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**(2013) 04 AP CK 0006**

**In the Andhra Pradesh High Court**

**Case No : CRP No"s. 5784 and 5785 of 2012**

AESSEAL India Pvt. Ltd. and Another

APPELLANT

Vs

Nageswara Rao and Others

RESPONDENT

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**Date of Decision : 29-04-2013**

**Acts Referred:**

Arbitration Act, 1940 — Section 24

Arbitration and Conciliation Act, 1996 — Section 5, 8, 9

**Citation :** (2013) 4 ALD 625 : (2013) 6 ALT 200 : (2014) 1 ARBLR 505

**Hon'ble Judges :** L. Narasimha Reddy, J;K.G. Shankar, J

**Bench :** Division Bench

**Advocate :** S. Niranjan Reddy, for the Appellant; B. Mayur Reddy and M. Govind Reddy, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

L. Narasimha Reddy, J.—These two revisions are between the same parties and arise out of an interlocutory order passed in OS No. 73 of 2012 on the file of the learned I Additional District and Sessions Judge, Rangareddy District. For the sake of convenience, the parties are referred to as arrayed in the suit.

2. The plaintiffs filed the suit against the defendants for the reliefs of perpetual injunction, to restrain the defendants or persons or agencies claiming through them from manufacturing, selling, advertising or distributing mechanicals or any other product in manner based upon the designs, drawings, trade secrets, confidential information belonging to the plaintiffs, to restrain the defendants from passing off or using the confidential information or soliciting customers of the plaintiffs; and for mandatory injunction to destroy all the drawings, designs, trade secrets and data now being dealt with by the defendants; and for award of damages of Rs. 2,00,00,000/- jointly and severally against the defendants for the loss suffered by the plaintiffs. The plaintiffs are engaged in the business of designing, manufacturing and supplying the mechanical seals. While the 1st plaintiff is a company in United Kingdom, the 2nd plaintiff is a holding company.

The 1st plaintiff has entered into an Asset Purchase Agreement on 3.9.2008 with defendants 7 and 8. According to that, defendants 7 and 8 agreed to cause the 9th defendant, a private limited company, to sell, transfer the assets, including know-how, intellectual property, and to transfer certain employees to the 1st plaintiff. The employment agreements were also entered on the same day. Extensive documentation was undertaken.

3. It was pleaded that in the year 2009, 1st plaintiff sensed some deviations on the part of defendants 7 and 8 and then internal investigation into accounts and management of the agencies revealed certain illegal acts and financial irregularities on the part of defendants 7 and 8. It was also stated that several trade secrets and intellectual property rights, confidential information, designs and drawings of the plaintiffs were wrongfully used by the other defendants with the active collusion of defendants 7 and 8. It was further pleaded that the 9th defendant through its Directors, defendants 10 and 11, wives of defendants 7 and 8 respectively, filed Arbitration OP No. 2599 of 2010 u/s 9 of the Arbitration and Conciliation Act, 1996 (for short "the Act") in the Court of III Additional Chief Judge, City Civil Court, Hyderabad for certain measures, such as injunction restraining the 1st plaintiff from removing or shifting or transferring or alienating the acquired assets from its branch and that orders passed therein on 7.6.2011 were set aside by this Court in CMA No. 615 of 2011. With these and other related pleadings, the plaintiffs filed the suit claiming the reliefs of perpetual injunction and mandatory injunctions.

4. Defendants 7 and 8 filed IA No. 625 of 2012 in OS No. 73 of 2012 with a prayer to direct that the subject-matter of the suit, insofar as it is between them and the plaintiffs is covered by clause (15.13) of the Asset Purchase Agreement, dated 3.9.2008, be resolved through arbitration. They have also prayed for the consequential relief of closure of the suit against them. Similar application, being IA No. 643 of 2012 was filed by defendants 9 to 11. It was pleaded that the subject-matter of the suit is covered by the Assets Purchase Agreement and since there is a clause providing for arbitration, the suit cannot be maintained. They further pleaded that an arbitration at their instance is already in progress and that there is no basis for the plaintiffs to proceed with the suit at least against them i.e., defendants 7 to 11. The plaintiffs filed a counter opposing the I.As. They stated that the cause of action against all the 17 defendants is common and since defendants 1 to 6 and 10 to 17 are not parties to the Assets Purchase Agreement, they cannot be made to face arbitration proceedings. It has also been mentioned that before the Arbitrator, they have reserved their right to institute proceedings before the concerned Court to vindicate their rights against the persons, who are not parties to the arbitration and the matters, which are outside the scope of the O.P.

5. Through a common order, dated 24.9.2012, the trial Court allowed both the applications. Hence, these two revisions.

6. Sri S. Niranjan Reddy, learned Counsel for the plaintiffs submits that the

subject-matter of the suit is outside the scope of the Agreement, which contains an arbitration clause, and many parties to the suit are not parties to the Asset Purchase Agreement and in that view of the matter, the view taken by the trial Court cannot be countenanced. He submits that the Hon''ble Supreme Court held in several cases, including the one in Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, , that where the arbitration agreement covers only part of the subject-matter of the pending suit, the proceedings cannot be split. Learned Counsel further submits that the result of the order of the trial Court would be that the suit vis-a-vis defendants 7 to 11 would no longer be pending, whereas as regards other defendants, such an incongruous situation cannot be permitted to occur or remain.

7. Sri B. Mayur Reddy and Sri M. Govind Reddy, learned Counsel for the contesting defendants on the other hand submits that the dispute in the suit is referable to the Asset Purchase Agreement dated 3.9.2008 and other subsidiary agreements and once arbitration is pending in relation to those agreements, it is not at all open to the plaintiffs to file the suit. They contend that defendants 1 to 6 and 10 to 17 were added only to camouflage the real controversy and thereby to bring the proceedings outside the purview of arbitration.

