
(2006) 04 AP CK 0016
In the Andhra Pradesh High Court
Case No : CRP No. 1866 of 2006

F.A. and C.A.O./W.S.T./S.C., South Central Railway and Others	APPELLANT
Vs	
Chem Equipments and Coolers	RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 8(1), 8(2)
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2), 151

Citation : (2007) 2 ALD 16 : (2006) 4 ALT 61 : (2007) 2 ARBLR 466

Hon'ble Judges : D.S.R. Varma, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : C.V. Vinitha Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—This revision is directed against the order dated 23.01.2006 passed by the court below, dismissing the IA No. 371 of 2004 in OS No. 360 of 2003, filed u/s 151 CPC, on the file of the III Senior Civil Judge, City Civil Court, Secunderabad.

2. The petitioners herein are the defendants in the suit. The suit was filed for recovery of money of Rs. 1,66,360.

3. The contention of the learned counsel appearing for the petitioners is that there is an arbitration clause available in the agreement, which is called "Indian Railway Service (IRS) Conditions of Contract". It appears that the respondent-plaintiff addressed a letter to the department indicating that he was ready to proceed with the arbitration proceedings to settle the matter. In fact, this letter prompted the petitioners-defendants to file the interim application, IA No. 371 of 2004, which has been rejected by an order dated 23.01.2006. Hence, the present civil revision petition.

4. In this revision, it is to be noted that when the agreement provides for an arbitration and when a suit has been filed without being any reference to the

arbitration, it is always open for the defendants to move the court by way of an application u/s 8(1) of the Arbitration and Conciliation Act, 1996 (for brevity "the Act"). Sub-section (2) of Section 8 of the Act postulates that the arbitration agreement shall be filed duly along with the application. Sub-section (1) of Section 8 of the Act further specifically postulates that the petition to refer the parties to arbitration is subject to the condition that such an application shall be filed before submitting the first statement on the substance of the dispute. Such first statement in these cases can only be termed as written statement.

5. It is on record that the written statement had been filed and issues have been settled and the evidence on the part of the respondent-plaintiff also had commenced. At that point of time, basing on the letter addressed by the respondent-plaintiff, the petitioners-defendants filed the present IA u/s 151 of CPC. In fact, such an application could and should have been filed only under Sub-section (1) of Section 8 of the Act.

6. The learned counsel appearing for the petitioners-defendants further contends that in the written statement a specific averment is made that the suit was not maintainable, in the light of the arbitration clause incorporated in the agreement. But we are of the view that as contemplated under Sub-section (1) of Section 8 of the Act, such an application ought to have been taken only before making the first statement, i.e. written statement. Unfortunately, the written statement had been filed taking all possible objections including the jurisdiction of the court to try the suit when arbitration clause is available. When once written statement is filed, the court is precluded from proceeding with the said application.

7. However, the issue is in the nature of jurisdiction. In normal course as postulated under Order 14 Rule 2 of CPC, issues have to be answered. However, sub-rule (2) of Rule 2 of Order 14 of CPC, which is in the nature of exception to the general rule, envisages that the court can decide an issue as a preliminary issue under the conditions mentioned in clauses (a) and (b) and sub-rule (2) of Rule 2 of Order 14. Perhaps, the present case falls under clause (a) of the said sub-rule (2) of Rule 2 of Order 14. Therefore, when actually the trial of the suit is in progress, it is rather too late for the petitioners-defendants to make the present application. In fact, they ought to have filed an application under Order 14 Rule 2 to have the issue of jurisdiction as a preliminary issue. Since that is not done, we do not find any irregularity or illegality in the order impugned in this revision and the same is liable to be dismissed.

8. Accordingly, the civil revision petition is dismissed. However, it is open for the petitioners-defendants to approach the court as law provides, other than the procedure prescribed u/s 8 of the Act. No costs.