

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. _____ OF 2022
(Arising out of SLP(C) Nos. 6354-6356 of 2020)

**P. SESHAREDDY (D) REP. BY HIS
LR. CUM IRREVOCABLE GPA HOLDER AND
ASSIGNEE KOTAMREDDY KODANDARAMI** **Appellant(s)**

VERSUS

STATE OF KARNATAKA & ORS. **Respondent(s)**

J U D G M E N T

1. Leave granted.
2. The appeals challenge the judgment and order dated 12.11.2019 passed by the learned Single Judge, High Court of Karnataka, Kalaburagi Bench in W.P.Nos.201087-88/2018 c/w W.P. No. 201321/2016 (GM-CPC), thereby allowing the writ petition(s) filed by the respondent-State.
3. The facts giving rise to the present appeals arise out of the following narrow compass:
4. One P. Seshareddy S/o P.C. Venkatreddy

entered into a contract with State of Karnataka for execution of UKP project. He executed a General Power of Attorney dated 21.10.1982 in favour of one Kotermreddy Kodandarami Reddy authorising him to do all the acts necessary with regard to the execution of the said contract.

5. It appears that certain disputes arose between P. Seshareddy and the respondent-State with regard to the execution of the work, allotted to said P. Seshareddy. As such, he initiated arbitration proceedings by making an application under Section 8 of the Arbitration Act, 1940.

6. The said petition was presented through his General Power of Attorney holder Sri Kotemreddy Kodandarami Reddy.

7. The original contractor, namely, P. Seshareddy, died on 13.11.1995. After his death, his legal heirs were brought on record. However, it appears that the said Arbitration Case being Arbitration Case No.03/2004 came to be dismissed for default on 30.05.2008.

8. Thereafter, an application came to be made by Sri Kotemreddy Kodandarami Reddy for restoration of

the Arbitration Application under Order IX Rule 9 read with Sections 151 read with Section 146 of Code of Civil Procedure, 1908. The aforesaid application came to be allowed by the learned Trial Judge.

9. Being aggrieved thereby, the respondent-State filed the aforesaid writ petition(s). The learned Single Judge vide impugned judgment and order allowed the the writ petitions and set aside the order(s) passed by the learned Trial Judge.

10. We have heard Ms. Kiran Suri, learned senior counsel appearing for the appellant and Ms. Soumyan Tandon, learned counsel appearing for the respondent-State.

11. Ms. Kiran Suri, learned senior counsel appearing for the appellant, submits that the learned Single Judge of the High Court while allowing the writ petition(s) has only considered the provision of Section 201 of the Indian Contract Act, but has ignored the provision of Sections 202 and 209 of the said Act. She submits that since the appellant had an interest in the said contract, he was entitled to continue with the proceedings in

spite of the death of the original contractor. She submits that the learned Single Judge of the High Court has failed to take into consideration this aspect of the matter.

12. Ms. Soumyan Tandon, learned counsel for the State, on the contrary, submits that merely on the basis of General Power of Attorney, it cannot be construed that the appellant had an interest in the contract. In so far as the assignment deed is concerned, she submits that since there was no consent of the State for the said assignment deed, the same was not valid in law. She further submits that the rights in the contract could not have been transferred by way of an assignment deed.

13. Learned counsel for the respondent-State has relied on the judgment of this Court in the case of *Indu Kakkar Vs. Haryana State Industrial Development Corporation Ltd. & Anr.*-reported in (1999) 2 SCC 37 and also on the judgment of this Court in C.A. Nos. 10683-10686 of 2014 titled as *"Kapilaben & Ors. Vs. Ashok Kumar Jayantilal Sheth Through POA Gopalbhai Madhusudan Patel & Ors"*.

14. We have perused the material placed on

record.

15. The perusal of the assignment deed dated 02.07.1990 clearly reveals that the original contractor-P. Seshareddy had assigned all the rights and liabilities arising out of the said contract in favour of Sri Kotemreddy Kodandarami Reddy.

16. The perusal of the order passed by the Trial Court would show that, it has held that leaving apart the nature of GPA, the appellant was entitled to prosecute the arbitration proceedings in view of the rights accrued to him by way of the assignment deed.

17. We find that the view taken by the learned Single Judge was not in consonance with of Section 202 of the Indian Contract Act, which read thus:

"202. Termination of agency, where agent has an interest in subject-matter-where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

18. No doubt, the learned Single Judge was right in holding that on account of the death of the

original contractor, it amounted to termination of the agency. However, learned Single Judge could not have read Section 201 of the Indian Contract Act in isolation by ignoring Section 202 of the Indian Contract Act. The learned Single Judge failed to take into consideration that on account of the assignment deed, an interest accrued in the said contract in favour of the appellant. Indisputably, the said contract was the subject matter of the agency and as such in the absence of an express provision to the contrary, the appellant was entitled to continue with the said agency.

19. The learned trial Judge rightly construing this position, allowed the application of the appellant. In a jurisdiction under Article 227 of the Constitution of India, the learned Single Judge could not have interfered with the order of the trial Court , unless he found the view taken by the learned trial Judge was perverse or impossible.

20. In so far as the judgments relied upon by Ms. Soumyan Tandon are concerned, the same are related to an issue where the contract is contingent upon certain rights and liabilities. One party cannot

not be compelled to do something unless the other party which was required to perform its obligation has performed it. As such, the said judgments would not be applicable in the facts of the present case.

21. In so far as the contention of Ms. Soumyan Tandon with regard to the question as to whether the contract could be assigned or not is concerned, the said question is touching the merits of the matter and cannot be gone into at this stage. These questions can be raised by the respondent(s) in the appropriate proceedings, if entitled in law.

22. In the result, the impugned judgment and order is not sustainable and thus the same is quashed and set aside. The order of the learned trial judge is restored.

23. Since the proceedings are pending from 1992, i.e. almost a period of more than 30 years, we expedite the proceedings before the Trial Judge and direct the same to be disposed of within a period of six months from today.

24. The appeals are disposed of in the above terms.

25. Pending applications, if any, stand disposed of.

.....J
(B.R. GAVAI)

.....J
(B.V. NAGARATHNA)

New Delhi
November 09, 2022

