 on the file of LXXXV Additional City Civil and Sessions Judge at Bangalore, allowing the memo dated 16th January, 2020 filed by the judgment debtor.

2. Facts in nutshell are that, the petitioner had entered into an agreement No.001/2011-12 dated 03rd August, 2011 for execution of "Construction of Community Centres at thirteen locations under Phase-2 and work at the identified slums in Bengaluru City". The total amount for the project was Rs.6,41,58,238/- and the time stipulated to complete the project was twelve months. However, for the reasons best known to the parties, the project was not completed within the stipulated period and as such the respondent herein refuted the claims made by the petitioner on account of the delay in execution of work and in that view of the matter the petitioner invoked

arbitration clause in the agreement dated 03rd August, 2011. A Sole Arbitrator was appointed on 23rd October, 2017 for adjudication of dispute between the parties. The Arbitral Tribunal, by award dated 08th April, 2019, ordered that the Decree holder/petitioner is entitled for Rs.63,97,750/- with further simple interest at the rate of Rs.15.80% (SBI PLR + 2%) from 09th April, 2016 till realisation. The counter claim filed by the respondent was rejected by the learned Arbitrator. Thereafter, the petitioner herein has filed Execution Petition No.3835 of 2019 on the file of the trial Court to execute the award made by the learned Arbitrator. In the Execution Proceedings the judgment debtor filed Memos dated 16th January, 2020 and 12th December, 2019; and the memo of calculation filed by the Decree holder on 16th January, 2020. The trial Court heard the learned counsel appearing for the parties and allowed the memo dated 16th January, 2020 filed by the judgment debtor/respondent and as such, modified the award. Feeling aggrieved by the same, the Decree holder/petitioner herein has presented this petition.

3. Sri Samaksh Sood, learned counsel appearing for the petitioner drew the attention of the Court to the award at Annexure-B made by the learned Arbitrator and also Section 33 of the Arbitration and Conciliation Act, 1996 (for short, hereinafter referred to as "Act"). He submitted that the Executing Court has no jurisdiction to correct the award made by the learned Arbitrator and therefore, he places reliance on the judgment of the Hon'ble High Court of Delhi in the case of S.P.S. RANA v. MTNL AND OTHERS decided on 14th January, 2010; in the case of DO-IT COMPUTER JV A v. THE MUNICIPAL CORPORATION OF GREATER MUMBAI reported in 2018 SCC ONLINE Bom.1192; and in the case of UNION OF INDIA v. POPULAR CONSTRUCTION COMPANY reported in (2001)8 SCC 470. Placing reliance on the above judgments, learned counsel appearing for the petitioner submitted that neither the petitioner nor the respondent have filed an application under Section 33 of the Act and therefore the impugned order passed by the Executing Court modifying the award requires interference in this Writ Petition.

4. Respondents are served remained absent.

5. In the light of the submission made by the learned counsel appearing for the petitioner I have carefully examined the finding recorded by the trial Court in the impugned order dated 18th February, 2021. Section 33 of the Act provides as under:

“33. Correction and interpretation of award; additional award.—

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own

initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

6. The language employed in Section 33 of the Act provides for corrections and interpretation of the award and same has to be made within thirty days from the date of receipt of the arbitral award by the parties. Any correction in the arbitral award has to be made only after providing opportunity to both the sides. In the instant case, perusal of Writ Petition

papers would indicate that, no such application under Section 33 of the Act has been made before the Executing Court. On the other hand, respondent herein has filed memo, seeking clarification as per Annexure-D to the Writ Petition. Objections have been filed by the decree holder stating that the judgment debtor, if aggrieved by the award made by the arbitral Tribunal, has to challenge the award as per Section 34 of the Act and on the other hand sought clarification from the arbitral Tribunal within thirty days of the receipt of the award. Undisputably, the thirty days time elapsed on account of delay in filing the application before the arbitral Tribunal and therefore, the Executing Court, based on the memo filed by the judgment debtor, has passed the impugned order by exercising jurisdiction under Section 36(1) and 36(2) of the Act which is impermissible in law since no application has been filed by the judgment debtor, even before the Execution Court, seeking correction of typographical mistakes, in that regard, I have carefully considered the judgment referred to by the learned counsel appearing for the petitioner in S.P.S RANA (supra). Paragraph 9 of the judgment reads as under:

"9. Section 33 of the Act does not use the words "but not thereafter". However, the period of 30 days is subject to "unless another period of time has been agreed upon by the parties". In our view the said expression has to be read in the same manner as the expression "but not thereafter" was interpreted in M/s Popular Construction Co. (supra). Also, Section 32 inter alia provides for termination of the arbitral proceedings by the final award. Section 32 (3) lays down that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject inter alia to Section 33. It will thus be seen that unless a case is covered by Section 33, the mandate of the Arbitral Tribunal is terminated. Thus, unless an application/petition under Section 33(1) of the Act is preferred within 30 days of the making of the award, the mandate of the Arbitral Tribunal terminates. Once the mandate of the Arbitral Tribunal terminates, it is not possible to file the application / petition under Section 33 of the Act."

7. Following the law declared by the Division Bench of the High Court of Delhi referred to above, I am of the view that after the completion of thirty days of the making of the award, no application shall be entertained under Section 33 of the Act for rectification of typographical mistakes. That apart, in the instant case, the trial Court ought not to have passed the impugned

order in the absence of application filed by the respondent and therefore, I am of the view that the order dated 08th February, 2021 passed in Execution Petition No.3835 of 2019 is liable to be set aside, accordingly, set aside. In the result, Writ Petition is allowed.

**Sd/-
JUDGE**