

HIGH COURT OF ANDHRA PRADESH

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COMMERCIAL COURT APPEAL No. 21 of 2025

Between:

M/s. JPR Projects, Gajuwaka,
Visakhapatnam rep. through its
Partners Mr. Manthena Vivek Varma and another

.....APPELLANT

AND

Axis Bank, MVP Colony Branch,
Rep.by its Authorized Officer,
and 2 others

.....RESPONDENTS

DATE OF JUDGMENT RESERVED : **11.12.2025**
DATE OF JUDGMENT PRONOUNCED : **27.02.2026**
DATE OF JUDGMENT UPLOADED : **27.02.2026**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

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! Counsel for the Appellant : Sri Patanjali Pamidighantram

Counsel for the Respondents : Sri V. V. N. Narasimham

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> Head Note:

? Cases Referred:

1. 2016 SCC OnLine Cal 6251
2. 2004 SCC OnLine All 175
3. (2017) 8 SCC 603
4. 2024 SCC OnLine SC 2632
5. (1999) 2 SCC 479
6. 2017 SCC OnLine Hyd 469
7. ILR 2017 Kar 3016

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE MAHESWARA RAO KUNCHEAM**

COMMERCIAL COURT APPEAL No. 21 of 2025

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Patanjali Pamidighantam, learned counsel for the appellant and Sri V. V.N. Narasimham, learned counsel for the respondents.

2. The present appeal has been filed under Section 13 (1) of the Commercial Courts Act, 2015 (in short 'Act 2015') read with Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996 (in short 'Act 1996'), challenging the Judgment/ Order, dated 31.07.2025 passed in CAOP No.49 of 2024 (in short 'CAOP'), by the Special Judge For Trial and Disposal of Commercial Disputes, Visakhapatnam (in short 'Special Judge').

3. The appellants are the petitioners in CAOP No.49 of 2024. It filed the application under Section 9 of the Act 1996 seeking injunction restraining the respondents and those acting on their instructions from continuing the freeze on current account No.915020032315999 with Axis Bank, M.V.P.Colony Branch, Visakhapatnam, belonging to the petitioner firm and to direct the respondent/Axis Bank to restore the operational access to the petitioner by de-freezing the said current bank account.

4. The learned Special Judge, by the impugned Order dated 31.07.2025, allowed the application, partly, with costs and freezing of the bank account with the Axis Bank was revoked only for the limited purpose of paying taxes and statutory dues to the Central Government, the State Government and the local

bodies. The learned Special Judge, however, directed that no payment shall be made to the partners of the firm in their individual capacity, vendors, third parties. It also provided that the bank account shall be operated as per terms of Clause 14 of the reconstituted partnership deed dated 10.02.2024 and that the said order shall remain in force for not more than 90 days from the date of the order. The learned Special Judge further provided that on the Arbitral Tribunal being constituted, the further continuation, modification or variation of the order shall be dealt by the Arbitral Tribunal on the application filed by either party.

A. Facts:

I. Petitioner/Appellants' case:

5. The brief facts of the case are that, M/s.JPR Projects, a partnership firm was constituted in the year 2015 and is involved in construction related activities. The petitioners and the respondents 2 and 3 are its partners. Late Sri Janga Punna Reddy, the husband of the 2nd respondent and father of the 3rd respondent was the Managing Partner. The petitioner's case is that Sri Janga Punna Reddy and the 2nd respondent withdrew a sum of Rs.1,59,28,200/- in excess of the amounts withdrawn by the partners until 2022. Late Janga Punna Reddy withdrew an additional amount of Rs.92,00,000/- and further funds amounting to Rs.1,22,00,000/- along with the 2nd respondent without proper documentation. Late Janga Punna Reddy suffered from ill-health resulting in unsuccessful attempts at comprehensive settlement of accounts. Sufficient funds had been diverted for purchase of fixed assets in his name and in the

name of 2nd respondent as a result of which the liquid capital required for ongoing projects was depleted. In order to maintain operational continuity, a Memorandum of Understanding was executed on 31.10.2023 whereunder late Sri Janga Punna Reddy and his wife the 2nd respondent agreed to retire from the firm and the petitioners were to continue the firm's operations. Sri Janga Punna Reddy expired on 13.12.2023 and the respondents 2 and 3 made fresh demands and raised disputes. The firm was under liabilities to third parties to a tune of Rs.1,45,27,439/-.

