

APHC010335642020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3457]

WEDNESDAY, THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

**THE HONOURABLE SRI JUSTICE HARINATH.N
CIVIL REVISION PETITION NO: 1229/2020**

Between:

1. AKBAR ALI KHAN MAYANA,, S/O.SYED KHAN, AGED 53 YEARS, R/O D.NO. 67/120, MARKET, RAVACHOTY, KADAPA - 516 269.
2. M. FATNIMA KHANAM,, W/O MAYANA AKBAR ALIO KHAN, AGED 43 YEARS, R/O D.NO. 67/120, MARKET, RAYACHOTY, KADAPA - 516 269.

...PETITIONER(S)

AND

1. M/S SHRIRAM CITY UNION FINANCE LIMITED, HAVING ITS REGISTERED OFFICE AT 123, ANGAPPA NAIKEN STREET, CHENNAI AND HAVING ITS ADMINISTRATIVE OFFICE AT NO.3-6-478, 4TH FLOOR, ANAND ESTATES, LIBERTY ROAD, HIMAYATHNAGAR, HYDERABAD, HAVING ITS BRANCH OFFICE AT RAYACHOTY, REP. BY ITS GPA HOLDER A. VENKATAIAH, S/O VENKATA SWAMY, AGED 35 YEARS, D.NO. 42/107-1, OBUL REDDY COMPLEX, JAYANAGAR COLONY, KADAPA - 2.
2. K REDDAIAH, , S/O K. NARAYANA REDDY, AGED 47 YEARS, R/O D.NO. 26/66-F, CHURCH STREET, RAYACHOTY, KADAPA DIST - 516 269. (R.2 IS NOT NECESSARY PARTY)

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to Memorandum of Civil Revision Petition being aggrieved by the attachment order passed in EPNo. 57 of 2020 in ARC.No. 58 of 2019 dt. 13-10-2020 and the consequential notice under Order 21 Rule 54 (1A) on the file of V Additional District Judge, Rayachoty,

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Stay all further proceedings in E.P.No. 57 of 2020 in ARC.No.58 of 2019 on the file of V Additional District Judge, Rayachoty pending disposal of the above C.R.P. and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim stay order granted in I.A. No. 1 of

2020 in C.R.P. No. 1229 of 2020 dated.13.11.2020, till disposal of the C.R.P., in the interest of justice

Counsel for the Petitioner(S):

1.T V S KUMAR

Counsel for the Respondent(S):

1.O UDAYA KUMAR

The Court made the following:

THE HONOURABLE SRI JUSTICE HARINATH.N
CIVIL REVISION PETITION No.1229 OF 2020

ORDER:

1. The present Civil Revision Petition is filed aggrieved by the initiation of execution proceedings in E.P.No.57 of 2020 in A.R.C.No.58 of 2019 and the consequential notice issued under Order XXI Rule 54(1A) CPC on the file of the V Additional District Judge, Rayachoti.
2. The petitioners had obtained a loan of Rs.15,00,000/- from the 1st respondent and were required to repay the same together with interest at Rs.45,625/- per month in 60 equated monthly installments. Upon dishonour of the cheques issued by the petitioners towards repayment of the EMIs, the 1st respondent invoked the arbitration clause in terms of the loan agreement dated 30.03.2017. Consequently, the sole Arbitrator passed an award directing the petitioners to pay a sum of Rs.24,21,047/- together with future interest at the rate of 12% per annum, besides directing respondent Nos.1 to 3 to bear half of the costs involved.
3. The learned counsel appearing for the petitioners submits that the petitioners were unaware of the arbitration proceedings and had never received any notice thereof. It is further submitted that the petitioners have filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the ex parte arbitral award, on the ground that they had no knowledge of

the proceedings before the learned Arbitrator. The learned counsel further submits that the said application is still pending consideration, and that the learned Arbitrator is not inclined to take up the said interlocutory application on the ground that the award has already been passed and no further orders can be passed thereafter.