8. The purport of the suit filed by the plaintiffs has already been explained in brief. Defendants 7 and 8 and 9 to 11 filed separate applications u/s 8 of the Act with a prayer to direct the plaintiffs to seek resolution of their disputes raised in the suit against them through arbitration, provided for under clause (15.13) of the Asset Purchase Agreement. If this request is acceded to, the suit vis-a-vis defendants 7 to 11 stands terminated.

9. Before the trial Court, as well as this Court, extensive arguments are advanced, drawing support from the judgments rendered by the Hon''ble Supreme Court and this Court in various cases arising under the Act.

10. It is a matter of record that an arbitration is already pending in relation to a dispute between the 1st plaintiff and defendants 7 and 8. Initially, defendants 7 and 8 filed an O.P. u/s 9 of the Act for certain measures in the form of interim injunctions and the orders passed therein were set aside by this Court at the instance of the plaintiffs. In the arbitration, that is now pending, the 2nd plaintiff and defendants 1 to 6 and 12 to 17 are not parties. In its memorandum filed before the Arbitrator, the 1st plaintiff made it clear that it has certain disputes with all the defendants in relation to its business activities and it reserves its right to institute a suit.

11. Had the suit been filed by the plaintiff against defendants 7 to 11 alone, it could certainly have been terminated, once an arbitration is pending between them in relation to the same contract. The presence of the 2nd plaintiff as second plaintiff and defendants 1 to 6 and 12 to 17 as defendants in the suit would certainly make substantial difference. In addition to that, the nature of reliefs claimed against the defendants is common and not distinguishable. Ultimately, it

is for the plaintiffs to prove the case pleaded by them by adducing evidence in the course of trial. The mere fact that an arbitration is pending between one of the two plaintiffs, on the one hand and two of the 17 defendants, on the other hand, cannot be a factor for terminating the proceedings. In *Sukanya Holdings (P) Ltd.*'s case (*supra*), the Hon"ble Supreme Court expanded the scope of Section 8 of the Act with reference to cases, where the parties to a suit are not the same with those in the arbitration agreement, as under:

12. For interpretation of Section 8, Section 5 would have no bearing because it only contemplates that in the matters governed by Part-I of the Act, judicial authority shall not intervene except where so provided in the Act Except Section 8, there is no other provision in the Act that in a pending suit, the dispute is required to be referred to the arbitrator. Further, the matter is not required to be referred to the arbitral Tribunal, if (1) the parties to the arbitration agreement have not filed any such application for referring the dispute to the arbitrator, (2) in a pending suit, such application is not filed before submitting first statement on the substance of the dispute; or (3) such application is not accompanied by the original arbitration agreement or duly certified copy thereof. This would, therefore, mean that Arbitration Act does not oust the jurisdiction of the civil Court to decide the dispute in a case where parties to the Arbitration Agreement do not take appropriate steps as contemplated under sub-sections (1) and (2) of Section 8 of the Act.

13. Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.

14. Thirdly, there is no provision as to what is required to be done in a case where some parties to the suit are not parties to the arbitration agreement. As against this, u/s 24 of the Arbitration Act, 1940, some of the parties to a suit could apply that the matters in difference between them be referred to arbitration and the Court may refer the same to arbitration provided that the same can be separated from the rest of the subject-matter of the suit. Section also provided that the suit would continue so far as it related to parties who have not joined in such application.

15. The relevant language used in Section 8 is "in a matter which is the subject-matter of an arbitration agreement", Court is required to refer the parties to arbitration. Therefore, the suit should be in respect of "a matter" which the parties have agreed to refer and which comes within the ambit of arbitration agreement Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words "a matter" indicates entire subject-matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible u/s 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the Legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the arbitral Tribunal and other to be decided by the civil Court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums.

12. The same view was taken by the Hon"ble Supreme Court in India Household and Healthcare Ltd. Vs. LG Household and Healthcare Ltd., Specific reference was made to the judgment in Sukanya Holdings (P) Ltd."s case (supra), The paragraphs that have been extracted above have been specifically referred to with approval.

13. The trial Court no doubt referred to the relevant precedents including the judgments in Sukanya Holdings (P) Ltd."s case (supra). However, it made an attempt to distinguish the case on facts. Once it is evident that the parties in the suit are over and above the parties to the agreement providing arbitration, there does not exist any scope for splitting the cause of action in the suit and referring part of it to the arbitration.

14. Acceding to the request made in the I.A.s would amount to termination of suit vis-?-vis defendants 7 to 11 and permitting it to remain on record as regards other defendants. Another problem would be that the 2nd plaintiff is not a party to the agreement at all. The disputes between the 2nd plaintiff on the one hand and defendants 7 to 11 on the other hand cannot be adjudicated in the present suit. To identify the same, an issue can be framed, so that it is decided on the basis of the evidence, which the parties may adduce.

15. Therefore, the civil revision petitions are allowed and the order under revisions is set aside. The trial Court shall proceed with the suit and it shall frame an issue viz., whether there is any overlapping between the subject-matter of the suit on the one hand and the arbitration which is pending between the 1st plaintiff and defendants 7 to 11 on the other hand and if so, the nature thereof. It is made clear that the overlapping, if any, to the extent it is identified shall not constitute the subject-matter of the suit. The miscellaneous petitions filed in

these civil revision petitions shall also stand disposed of. There shall be no order as to costs.