6. The petitioner's bank account was frozen on 18.12.2023. A fresh Memorandum of Understanding was signed under which the respondents were to receive Rs.1,30,00,000/- along with other movable assets in exchange for revoking the freeze on the bank account. The partnership was again reconstituted on 10.02.2024 after the said Memorandum of Understanding was executed and the petitioners were conferred with the exclusive authority in respect of finances of the firm and the bank accounts. The role of the respondents No.2 and 3 was confined only to specific percentage of shares without any remuneration or rights of management. The petitioner firm owed approximately Rs.6,20,00,000/- as on March, 2023 excluding the statutory dues, such as GST, TDS, PF and ESI. The petitioners had spent about Rs.1,45,27,439/- of their personal funds towards discharging liability of the firm to its sub-contractors and suppliers. The firm's current account, which was initially frozen in December, 2023 was revoked in January/February, 2024.

7. However, the 1st respondent, the Axis Bank again resorted to freezing of the account on 24.05.2024 basing on unilateral instructions from the 2nd and 3rd respondents, as a result of which the firm's financial activities were adversely affected. The appellants/petitioners' further case is that in May, 2024 they withdrew a sum of Rs.1,55,00,000/- from the firm's account. Their request to the bank to revoke the freeze imposed on the account even after furnishing copies of reconstituted partnership deed and other supporting documents did not yield any result, and an amount of Rs.2,51,64,791.58 ps was lying in the firm's bank account and its financial operations were adversely affected. The partners also furnished particulars of the payments made on behalf of the firm from their personal resources and the petitioners also furnished the particulars of the sums and amounts required to meet statutory as well as vendor obligations.

8. The appellants/petitioners filed application under Section 9 of the Act 1996, also submitting that if the statutory dues were not paid promptly, the same would attract penal consequences and the ongoing projects of the firm were to be jeopardized and the livelihood of its employees would be in danger on account of the freezing of bank account. They stated that the petitioners had *prima facie* case as well as balance of convenience in their favour and unless the freezing of the bank account was lifted, they will suffer irreparable loss. The petitioners also stated that they intend to institute the arbitration proceedings and sought for the reliefs stated in the petition under Section 9 of the Act 1996, prior to the commencement of the arbitration proceedings.

II. Respondents' case:

9. The 1st respondent bank did not file any counter and it was set *ex parte* on 21.01.2025.

10. The 2nd respondent filed counter, denying the petition averments. The 3rd respondent filed a Memo adopting the counter of the 2nd respondent.

11. The stand of the respondents No.2 and 3 in their counter was that late Sri Janga Punna Reddy was diagnosed with Pancreatic Cancer and had withdrawn Rs.80,000/- from its capital account during 2023-24 with the consent of the petitioners in order to meet his medical expenditure. The 2nd respondent also withdrew Rs.30,00,000/- from her capital account for further requirements with the consent of the petitioners. According to the respondents No.2 and 3, late Sri Janga Punna Reddy deposited Rs.53,00,000/- back into the capital account prior to his death. They had withdrawn some further amount which was said to be towards meeting the medical expenditure with the consent of the partners of the petitioner firm. It was the further case of the respondents No.2 and 3 that the petitioners suppressed the fact that they had also withdrawn Rs.74,50,000/- from their capital account.

12. With respect to the Memorandum of Understanding, their stand was that, that was not a valid document as their signatures were obtained when they were not in a proper state of mind, as late Janga Punna Reddy was suffering from chronic pancreatitis and was treated as an inpatient in different hospitals during the period from 19.06.2023 to 18.07.2023 and after the surgery, he was also treated as an inpatient from 28.10.2023 to 03.11.2023 in

another hospital at Visakhapatnam. During that period, the petitioners brought a readymade Memorandum of Understanding on 31.10.2023 to the hospital and on the refusal of the respondents, they were met with threats and consequently as a result of threats and coercion they signed the Memorandum of Understanding and also allowed the petitioners to obtain finger prints of late Janga Punna Reddy on the Memorandum of Understanding. The further case of the respondents 2 and 3 is that two cheques each for Rs.65,00,000/- were issued by the petitioners and another cheque for a sum of Rs.95,22,999/- was issued in lieu of the value of the movable assets as per the terms of the Memorandum of Understanding, but the petitioners issued 'stop payment' instructions in respect of those cheques and so the petitioners themselves did not act upon the terms of the Memorandum of Understanding, and as such, the respondents No.2 and 3 cannot be said to have retired from the business of the firm. They also stated that the reconstituted partnership deed dated 10.02.2024 was not valid and the Memorandum of Understanding dated 10.02.2024 was also not valid. Those were obtained by fraud played on the respondents while denying that the petitioners infused their own personal funds to a tune of Rs.1,45,27,439/- into the firm.

