

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01st DAY OF SEPTEMBER 2017

PRESENT

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

AND

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

ORDERS ON I.A.No.2/2017

IN

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) ... APPLICANT

(BY 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 M/S JURIS CONSULT FOR C/R.NOS.1 & 2)

I.A.No.2/2017 IS FILED UNDER SECTION 151 of
THE CODE OF CIVIL PROCEDURE, 1908 PRAYING TO
MODIFY THE ORDERS OF THIS HON'BLE COURT
DATED 24.11.2016 AND 17.07.2017 IN
M.F.A.NO.5486/2016 AND TO PASS SUCH FURTHER
ORDERS.

I.A.No.2/2017 HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 31.07.2017 AND COMING
ON FOR PRONOUNCEMENT THIS DAY, **K.S.MUDAGAL
J.**, MADE THE FOLLOWING:

ORDER ON I.A.No.2/2017

The appellant has filed the above application seeking
modification of the orders of this Court dated 24.11.2016
and 17.07.2017 passed in the above matter. On appellant's
application at I.A.No.1/2016 for interim stay, this Court
granted interim stay of the impugned order subject to the

appellant furnishing Bank Guarantee for 50% of the award amount renewable from time to time.

2. The appellant filed I.A.No.2/2016 to relax that condition and I.A.No.1/2017 to direct respondents No.1 & 2 to deposit Rs.1,34,62,423/- and to provide suitable security. This Court vide order dated 17.07.2017 dismissed both those applications.

3. Again the appellant has come up with the above application seeking modification of the said orders. Respondents No.1 and 2 oppose the applications.

4. Having regard to the rival contentions, the question that arises for consideration is, whether the prayer for modification of the orders is sustainable?

5. In the application, though modification of the order is sought, it is not specified as to what further order the appellant is seeking. But the affidavit filed in support of the application indicates that, the whole focus of the appellant is for waiver of the condition imposed for grant of interim stay. The ground for seeking modification is that

the appellant is facing financial crunch and condition for furnishing Bank Guarantee causes hardship to it.

6. The orders of this Court dated 24.11.2016 and 17.07.2017 are passed on considering rival contentions of both the parties and merits of the applications. The appellant has not challenged the same according to the procedure known to law. Since the time to challenge the order dated 24.11.2016 has expired, the same has attained finality.

7. Since the IA Nos.2/2016 and 1/2017 have been dismissed on merits, appellant cannot re-agitate the matter again before this Court, to convert it to an appellate Court against its own orders. Thus the application is liable to be dismissed at the threshold on the ground of maintainability.

8. The appellant in his affidavit claims that since 2011-2012 the financial condition of the Company is poor. But that was not the contention in his earlier applications.

Except that no other ground is made out to recall the order as prayed.

9. The appellant without complying the order dated 24.11.2016, is indulging in filing successive applications. Therefore, there is sufficient force in the contention of respondents No.1 and 2 that the appellant is abusing the process of law.

10. For the aforesaid reasons, the application is dismissed with costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

HR