4. The learned counsel for the petitioners places reliance on the judgment rendered by the Hon'ble Supreme Court in **Srei Infrastructure Finance Limited Vs. Tuff Drilling Private Limited**¹, the Hon'ble Supreme Court dealt with an issue where the claimant before the Arbitral tribunal did not submit the claim petition resulting in termination of the arbitral proceedings. The application filed by the claimant subsequently under Order IX Rule 13 CPC was not considered by the Tribunal as the Arbitrator had terminated the arbitration proceedings. The Hon'ble Supreme Court held that the arbitral tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(a) and that the tribunal has not considered the cause shown by the claimant in the application and that Tribunal was directed to consider the application filed by the claimant, praying for the recall of the order and to grant extension of time for filing of the statement of claim. It is submitted that the case of the petitioner though not identical, but is similar to the facts considered by the

¹(2018) 11 SCC 470

Hon'ble Supreme Court. It is submitted that the respondent before the Tribunal did not enter appearance as the respondent therein did not receive any notice of arbitration proceedings. The Arbitrator ought to have considered the application filed by the petitioner and granted an opportunity of filing counter to the claim set up by the claimant therein.

5. The learned counsel appearing for the respondent submits that there is nothing on record to show that any application is pending before the learned Arbitrator, as the petitioners have not furnished any copy of the endorsement said to have been made by the learned Arbitrator. It is further submitted that, even assuming that such an application has been filed before the Tribunal, a petition under Section 34 of the Arbitration and Conciliation Act, 1996 would not be maintainable before the learned Arbitrator. It is submitted that an application is required to be filed before the competent Court as defined under Section 2 (e) of the Arbitration and Conciliation Act, 1996. It is also submitted that the learned Arbitrator has no jurisdiction to entertain or decide an application filed under Section 34 of the Act.
6. During the course of hearing, the learned counsel for the petitioners submits that the petitioners are inclined to settle the outstanding dues in order to save their house property.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondents. Perused the material available on record.
8. The petitioners filed an application before the learned Arbitrator seeking to set aside the ex parte order by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996. Insofar as the relief of setting aside the ex parte arbitral award is concerned, the proper recourse available under the Arbitration and Conciliation Act, 1996 is to file an application under Section 34 of the Act before the competent Court as defined therein. Further, the award is required to be served on the parties in terms of Section 31(5) of the Arbitration and Conciliation Act, 1996.
9. On the facts of the present case, the petitioners contend that they were unaware of the arbitration proceedings pending before the Tribunal and that a copy of the award dated 09.09.2019 was also not served upon them, thereby depriving them of the opportunity to take appropriate steps within the prescribed period for filing an application under Section 34 of the Act to set aside the award. By the time the petitioners received notice in the execution petition, the limitation period for filing an application under Section 34 of the Act before the competent Court had already expired, leaving them with no other option except to approach the Arbitral Tribunal.

10. In such circumstances, the Tribunal shall consider the application filed by the petitioners as one seeking to set aside the ex parte order, akin to an application under Order IX Rule 13 CPC, for the limited purpose of examining the reasons assigned by the petitioners for seeking to set aside the arbitral award. The Arbitrator would also have the benefit of verify the claim of the petitions with regard to non service of notice of Arbitration and non service of the Arbitral award in terms of the Section 31(5) of the Arbitration and Conciliation Act, 1996.
11. The learned Arbitrator shall consider the application pending before the Tribunal, treat the same as an application filed under Order IX Rule 13 CPC, and pass appropriate orders thereon. Till the determination of the said application filed by the petitioners, the arbitral award passed by the learned Arbitrator shall remain suspended. This, however, shall not preclude the petitioners and the respondents from resolving the dispute amicably, in view of the submission made by the learned counsel for the petitioners that they intend to repay the outstanding dues and clear the loan. This direction is not to be treated as a precedent for all cases where award is sought to be set aside. These directions are issued in view of the peculiar circumstances of this case.
12. Accordingly, the writ petition disposed off. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE HARINATH.N

Date:29.04.2026

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THE HONOURABLE SRI JUSTICE HARINATH.N

CIVIL REVISION PETITION No.1229 of 2020
Date: 29.04.2026

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