13. The 2nd and 3rd respondents further submitted that the initial freezing of the account of the firm was in December 2023 by the bank which was on account of death of Janga Punna Reddy who was the managing partner of the firm. That was revoked by the bank itself. The petitioners unilaterally transferred Rs.1,55,00,000/- to their personal accounts and after the said fact

came to the knowledge of the respondents, they instructed the bank to freeze the account on 24.05.2024 in order to prevent further unlawful transactions. It was their further case that the 2nd petitioner is the managing partner of M/s.V.V.Constructions (another company) and fabricated the document showing that the firm is due a sum of Rs.55,05,230/- to M/s.V.V.Constructions only to divert the funds of the firm to such other firm/company. They pleaded that the petitioners had no case for grant of interim measure under Section 9 of the Act 1996.

B. Judgment of the learned Special Judge:

14. The learned Special Judge framed the following points for determination:

“1. Whether the freezing of bank account No.915020032315999 with Axis Bank, M.V.P.Colony Branch, Visakhapatnam belonging to the partnership firm can be revoked?

2. To what relief?”

15. On point No.1, the learned Special Judge recorded the finding, that it would be in the interests of both the parties that the freezing of bank account be revoked for a limited period of 90 days pending initiation of arbitration proceedings contemplated under clause 18 of the reconstituted partnership firm and the bank account be operated for the limited purpose of paying taxes and other statutory liabilities payable to the Central Government, the State Government and the local bodies by the partnership firm. It further held that the bank account of the partnership firm with the 1st respondent bank shall be

operated as per Clause 14 of the reconstituted partnership deed dated 10.02.2024 only for the mentioned purposes and no payment shall be made to the partners or vendors or third parties from the said account.

16. On point No.2, the learned Special Judge passed the following Order:

“57. In the result, this application is allowed without costs and freezing of bank account No.915020032315999 with respondent No.1/Axis Bank, M.V.P.Colony Branch, Visakhapatnam is revoked only for the limited purpose of paying taxes and statutory dues to Central Government, State Government and local bodies. No payment shall be made to the partners of the firm in their individual capacity, vendors, third parties. The bank account shall be operated as per the terms of Clause 14 of the reconstituted partnership deed dated 10.02.2024. This order shall remain in force for not more than 90 days from the date of order. On the Learned Arbitral Tribunal being constituted, the further continuation, modification or variation of this Order shall be dealt by Learned Arbitral Tribunal on application filed by either party.”

C. Submissions of the learned counsels:

I. For the appellants:

17. Learned counsel for the appellants submitted that the learned Special Judge should have allowed the application in toto, in view of the observations/findings of the learned Special Judge as in para-52 in the Order that “the petitioners have shown that the freezing of the bank account was done without consulting them”. He further submitted that the respondents No.2 and 3 had no right to instruct the 1st respondent bank to freeze firm’s account on 24.05.2024 affecting the finances of the firm. They had no legal right to do so in terms of Memorandum of Understanding dated 10.02.2024.

18. Learned counsel for the appellants further submitted that the learned Special Judge failed to see that the action of the respondents No.2 and 3 to acquire assets in their personal name with the capital of the firm was contrary to Sections 9 and 12 of the Partnership Act.

19. Learned counsel for the appellants submitted that respondents No.2 and 3 without following the procedure, according to Memorandum of Understanding dated 31.10.2023 arbitrarily initiated the action of freezing the account of the petitioners. He submitted that the learned Special Judge ought to have allowed the application under Section 9 of the Act 1996 in toto to complete defreeze the bank account of the firm and not only for the limited purposes. The action of freezing the bank account is beyond the contractual and statutory rights and the said action of the bank cannot be sustained. So, the impugned Order is unsustainable in the eyes of law.

20. Learned counsel for the appellants further submitted that the appellants have initiated the arbitration proceedings by issuing notice under Section 21 of the Act 1996, dated 07.11.2025 sent to the respondents No.2 and 3, proposing to appoint a sole arbitrator to adjudicate the dispute that arose between the parties. Copy of the legal notice dated 07.11.2025 along with the copy of postal receipt has been filed along with memo dated 26.11.2025.

21. Learned counsel for the appellants placed reliance on the following judgments in support of his contentions:

- 1) ***Smt. Shanti Dey @ Santi Dey v. Sri Suvodeep Saha***¹

¹ 2016 SCC OnLine Cal 6251

- 2) ***Modern Metal Industries v. Smt. Shanti Parolla***²
- 3) ***Navnirman Development Consultants (I) Pvt. Ltd.***³
- 4) ***Punjab State Civil Supplies Corporation Limited v. M/s. Sanman Rice Mills***⁴

II. For the Respondents:

22. Respondents No.2 and 3 have filed counter affidavit in the present appeal, taking the same stand as was taken before the learned Special Judge.

