
(2004) 02 AP CK 0088
In the Andhra Pradesh High Court
Case No : CRP No. 332 of 2003

B. Rama Swamy	Vs	APPELLANT
B. Ranga Swamy		RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 37(3)

Citation : AIR 2004 AP 280 : (2004) 2 ALD 791 : (2004) 3 ALT 1 : (2004) 2 ARBLR 323 : (2004) 55 SCL 561

Hon'ble Judges : Gopala Krishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : B. Adinarayana Rao, for the Appellant; Y. Ratnakar, for the Respondent

Judgement

Bilal Nazki, J

1. This matter comes before us as a result of the reference made by one of the learned Single Judge.
2. Heard Sri B. Adinarayana Rao, learned Counsel appearing for the petitioner and Sri Y. Ratnakar, learned Counsel appearing for the respondent.
3. It appears that the award passed by the Arbitral Tribunal was challenged before the Civil Court in terms of Section 34 of Arbitration and Reconciliation Act, 1996 (for short "1996 Act")
4. The petitioner who challenged the award did not present himself before the Lower Court on the date fixed. Therefore the application was dismissed by the Civil Court. Thereafter the petitioner filed an application in LA. No. 2017/2002 seeking restoration of the earlier application being O.P. No. 1524/99. When this application was listed, again the petitioner absented himself and this application was also dismissed. The order passed in LA. No. 2017/2002 dismissing the application in default and the order passed in O.P. No. 1524/99 dismissing the OP in default have been challenged by way of CRP No. 332/2003. When this matter

came before the learned Single Judge, he felt that the matter was of wider magnitude and much public importance. Therefore, he referred the following question to be decided by the Division Bench:

"Whether the learned Chief Judge, City Civil Court, Hyderabad who had dismissed LA. No. 2017/2002 has power or jurisdiction to make an order of default in OP No. 1524/99 in the light of the provisions of the Arbitration and Reconciliation Act 1996.?"

5. Mr. B. Adinarayana Rao, learned Counsel appearing for the petitioner mainly contended that the CPC was not applicable to the proceedings pending in Civil Court under the Arbitration and Reconciliation Act, 1996. He contended that under misapprehension an application was filed by his client under Order 9, Rule 9 before the Civil Court. As a matter of fact, the Civil Court has no jurisdiction to dismiss the application in default entertained by him u/s 34 of 1996 Act. According to him, once an application was filed u/s 34 of 1996 Act the only course open to the Civil Court is either to allow or dismiss the application by setting aside the award on the grounds which are mentioned in Section 34 of 1996 Act. Since the provisions of CPC have not been made applicable, the Civil Court cannot even dismiss the application u/s 34 in default. He has taken us to various provisions of 1996 Act.

6. Section 2(e) defines Civil Court as follows:

"Court" means the Principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court or a grade inferior to such principal Civil Court or any Court of Small Causes."

7. Section 5 lays down the extent of judicial intervention as follows:

"Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene except where so provided in this part."

8. According to Sri Adinarayana Rao, the Civil Courts cannot interfere or intervene in the matter, which is the subject-matter of arbitration except where it is specifically provided for in the first part of 1996 Act. Since in the first part of the 1996 Act it is nowhere provided that CPC would apply dismissal of OP in default was without jurisdiction. He also took us to Section 19 of 1996 Act which lays down that Arbitral Tribunal shall not be bound by the CPC or the Evidence Act and shall be free to lay down its own procedure. He referred to Section 36 of 1996 Act and submits that when the award has become final after expiry of statutory period, the award can be enforced by a Civil Court as a decree of the Court. He submits that if the intention of the legislature was to make the whole of the CPC applicable then it would not have provided in Section 36 that the

decree would be enforced as a decree of the Civil Court. He has also referred to Section 82 of 1996 Act and submits that it is for the High Court to lay down the procedure which can be followed by the Civil Court.

9. On the other hand the learned Counsel Mr. Ratnakar appearing for the respondent submits that the matter is not *res integra* as it has already been decided by the Supreme Court in a judgment rendered in *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*, . He further submits that 1996 Act has in fact two parts - one deals with the procedure before the Arbitrator and the other deals with the Courts. He submits that Section 2(e) defines Civil Court and Civil Court is not a *persona designata* but a Civil Court as is also understood by Civil Courts Act and by CPC. The Civil Court can interfere and intervene and the power u/s 9 is available to the Civil Court before arbitration, during arbitration and even after arbitration. He further contended that in terms of Section 4 of CPC, the provisions of CPC will apply to all the proceedings in Civil Court unless expressly barred. These matters according to us have been directly considered by the Supreme Court in *M/s. T.L Limited case* (*supra*). The controversy was similar in nature. An appeal had been directly filed before the Supreme Court in view of Section 37 of 1996 Act. Section 37 of 1996 Act relates to appealable orders. Under Sub-section (3) of Section 37 it has been laid down that no second appeal shall lie from an order passed under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court. Since this provision was there, the appellant in that case before the Supreme Court did not file second appeal but filed SLP before the Supreme Court. The question was that if the remedy of second appeal had been barred u/s 37(3) whether a revision u/s 115 of CPC was still available. Though the learned Judges wrote different judgments but the conclusions were same. The question which fell for consideration of the Supreme Court was mentioned in para 4 of the judgment which is reproduced herein:

