

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY 2017

PRESENT

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

AND

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

MISCELLANEOUS FIRST APPEAL NO. 5486/2016 (AA)

BETWEEN :

M/S BID & HAMMER
AUCTIONEERS PVT. LTD.,
A COMPANY REGISTERED AND
INCORPORATED UNDER THE COMPANIES ACT,
1956, NO.226, 39TH 'C' CROSS, 8TH MAIN ROAD
5TH BLOCK, JAYANAGAR, BANGALORE-560 041
(REPRESENTED BY ITS DIRECTOR
MR.ANKUSH DADHA) ..COMMON APPLICANT

(BY SRI ADITHYA SONDHI, SENIOR COUNSEL FOR
SRI M. ARUN PONAPPA, ADVOCATE)

AND :

1. M/S SKN INVESTMENTS (CHENNAI) PVT. LTD.,
A COMPANY REGISTERED AND
INCORPORATED UNDER THE COMPANIES ACT
1956, HAVING ITS REGISTERED OFFICE AT
NO.44, FRIENDS COLONY (EAST)
NEW DELHI-110 065
REPRESENTED BY ITS AUTHORIZED
REPRESENTATIVE MR.NISHANT RANA
2. MRS.KIRAN NADAR, DIRECTOR
M/S SKN INVESTMENTS (CHENNAI)
PVT. LTD., NO.44, FRIENDS COLONY (EAST)

NEW DELHI-110 065

3. HON'BLE MR.JUSTICE R.GURURAJAN (RETD)
LEARNED SOLE ARBITRATOR
R/O "SRI HARI KRUPA",
NO.504, 5TH FLOOR,SRI CHITRAPURA
HOUSING CO-OPERATIVE SOCIETY LTD.,
15TH CROSS, MALLESHWARAM
BANGALORE-560 003 ...RESPONDENTS

(BY SRI S.S.NAGANAND, SENIOR COUNSEL FOR
SMT.SHALINI JOHN, ADVOCATE FOR R.NOS.1 & 2 NOTICE
TO R3 IS DISPENSED WITH VIDE ORDER DTD:24.11.2016)

I.A.NO.2/2016 IS FILED UNDER SECTION 151 OF
C.P.C., 1908 FOR MODIFICATION OF THE ORDER OF
THIS HON'BLE COURT DATED:24.11.2016 IN
M.F.A.NO.5486/2016.

I.A.NO.1/2017 IS FILED UNDER SECTION 151 OF
C.P.C., 1908 FOR A DIRECTION TO RESPONDENT
NOS.1 AND 2 TO DEPOSIT A SUM OF RS.1,34,62,423/-
WITH THIS HON'BLE COURT OR PROVIDE SUITABLE
SECURITY FOR THE SAME AMOUNT, AND PASS SUCH
OTHER AND FURTHER ORDERS IN THE INTERESTS OF
JUSTICE.

I.A.Nos.2/2016 and 1/2017 HAVING BEEN
HEARD AND RESERVED FOR ORDERS ON 06.07.2017
AND COMING ON FOR PRONOUNCEMENT, THIS DAY,
K.S.MUDAGAL. J., MADE THE FOLLOWING:

ORDER ON I.A.NOs.2/2016 and 1/2017

Both the above applications involve common
questions. Therefore, they are taken up together for
disposal.

2. The above appeal arises out of the arbitration award passed in CMP No.93/2012. The third respondent/ arbitrator was appointed to arbitrate the dispute between the appellant and respondents 1 and 2. The appellant is the claimant in the arbitral proceedings. The arbitral Tribunal declared that the claimant is entitled for recovery of Rs.79,72,598/- with interest @ 12% p.a. towards the sale of an Artifact and rejected the counter claim of respondents nos.1 and 2.

3. Respondents 1 and 2 challenged the said award under Section 34 of the Arbitration and Conciliation Act, 1996 before the XXXIX Addl. City Civil Judge, Bangalore in A.S.No.34/2016. The City Civil Judge allowed the petition rejected the claim of the claimant, allowed the counter claim of respondent nos.1 and 2 and directed the appellant to pay Rs.79,72,598/- with interest @ 6% p.a. to respondents 1 and 2.

4. The claimant is challenging the said Judgment of the City Civil Judge before this Court in the above Appeal.

While admitting the appeal, on the application of the appellant at I.A.1/2016, this Court vide order dated 24.11.2016 granted interim stay subject to the appellant furnishing bank guarantee for 50% of the amount awarded under the impugned order, renewable from time to time.

5. Under I.A.No.2/2016, the appellant seeks modification of the order of this Court dated 24.11.2016 in terms that he shall be permitted to furnish the security of his immovable property in lieu of the bank guarantee. Under I.A.No.1/2017, the appellant seeks directions to respondent nos.1 and 2 to deposit Rs.1,34,62,423/- or to provide suitable security. Respondents 1 and 2 oppose both the applications vehemently.

6. The only ground urged for modification of the order is that furnishing bank guarantee is cumbersome to the appellant. The ground urged for seeking the directions against respondent nos.1 and 2 is that the said Company is running under loss.

7. The order dated 24.11.2016 to furnish the bank guarantee is passed on hearing both sides and on appreciation of rival contentions. The appellant has not challenged the said order before any appellate forum. No changed circumstance or any subsequent event is made out to modify the said order. No material is placed to show that the appellant tried to furnish the bank guarantee and that caused any hardship to it due to any cumbersome procedure. Therefore, the said contention is not acceptable.

8. So far as I.A.No.1/2017, as per the impugned order the appellant itself is holding the part of the sale consideration. It is submitted that so far the appellant has not furnished bank guarantee in compliance with the order dated 24.11.2016. Having regard to these facts, both the applications lack merit. Therefore, rejected.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Brn