23. Learned counsel for the respondents 1 & 2 submitted that there is no illegality in the Order of the learned Special Judge. They have taken the stand that the reconstituted partnership deed dated 10.02.2024 was executed, as per the own case of the petitioners in consequence to the fulfilling of the terms and conditions of Memorandums of Understanding dated 31.03.2023 and dated 10.02.2024, but the petitioners themselves failed to comply with the terms and conditions thereof and so the reconstituted partnership deed dated 10.02.2024 though not valid, but still would not have any sanctity and it did not confer any managerial powers on the petitioners and based thereon the petitioners will not get any right and they cannot operate the firm's bank account and represent the firm. There was no *prime facie* case in favour of the petitioners so as to lift the freezing of the firm's bank account. The petitioners already misappropriated a substantial sum of Rs.1,55,00,000/- for their personal benefit and consequently, there was no balance of convenience in their favour. The Order did not call for any interference otherwise the petitioners would divert the

² 2004 SCC OnLine All 175

³ (2017) 8 SCC 603

⁴ 2024 SCC OnLine SC 2632

entire amount and nothing would remain in the account to the great prejudice of the respondents 1 and 2.

III. Reply by Appellants' Counsel:

24. In reply, learned counsel for the petitioners submitted that if it is the case of the respondents No.2 and 3 that the petitioners misappropriated the funds of the firm by diverting the same to M/s.V.V.Constructions, then the said respondents ought to have taken recourse to some legal provisions for recovery of that amount or to such other reliefs, but no steps have been taken by the respondents and so the said allegations of misappropriation of funds is unfounded and unsustainable.

D. Points for Determination:

25. The following points arise for our consideration and determination:

- 1) Whether the impugned Order dated 31.07.2025 passed by the learned Special Judge, deserves to be interfered?
- 2) Whether the appellants' application under Section 9 of the Arbitration and Conciliation Act 1996 deserves to be allowed as a whole?"

E. Consideration/Analysis:

26. We have considered the aforesaid submissions of the learned counsels and perused the material on record.

27. Both the points are connected and as taken together.

28. Section 9 of the Arbitration and Conciliation Act, 1996 reads as under:

“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.

29. It is evident from Section 9 of the Act 1996 that 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, *inter alia*, for grant of the interim measure as mentioned therein in clauses (ii) (a) to (e). Sub-section 2 also provides that before the commencement of the arbitral proceedings where a Court passes the Order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of 90 days from the date of such order or within such further time as the Court may determine. So, under sub-section (2) the arbitral proceedings shall be commenced within a period of 90 days from the date of order of interim measure of protection or within such further time as the Court may determine.

30. Learned counsel for the appellants placing reliance on ***Modern Metal Industries*** (supra) judgment contended that the firm's bank account should have been permitted to be operated for business purposes as well otherwise a grave situation would arise for continuance of the firm business. Learned counsel for the appellant submitted that the learned Special Judge has taken into consideration the aforesaid judgment of the Allahabad High Court and referring the same, it also recorded in para-51 of the impugned judgment that before operation of the bank account can be stopped the following conditions must be fulfilled referring to para-68 of the judgment in ***Modern Metal Industries*** (supra) which reads as under:

“68. Thus the law is well-settled that before the majority can take a decision binding on the minority certain conditions have to be fulfilled which are as follows:

- (1) The minority must be consulted.
- (2) The majority must act in good faith

(3) The majority must act for the welfare of the firm and not for a purpose which is detrimental to the welfare of the firm.”

31. In ***Modern Metal Industries*** (supra), the application of the appellants therein under Section 9 of the Arbitration and Conciliation Act, 1996 was rejected. The appeal was allowed by the Division Bench of the Allahabad High Court and the second appellant therein was protected to operate the firm’s bank account. The Allahabad High Court opined that the sole bank account of the firm was the very lifeline of the firm and unless the moneys deposited therein were allowed to be withdrawn, at least, for business expenditure purposes, it would be impossible to run and manage the business of the firm and to keep its contractual commitments with the customers within the stipulated periods of time. Consequently, considering on the uncontroverted facts of the case, that a very grave and sudden situation had arisen when the business of the firm itself was facing imminent danger of being paralyzed, it was observed and held that an interim injunction under Section 9 of the Act should be granted for protection of the firm from severe crises and imminent danger of its business coming to a grinding halt resulting in huge and irreparable loss.