"The principal question that arises for our consideration is whether a revision petition u/s 115 of the CPC (the "Code") lies to the High Court as against an order made by a Civil Court in an appeal preferred u/s 37 of the Act. If so whether on the facts and circumstances of this case, such a remedy by way of revision is an alternate and efficacious remedy or not."

10. We also reproduce paras 9, 10, 18, 20 and 21 of the Supreme Court judgment wherein the question was answered, as follows:

9. But Mr. Parasaran contended that the said order is based on an earlier reported judgment of this Court in the case of *Shyam Sunder Agarwal and Co. Vs. Union of India*, . According to Mr. Parasaran, the Court in the case of *Nirma Ltd. (supra)* has erroneously founded its conclusion on the said judgment in *Shyam Sunder Agarwal's case*. Learned Counsel argued that the case of *Shyam Sunder Agarwal (supra)* arose under the Arbitration Act, 1940 which Act had made the provisions of the Code specifically applicable to proceedings arising under the said Act in the Civil Court whereas in the present Act such provision

making the Code applicable is not found. Therefore, there is a substantial difference in law between the cases of Shyam Sunder Agarwal (supra) and Nirma Ltd. (supra). Therefore, the order of this Court in Nirma Ltd. (supra) is not a good law, hence, requires reconsideration.

10. We do not agree with this submission of the learned Counsel. It is true in the present Act application of the Code is not specifically provided for but what is to be noted is; is there an express prohibition against the application of the Code to a proceeding arising out of the Act before a Civil Court? We find no such specific exclusion of the Code in the present Act. When there is no express exclusion we cannot by inference hold that the Code is not applicable.

18. Power conferred on the High Court u/s 115 of the Code of Civil Procedure, 1908 over all Subordinate Courts within its jurisdiction is a supervisory power and has been distinguished from its power of appeal to correct errors of fact and law. The power of revision u/s 115 being in the nature of power of superintendence to keep subordinate Courts within the bounds of their jurisdiction cannot be readily inferred to have been excluded by provisions of a special Act unless such exclusion is clearly expressed in that Act. The Arbitration and Conciliation Act of 1996 which is for consideration before us by provision contained in Section 37(3) of the said Act only takes away the right of second appeal to the High Court. The remedy of revision u/s 115 of the CPC is neither expressly nor impliedly taken away by the said Act.

20. The true rule is said by Lord Simonds in *Adaikappa Chettar's* case (supra) that:

"When a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorized by such rules notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

21. Provisions of Section 37 of the Act of 1996 bars second appeal and not revision u/s 115 of the Code of Civil Procedure, The power of appeal u/s 37(2) of the Act against order of Arbitral Tribunal granting or refusing to Grant an interim measure is conferred on Court, Court is defined in Section 2(e) meaning the principal Civil Court of original jurisdiction which has jurisdiction to decide the question forming the subject-matter of the arbitration if the same had been the subject-matter of the suit. The power of appeal having conferred on a Civil Court all procedural provisions contained in the Code would apply to the proceedings in appeal. Such proceedings in appeal are not open to second appeal as the same is clearly barred under Sub-section (3) of Section 37. But I agree with the conclusion reached by brother Hedge, J. that the supervisory and revisional jurisdiction of High Court u/s 115 of the CPC is neither expressly nor impliedly barred either by the provisions of Section 37 or Section 19(1) of the Act. Section 19(1) under Chapter V of Part I of the Act merely states that the Arbitral Tribunal

shall not be bound by the Code of Civil Procedure. The said action has no application to the proceedings before Civil Court in exercise of powers in appeal u/s 39(2) of the Act"

11. Following this judgment of the Supreme Court, we are of the view that the CPC is applicable to the proceedings before the Civil Court under Arbitration Act, 1996. What we understand from the judgment of the Supreme Court is that the CPC would be applicable unless it was specifically barred. Even if the CPC provides for second appeal in certain case, but it will not be available because of the bar created u/s 37(3) of the Act.

12. Since the power to entertain an application u/s 34 of 1996 Act is only available to the Civil Court and when such an application is filed before the Civil Court, all the powers necessary for disposal of such application under CPC would be available to such a Court. We answer the reference accordingly. The revision might have been filed even on other grounds. Therefore, we are not disposing of the revision. Let the revision be placed before the learned Single Judge for disposal on merits.