

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF JUNE 2017**

**PRESENT**

**THE HON'BLE MR. JUSTICE H.G.RAMESH**

**AND**

**THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA**

**MISCELLANEOUS FIRST APPEAL NO.1440/2014 (AA)**

**BETWEEN :**

M/S. PATON CONSTRUCTIONS PRIVATE LTD.  
A COMPANY INCORPORATED UNDER THE  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT:  
101, THOSAR HOUSE, HANUMAN CROSS ROAD NO.1  
VILE PARLE (E), MUMBAI-400 057  
HAVING ITS CORPORATE OFFICE AT  
2<sup>ND</sup> FLOOR, KRISHNA BHAVAN  
67, NEHRU ROAD, VILE PARLE (EAST)  
MUMBAI - 400 057  
REPRESENTED BY ITS DIRECTORS

- a) Mr. PRAVIN SATRA
- b) Mr. PREMJI SATRA

...APPELLANT

(BY SRI AJESH KUMAR S., ADVOCATE)

**AND :**

1. M/S. LORVEN PROJECTS LTD.  
HAVING ITS REGISTERED OFFICE AT NO.1291  
ROAD NO.65, JUBILEE HILLS  
HYDERABAD - 500 034
2. MR. G.P.REDDY  
ALIAS GODI PITCHI REDDY  
AGED ABOUT 56 YEARS

S/O G.CHINNAPPA REDDY  
MANAGING DIRECTOR  
M/S LORVEN PROJECTS LTD.  
AT NO.1291, ROAD NO.65  
JUBILEE HILLS  
HYDERABAD – 500 034

...RESPONDENTS

(BY SRI H.MALLANGOUD, ADVOCATE - ABSENT)

THIS MFA IS FILED UNDER SECTION 37(1)(a) OF THE ARBITRATION AND CONCILIATION ACT, 1996 AGAINST THE ORDER DATED 21.12.2013 PASSED BY THE III ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, HOLDING C/c OF XXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE, ALLOWING ARBITRATION APPLICATION NO.850/2013 FILED UNDER SECTION 9(ii)(e) OF THE ARBITRATION AND CONCILIATION ACT, 1996.

THIS MFA COMING ON FOR HEARING, THIS DAY, **H.G.RAMESH J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

#### **H.G.RAMESH, J. (Oral):**

**1.** This appeal is presented under Section 37(1)(a) of *the Arbitration and Conciliation Act, 1996* ('*the Act*') against the order dated 21.12.2013 passed by the Court of the Additional City Civil Judge, Bangalore, allowing Arbitration Application No.850/2013 presented under original Section 9 of *the Act*. By the impugned order, the appellant has been restrained from enforcing the terms of the *memorandum of understanding* dated 18.05.2011 (18.04.2011) till

constitution of the Arbitral Tribunal and initiation of proceedings by it.

**2.** We have heard learned counsel appearing for the appellant and perused the impugned order. Counsel for the respondents is absent. The sole contention urged by learned counsel for the appellant is that, in view of Rule 9(4) of *the High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001 ('the Rules')*, the impugned order dated 21.12.2013 granting the *interim measure* under Section 9 of *the Act* stood vacated on the expiry of three months from the date of presentation of the application under Section 9 of *the Act*, as arbitral proceedings were not initiated within the aforesaid three months. To examine the contention urged, Rule 9(4) of *the Rules* requires to be noticed; it reads as follows:

**Rule 9: Application for interim measure, etc.:**

.....  
**(4)** In the case of an Application for interim measure made before initiating arbitral proceedings, if the arbitral proceedings are not initiated within three months from the date of the presentation of the Application under section 9, any interim order granted shall stand vacated without any specific order being passed by the Court to that effect.

The above extracted sub-rule states that in the case of an application for any *interim measure* made before initiating arbitral proceedings, if the arbitral proceedings in respect of the dispute are not initiated within three months from the date of presentation of the application under Section 9 of *the Act*, any *interim order* granted shall stand vacated without any specific order to that effect by the Court which passed the order. It is relevant to state that '*any interim order*' referred to in Rule 9(4) extracted above, in the context, shall include any order granting any *interim measure*.

**3.** In this case, the application under Section 9 of *the Act* was presented on 13.11.2013. It is stated by learned counsel for the appellant that the arbitral proceedings in respect of the dispute were not initiated within three months from 13.11.2013, the date of presentation of the application. Hence, in our opinion, the order dated 21.12.2013 granting the *interim measure*, which is impugned in this appeal, stood automatically vacated on the expiry of three months from the date of presentation of

the application. Therefore, no further order to set it aside is necessary.

**4.** In the context of the question raised, it is relevant to refer to the recent amendment to Section 9 of *the Act* made by *Parliament by the Arbitration and Conciliation (Amendment) Act, 2015* which came into force on 23.10.2015. Sub-section (2) which is similar to the Rule extracted above is inserted to Section 9 by the aforesaid amendment Act; the sub-section reads as follows:

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

.....  
**(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.

(Emphasis supplied)

As per the above sub-section, where a Court passes an order for any *interim measure* under Section 9(1) of *the Act* before commencement of the arbitral proceedings, the arbitral proceedings shall be commenced within the period stated in the sub-section. Commencement of the arbitral proceedings within the period stated in Section 9(2) of *the*

*Act* is made mandatory by *Parliament*. The intention of *Parliament* in making commencement of the arbitral proceedings within the period stated in sub-section (2) mandatory is to see that an order for any *interim measure* passed under Section 9(1) shall not continue to be in force indefinitely in the absence of the arbitral proceedings. Therefore, commencement of the arbitral proceedings within the period stated in sub-section (2) is a requirement for the legal effectiveness of the order passed for any *interim measure* under Section 9(1) of *the Act*. Hence, if the arbitral proceedings in respect of the dispute are not commenced within the period stated in Section 9(2) of *the Act*, the order granting any *interim measure* under Section 9(1) of *the Act* shall automatically stand vacated on the expiry of the said period. Though this is not expressly stated in the sub-section, it is clearly implied in the purpose of the mandate of the sub-section. Any other interpretation of sub-section (2) will defeat the intention of *Parliament* in making commencement of the arbitral proceedings within the period stated in the sub-section mandatory.

**5.** As stated above, the order which is impugned herein, stood automatically vacated on the expiry of three months from 13.11.2013, the date of presentation of the application under Section 9 of *the Act* in view of Rule 9(4) of *the Rules*. Hence, no further order to set it aside is necessary.

Appeal disposed of.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

hkh.