32. From the aforesaid judgment, in paragraphs 51 and 52 of ***Modern Metal Industries*** (supra), which are also reproduced as under, it becomes evident that in that case there was a grave and sudden situation for imminent danger of the firm being paralyzed on the uncontroverted facts of that case.

“51. In our opinion the Court below has failed to appreciate that the sole bank account of the firm is the very lifeline of the firm and unless the moneys

deposited therein are allowed to be withdrawn, at least, for business expenditure purposes, it would be impossible to run and manage the business of the firm and to keep its contractual commitments with the customers within the stipulated periods of time.

52. On the uncontroverted facts of the case, a very grave and sudden situation has arisen when the business of the firm itself is facing imminent danger of being paralysed and, hence we are of the opinion that an interim injunction under S. 9 of the Act should be granted for protection of the firm from severe crises and imminent danger of its business coming to a grinding halt resulting in huge and irreparable loss.”

33. In the present case, the facts are controverted with respect to the situation of the business of the firm. It cannot be said on uncontroverted facts that the firm is facing imminent danger as were the uncontroverted facts in ***Modern Metal Industries*** (supra). On such aspect facts are in contraversion in the present case.

34. Learned counsel for the appellant submitted that the learned Special Judge thereafter in para-52 of its judgment recorded that the petitioners have shown that the freezing of the bank account was done without consulting them. So, the learned Special Judge being satisfied that all the conditions as laid down in para-68 of the ***Modern Metal Industries*** (supra) were not satisfied and as the freezing was without consulting the petitioners, the firm should have been permitted to meet its statutory fiscal responsibilities, but in not allowing the same, except for the limited purposes, even after recording that the petitioners had *prima facie* shown that the freezing of bank account was detrimental to the function of the partnership firm, and passing the Order as stands, the same

cannot be sustained to the extent of non-grant of the rest of the petitioners' prayers.

35. We are of the view that what the learned Special Judge recorded being detrimental to the functioning of the partnership firm was for the discharge of its statutory duties and statutory fiscal responsibilities. So, the learned Special Judge allowed the application to that extent and revoking the order of freezing of the account of the bank only for the limited purpose. But, so far as to lift the freezing of the bank account for other purposes is concerned, the facts not being uncontroverted and there being controversy with respect to the Memorandum of Understandings, the reconstituted partnership deed, the petitioners themselves not following the conditions and the terms of the reconstituted partnership deed and Memorandum of Understandings and consequent thereto, the respondents No.2 & 3 ceasing to be the partners or not, as also misappropriation of the funds and transfer of funds to other company/firm of the petitioners, and all those questions which required adjudication before the Arbitral Tribunal in arbitral proceedings if so raised, the learned Special Judge kept pending the payments to third parties, and revoked freezing only for payment of statutory dues to the Central Government, State Government and local bodies. Consequentially, we do not find any fault in the Order of the learned Special Judge calling for our interference on the said count.

36. Further, from the admitted facts on record it is evident that within a period of 90 days the arbitral proceedings were not commenced in terms of Sub-section (2) of Section 9 of the Act 1996. Notice under Section 21, sent to

the respondents, copy of which has been filed along with Memo, is dated 07.11.2025 which is after the expiry of the period of 90 days from the date of the impugned Order. Sub-section (2) of Section 9 of the Act 1996 specifically provides for the time to commence the arbitral proceedings. The statutory period is 90 days from the date of the Order of interim measure of protection or within such further time as the Court may provide. The Order in the present case is dated 31.07.2025. The Special Judge also provided 90 day from the date of the Order for commencement of the arbitral proceedings. So, within 90 days from 31.07.2025 the arbitral proceedings must have been commenced.

37. The commencement of the arbitral proceedings is by moving an application under Section 21 of the Act 1996, which reads as under:

“**Section 21: Commencement of arbitral proceedings:-** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.”

38. In ***Sundaram Finance Ltd. v. NEPC India Ltd.***⁵ the Hon’ble Apex Court held that the arbitral proceedings were commenced on the date on which the request to refer the dispute to arbitration is received by the respondent. It is relevant to reproduce paragraphs 11 and 13 as under:

“**11.** The reading of Section 21 clearly shows that the arbitral proceedings commence on the date on which a request for a dispute to be referred to arbitration is received by the respondent. It is in this context that we have to examine and interpret the expression “before or during arbitral proceedings” occurring in Section 9 of the 1996 Act. We may here observe that though

⁵ (1999) 2 SCC 479

Section 17 gives the Arbitral Tribunal the power to pass orders, the same cannot be enforced as orders of a court. It is for this reason that Section 9 admittedly gives the court power to pass interim orders during the arbitration proceedings.

