
(2009) 06 AP CK 0061

In the Andhra Pradesh High Court

Case No : Civ. Revision No. 3627 of 2002

Ashok Leyland Finance Ltd.

APPELLANT

Vs

P. Vengal Rao and Another

RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, 38

Citation : AIR 2009 AP 196 : (2009) 5 ALD 235 : (2009) 6 ALT 128 : (2010) 8 RCR(Civil) 2258

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Someswara Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—An arbitration has taken place between the petitioner and the respondents in relation to a commercial transaction. An Arbitrator from Chennai was chosen and he passed an award, dated 06.04.2001 for a sum of Rs. 17,63,255/- in favour of the petitioner. Thereafter, the petitioner filed an execution petition before the Court of the Principal District Judge, Visakhapatnam with a prayer to transfer the decree to the Court of the Principal District Judge, Ranga Reddy District. It was alleged that the respondents own several items of property within the jurisdiction of the District Court, Ranga Reddy District. The learned District Judge passed an order, dated 17.06.2002, refusing to entertain the execution petition, on the ground that it has no jurisdiction. The same is challenged in this civil revision petition.

2. Sri K. Someswar Kumar, the learned Counsel for the petitioner, submits that the Court of the Principal District Judge answers the description of "Court" as defined u/s 2(e) of the Arbitration and Conciliation Act, 1996 (for short "the Act") and that being so, the request of the petitioner ought to have been acceded to. He contends that once a decree is enforceable in the Court of District

Judge, Visakhapatnam, by that very logic and reasoning, it is capable for being transferred to the Court of the Principal District Judge. Ranga Reddy District.

3. Though the respondents are served with notice, they have not chosen to enter appearance.

4. The Act provides for resolution of disputes through the process of arbitration. Once an award is passed by an Arbitrator, the enforcement thereof is entrusted to the civil Courts. The award can be straightway executed as though it is a decree.

5. The parties are said to be residents of Visakhapatnam in that view of the matter, it was competent for the petitioner to file the execution petition in the Court of the Principal District Judge, Visakhapatnam for enforcement of the award, though it was passed by an Arbitrator at Chennai. The request made by the petitioner, however, was for transmission of the award.

6. The provisions of Section 38 C.P.C. and Order 21 Rule 5 C.P.C. come into play. Order 21 Rule 5 C.P.C. empowers an executing Court to transfer a decree, which is passed by that Court. In other words, it is only a Court, which has passed a decree, that can transfer the same to another. Section 38 C.P.C. provides for execution of the decree by a Court which passed it or the one to which it was transferred. There is absolutely no controversy that the Court of the Principal District Judge, Visakhapatnam did not pass any decree in favour of the petitioner. The powers conferred upon such Court are very limited, in the sense that the award passed in arbitration has to be implemented as it is. Even the powers that are available u/s 47 C.P.C. cannot be exercised in relation to such an award. Therefore, a decree passed by a civil Court on the one hand and an award passed by an Arbitrator on the other, cannot be equated in the context of exercise of powers under Order 21 Rule 5 C.P.C. It is only a Court, which passes the decree that can transfer or send it for execution to another. Such a power is not available vis-a-vis an award. Therefore, no exception can be taken to the order under revision.

7. Hence, the civil revision petition is dismissed. It is, however, left open to the petitioner to seek enforcement of the award in accordance with law. There shall be no order as to costs.