

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18th DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SURAJ GOVINDARAJ

COMMERCIAL APPEAL NO. 65 OF 2021

BETWEEN:

A.S.CARGO MOVERS (P)
LIMITED
HAVING ITS CORPORATE OFFICE
AT B124/86, 3RD MAIN ROAD
DDUTTIL, Opp: KANTEERAVA STUDIO
MAIN GATE, YESHWANTPUR
INDUSTRIAL SUBURB
BENGALURU-560 022
REPRESENTED HEREIN BY ITS
DULY AUTHORIZED SIGNATORY
Mr.NARENDRA BABU.

... APPELLANT

(BY SHRI I.S.DEVAIAH, ADVOCATE FOR
M/s MD & T PARTNERS, ADVOCATES)

AND:

1. KAMADHENU INFRA BUILD
PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE
AT MOUNI KAMADENAHALLI
OPPOSITE PRAGATHI KRISHNA
GRAMINA BANK
KAMADHANUHALLI VILLAGE AND
POST, KOLAR-563 101.
ALSO AT:
BEHIND KANAKA MANDIRA
ABOVE JUICE MAGIC,
2ND FLOOR, DOOMLIGHT CIRCLE
KOLAR-563 101.

THROUGH ITS DIRECTOR
Mrs.KURUBURU GOPAL
GOWDA BHAGYAMMA
RESIDING AT 'KAMADHENU
NILAYA,' OPPOSITE PRAGATI
KRISHNA GRAMINA BANK
KAMADHANUHALLI VILLAGE
AND POST, KOLAR-563 101.

2. Mr.K.J.BABU MOUNI
AGED 47 YEARS
S/O Dr.K.M.JAYARAM MOUNI
RESIDING AT 'KAMADHENU NILAYA'
OPPOSITE PRAGATHI KRISHNA
GRAMINA BANK, KAMADHANUHALLI
VILLAGE AND POST,
KOLAR-563 101.

... RESPONDENTS

(BY SHRI CHETAN CHANDRASHEKAR, ADVOCATE
FOR M/s FRONTIER LEGAL, ADVOCATES)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 READ
WITH SECTION 13(1A) OF THE COMMERCIAL COURTS ACT,
2015 PRAYING TO SET ASIDE THE ORDER DATED 04.03.2021
(ANNEXURE-A) PASSED BY THE COMMERCIAL COURT AND
THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT KOLAR IN
COMM. A.A. NO.2020, AND ETC.

THIS COMMERCIAL APPEAL COMING ON FOR
ADMISSION THROUGH VIDEO CONFERENCING THIS DAY,
CHIEF JUSTICE DELIVERED THE FOLLOWING:

JUDGMENT

By consent, the appeal is taken up for final disposal. By this appeal, the appellant has taken an exception to the judgment and order dated 4th March, 2021 passed by the Principal District and Sessions Judge, Kolar by which a petition filed by the appellant herein under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") has been dismissed as infructuous.

2. In paragraph 6 of the impugned judgment and order, the learned Judge has referred to sub-section (2) of Section 9 of the Arbitration Act and has observed that it is mandatory that the arbitration proceedings shall commence within a period of ninety days from the date of grant of interim protection granted under sub-section (1) of Section 9 of the Arbitration Act. The learned Judge further proceeded to observe that the interim order directing the parties to maintain *status quo* was passed on 4th November, 2020 and therefore,

the period of ninety days expired on 2nd February, 2021.

3. It appears that the attention of the learned Judge was not invited to the fact that a petition under Section 11 of the Arbitration Act was filed by the appellant herein in this Court which was allowed on 12th April, 2021. A copy of the said judgment and order is placed on record. It is pertinent to note that in the said judgment, it is noted that a legal notice for appointment of an arbitrator was issued by the appellant on 17th October, 2020. This fact is not disputed. This fact was not noticed by the learned Judge and that is how he erroneously invoked subsection (2) of Section 9 of the Arbitration Act for holding that the petition had become infructuous. In the circumstances, the finding recorded by the learned Judge in paragraph 6 of the impugned judgment and order cannot be sustained.

4. Hence, the appeal must succeed and we pass the following order:

ORDER

(i) The impugned judgment and order dated 4th March, 2021 is hereby quashed and set aside and the petition bearing Com.A.A.No.2 of 2020 is restored to the file of the learned Principal District and Sessions Judge, Kolar;

(ii) We direct the parties to appear before the Principal District and Sessions Judge, Kolar on 30th June, 2021;

(iii) As the date has been fixed in the presence of the learned counsel for both the parties, it will not be necessary for the Court of the Principal District and Sessions Judge, Kolar to issue a notice to the parties;

(iv) To enable the appellant to prosecute the petition under Section 9 of the Arbitration Act , the order of *status quo* passed on 4th November, 2020 is hereby extended till 7th July, 2021;

(v) We make it clear that we have made no adjudication on the merits of the controversy and the learned Principal District and Sessions Judge, Kolar will

decide the petition filed under Section 9 of the Arbitration Act without being influenced by the continuation of the order of *status quo* by this Court;

(vi) The appeal is partly allowed on the above terms. Pending applications do not survive for consideration and the same stand disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

vgh*