13. Under the 1996 Act, the court can pass interim orders under Section 9. Arbitral proceedings, as we have seen, commence only when the request to refer the dispute is received by the respondent as per Section 21 of the Act. The material words occurring in Section 9 are “before or during the arbitral proceedings”. This clearly contemplates two stages when the court can pass interim orders, i.e., during the arbitral proceedings or before the arbitral proceedings. There is no reason as to why Section 9 of the 1996 Act should not be literally construed. Meaning has to be given to the word “before” occurring in the said section. The only interpretation that can be given is that the court can pass interim orders before the commencement of arbitral proceedings. Any other interpretation, like the one given by the High Court, will have the effect of rendering the word “before” in Section 9 as redundant. This is clearly not permissible. Not only does the language warrants such an interpretation but it was necessary to have such a provision in the interest of justice. But for such a provision, no party would have a right to apply for interim measure before notice under Section 21 is received by the respondent. It is not unknown when it becomes difficult to serve the respondents. It was, therefore, necessary that provision was made in the Act which could enable a party to get interim relief urgently in order to protect its interest. Reading the section as a whole it appears to us that the court has jurisdiction to entertain an application under Section 9 either before arbitral proceedings or during arbitral proceedings or after the making of the arbitral award but before it is enforced in accordance with Section 36 of the Act.”

39. In ***Velugubanti Hari Babu v. Parvathini Narasimha Rao***⁶ the High Court of Hyderabad at Hyderabad, held that the phrase ‘arbitral proceedings shall be commenced’ in sub-section (2) of Section 9 of the Act shall

⁶ 2017 SCC OnLine Hyd 469

be understood in the light of Section 21 of the Act, and on a true understanding of the said provision, the arbitral proceedings would commence the moment the respondent receive the request for the dispute to be referred to arbitration.

40. The request application for appointment of the Arbitrator in this case under Section 21 of the Act 1996 is dated 07.11.2025, i.e., beyond the statutory period of 90 days. So, the arbitral proceedings have not been commenced within the statutory period under Section 9 (2) of the Act 1996.

41. In ***Smt. Shanti Dey @ Santi Dey*** (supra), upon which the learned counsel for the petitioners placed reliance, the appeal was filed before the Calcutta High Court against the Order passed under Section 9 of the Act 1996 whereby the learned Special Judge refused the prayer for extension of the interim order on the ground of non-compliance of Section 11 of the 1996 Act. The learned Special Judge, in the said case, had refused the extension on the ground that the arbitral proceedings should have been commenced within the period of 90 days. The Division Bench of the Calcutta High Court observed that Section 9 (2) was amended. The arbitral proceedings should have been commenced within a period of 90 days or within such further time as the Court may determine. The use of the words "*or within such further time as the Court may determine*" makes it patently clear that the time stipulation of 90 days is directory and the Court might extend the time for commencement of the arbitral proceedings. Moreover, there is no penalty prescribed in 1996 Act as amended by Arbitration and Conciliation (Amendment) Act of 2015 for default in commencement of arbitral proceedings within 90 days. In the said

case, the learned Special Judge had rejected the extension without considering the question of extending the time. The order was set aside with the direction to the trial Court to consider the prayer for interim relief afresh and till then the interim direction was issued to maintain *status quo* of the schedule property as also the bank account standing in the name of the partnership firm.

42. The aforesaid judgment is of no help to the appellants.

43. Here, any application seeking extension of time for commencement of the arbitral proceedings, has not been filed before the learned Special Judge.

44. In the present appeal also there is no application seeking extension of time for commencement of the arbitral proceedings beyond the statutory period of 90 days.

45. We are not observing that without any such application as aforesaid, the arbitral proceedings cannot be commenced. Those can be commenced at any time. But, in the absence of any such application the question of the Court 'granting such further time for commencement of the arbitral proceedings would not arise and so also the question of extension of the interim measure as granted by the Special Judge, beyond the period of 90 days does not arise.

46. The learned counsel for the petitioners placed reliance in ***Navnirman Development Consultants (I) Pvt. Ltd.*** (supra) to contend that this Court can extend the time by invoking the powers as under the provisions of the Code of Civil Procedure. He submitted that an appeal is continuation of suit. So, the present appellate proceedings under Section 37 of

the Act 1996 are also continuation of the original proceedings under Section 9 of the Act 1996.

47. Learned counsel for the appellant submitted that in ***Navnirman Development Consultants (I) Pvt. Ltd.*** (supra), the High Court observed that in such a situation as therein, Order 41 Rule 17 CPC got attracted, and therefore, the High Court should have taken recourse to the powers under Order 41 Rule 17 CPC for passing appropriate orders and it was not empowered to dismiss the appeal on merits. In the event of dismissal of the appeal under Order 41 Rule 17 CPC, the appellants therein should have taken recourse to the remedy available under Order 41 Rule 19 CPC.

48. Based on the aforesaid observations in ***Navnirman Development Consultants (I) Pvt. Ltd.*** (supra), the learned counsel for the appellant submitted that the provisions of the Code of Civil Procedure can be made applicable in an appeal under the Arbitration Act under Section 37 as well. He submitted that the Hon'ble Apex Court has referred to the provisions of Order 41 Rules 17 and 19 CPC. Consequently, the interim measure under the impugned order as granted by the learned Special Judge can be extended by this Court, in the exercise of the appellate powers.

49. In the aforesaid case, the award of the arbitral tribunal was challenged under Section 34 which was allowed and challenging the same, the appeal was filed under Section 37 of the Act 1996 before the High Court. The High Court dismissed the appeal giving liberty to file review petition, and on dismissal of the review petition the appellants' approached the Hon'ble Apex

Court. The appeal was allowed on the ground that the High Court while dismissing the appeal did not set out even the factual controversy properly much less in detail nor dealt with any of the grounds nor pleading in appeal in support of the respective contentions of the parties.

50. Further, in ***Navnirman Development Consultants (I) Pvt. Ltd.*** (supra) the Hon'ble Apex Court recorded that the High Court decided the appeal in the absence of both parties. In such a situation, the provisions of Order 41 Rule 17 CPC got attracted and therefore, the High Court should have taken recourse to the powers under Order 41 Rule 17 CPC for passing appropriate Orders as contemplated in Rule 17, under which the appeal could not be dismissed on merits. However, the appeal having been dismissed essentially under Order 41 Rule 17 CPC, it was held that the appellant therein should have taken recourse to the remedy available under Order 41 Rule 19 CPC by filing application to the High Court praying therein for readmission of their appeal by making out sufficient cause for their non-appearance on the date when the appeal was listed for hearing instead of filing the appeal before the Hon'ble Apex Court. In the aforesaid judgment, the remedy open to the party against the dismissal of the appeal on merits, though the dismissal ought to have been for default, has been mentioned. The said judgment is not on the scope of the appellate powers for interference on the merits of the matter. If the appeal is dismissed on merits in the absence of the appellant contrary to Rule 17 of Order 41 CPC, the remedy would be under Order 41 Rule 19 CPC to approach the same Court. The said judgment is on that aspect. Further, as per this

judgment it can be said that Order under Rule 17 and 19 CPC applies to the appeals filed under Section 37 of the Arbitration and Conciliation Act 1996. The same is not the case here. The argument that drawing the analogy and taking clue from the said judgment all other provisions and power of appeal as under the Code of Civil Procedure shall also apply to the appeals under the Arbitration and Conciliation Act 1996 cannot be accepted.

51. On the scope of the interference with the judgment in the exercise of the appellate jurisdiction under Section 37 of the Arbitration and Conciliation Act, in ***Punjab State Civil Supplies Corporation Limited*** (supra) the Hon'ble Apex Court held that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the Civil Courts for the reason that the scope of interference of the Courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only (as that was a case arising from Section 34 proceedings), and even that power cannot be exercised in a casual and a cavalier manner. The Hon'ble Apex Court, referring to various pronouncements on the scope of intervention in an appeal under Section 37 of the Act, restricted it and subjected it to the same grounds, on which an award can be challenged under Section 34 of the Act. In other words, powers under Section 37 vested in the Court of Appeal are not beyond the scope of interference provided under Section 34 of the Act. The Hon'ble Apex Court finally concluded that the scope of the intervention of the Court in arbitral matters is virtually prohibited, if not absolutely barred and that interference is confined only to the extent envisaged under Section 34 of the

Act. It was further held that the appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary Court of Appeal. Its power is more akin to that of superintendence as is vested in civil courts while exercising revisionary powers. In the context of the appeal arising out of the proceedings under Section 34 of the Act 1996 the Hon'ble Apex Court held that the proceedings under Section 34 of the Act are summary in nature and are not like a full fledged regular civil suit. Therefore, the scope of the Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal.

52. Consequently, in view of the judgment of the Hon'ble Apex Court in ***Punjab State Civil Supplies Corporation Limited*** (supra), we are of the view that the scope of Section 37 of the Act arising out of the proceedings under Section 9 of the Act 1996 is also confined to the scope of Section 9 of the Act and is not like an ordinary civil appeal under the Code of Civil Procedure. The interference, if required, with the Order under Section 9 of the Act, can be only within the scope of Section 9 of the Act and not as exercising the wider appellate powers under CPC.

53. The Karnataka High Court in ***M/s. Paton Constructions Private Ltd., v. M/s. Lorven Projects Ltd.***⁷ held that as per sub-section (2) of Section 9, because of the use of the expression 'shall be commenced', commencement of the arbitral proceedings within the period stated in Sub-

⁷ ILR 2017 Kar 3016

section (2) of Section 9 is a requirement for the legal effectiveness of the order passed for any interim measure under Sub-section (1) of Section 9 of the Act. Hence, if the arbitral proceedings in respect of the dispute were not commenced within the period stated in Section 9 (2) of the Act 1996, the order granting any interim measure under Section 9 (1) of the Act 1996 automatically stand vacated on the expiry of the said period, though that was not expressly stated in sub-section, but was clearly implied and any other interpretation of sub-section (2) would defeat the intention of Parliament in making commencement of the arbitral proceedings within the period stated in the sub-section as mandatory.

54. Here, we may therefore mention that in ***M/s. Paton Constructions Private Ltd.*** (supra) the Karnataka High Court further held that if the arbitral proceedings in respect of the dispute were 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. However, we find that in Rule 9 (4) of the High Court of Karnataka Arbitration (Proceedings before the Courts) Rules, 2001, there was specific provision, providing that "in the case of an application for any interim measure made before initiating arbitral proceedings, if the arbitral proceedings were 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 being passed by the Court to that effect".

55. We find that there is no such rule as Rule 9 (4) of the Karnataka Arbitration Rules neither in the Act 1996 nor in the Rules framed thereunder.

56. But still in the present case, the interim measure granted by the Special Judge came to an end on expiry of 90 days from the date of the Order of interim measure, in terms of the Order itself.

F. Conclusions:

57. In view of the considerations made hereinabove, our conclusions are that,

- 1) Section 9 (1) of the Act 1996 provides for the interim measure before or during arbitral proceedings or at any time after making of the arbitral award but before invoking Section 36 of the Act 1996, if the arbitral proceedings have not been commenced within the statutory period.
- 2) The interim measure granted by the Special Judge was for a limited period of 90 days from the date of the Order. The appellant had to initiate the arbitral proceedings within the period of 90 days as per Section 9 (2) of the Act 1996 from the date of the Order of interim measure dated 31.07.2025. The arbitral proceedings could also be commenced within such further time i.e., beyond 90 days as the Special Court might have determined, but it was not so determined. Consequently, the arbitral proceedings must have been commenced within the period of 90 days from the date of the order, which period of 90 days came to end on 29.10.2025.

- 3) The application under Section 21 of the Act 1996 for initiation of arbitral proceedings has been filed by the appellant only on 07.11.2025 by issuing the notice, beyond the period of 90 days. So, the arbitral proceedings have not been commenced within the statutory period contemplated under Section 9 (2) of the Act 1996.
- 4) The consequences for not commencing the arbitral proceedings, within the statutory period have not been provided under Section 9 of the Act 1996. In such a case, the interim measure granted, would be governed by the terms of the Order granting interim measure, as provided by the Special Court itself, that is, that it shall operate for the specified period of 90 days. On expiry of 90 days from the Order, the interim measure came to an end.
- 5) The appellate powers under Section 37 of the Act 1996, applying the same principle as in ***Punjab State Civil Supplied Corporation Limited*** (supra), cannot be beyond the scope of Section 9 (1) and (2) of the Arbitration and Conciliation Act 1996.
- 6) The appeal no doubt is continuation of the suit, and so in that way it can be said that, an appeal under Section 37, is the continuation of the proceedings, under Section 9, as in the present case, but that would not be for all the purposes. In the exercise of the appellate jurisdiction, this Court cannot go beyond the powers that can be exercised under Section 9 and shall not have such wide powers as under the Code of Civil Procedure. The appellate power shall be like the power of superintendence while exercising revisionary powers.

- 7) We do not find any error of such a nature with the impugned Order so as to invoke the supervisory powers.
- 8) **On Point Nos.1 & 2**, we therefore hold that there is no illegality in the order impugned to the extent the learned Court has granted the protection to lift freezing of bank account for a limited purpose of discharging the statutory duties for the specified period nor in rejection of the rest of the prayers for interim measure.

G. Result:

58. In the result, the appeal is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

MAHESWARA RAO KUNCHEAM, J

Date: 27.02.2026

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Note:

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