
(2001) 06 AP CK 0060
In the Andhra Pradesh High Court
Case No : TCMP No. 126 of 2001

Kvaerner Cementation India Limited, Mumbai	APPELLANT
Vs	
Bharat Heavy Plate and Vessels Limited, Visakhapatnam	RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Andhra Pradesh Civil Courts Act, 1972 — Section 11
Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 7
Arbitration and Conciliation Act, 1996 — Section 2, 34
Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2001) 6 ALD 272

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : V. Ravinder Rao, for the Appellant;

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—This petition is filed seeking transfer of OP. No .1743 of 2000 from the file of the Court of the Principal District Judge, Visakhapatnam, to the file of any other Additional District Judge, in the same district, on the ground that the pendency in the District Court is heavy and since the matter which arises out of an order under the Arbitration and Conciliation Act, 1996 (for short "the Act"), requires expeditious disposal. The petitioner in fact moved the District Court, Visakhapatnam, in IA.No.819/2001 in OP. No . 1743/2000 with the above prayer, but the same was dismissed by the learned District Judge, on the ground that under the provisions of the Act, he alone, but not an Additional District Judge, has jurisdiction to entertain the main OP. No . 1743 of 2000.

2. Learned Counsel for the petitioner relying on S. Srinivas Rao v. High Court of A.P., 1988 (2) ALT 586 and New Jaji Labour Society Vs. Haji Abdul Rahaman Saheb and Others, , contended that the assumption of the learned judge that he is persona designata under the Act and so he cannot make over the proceedings to Courts of coordinate jurisdiction is erroneous. The contention of the learned

Counsel for the respondents is that since the District Court dismissed transfer petition and that order of dismissal is not challenged the said order became final and, so, this petition is not maintainable. His next contention is that Section 2(e) of the Act contemplates the matters arising under the Act being decided by the Principal Civil Court of original jurisdiction in the district only and so the case has to be decided only by the Principal District Judge but not by any Additional District Judge.

3. Section 34 of the act, lays down that an application for setting aside the arbitral award has to be made to a "Court". "Court" is defined in Section 2(e) of the Act as under:

"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 of a grade inferior to such Principal Civil Court or any Court of Small Causes."

A combined reading Sections 34 and Section 2(e) of the Act shows that proceedings for setting aside an arbitral award have to be initiated or instituted only in the Principal Civil Court of original jurisdiction having jurisdiction to decide the subject matter of arbitration, but no other Court. The jurisdiction of the "Court" has to be decided as per the Provisions of C.P.C. and the A.P. Civil Courts Act. The only embargo laid down in Section 2(e) of the Act is that a civil Court inferior to the Principal Civil Court, or any Court of Small Causes, cannot exercise jurisdiction to decide the matters arising under the Act. When a proceeding of any type is instituted in a Civil Court, that proceeding will be governed by the Provisions of the A.P. Civil Courts Act. In this case the Principal Court of Civil jurisdiction is the District Court. Section 11 of the Civil Courts Act lays down that an Additional District Judge can exercise the powers of a District Judge, and also has power to perform all or any of the functions of the District Judge. Therefore, it is clear that an "Additional District Judge" also is a "District Judge" as has all the powers of the District Judge, while dealing with the matters made over, or assigned to him, by the District Judge.

4. In Srinivas Rao's case (supra), relied on by the learned Counsel for the petitioner, the question before the Division Bench was whether the Chief Judge of Small Causes Court has power to transfer the appeals filed before him u/s 20 of the Rent Control Act to the Additional Chief Judge, City Small Causes Court. The Division Bench, after reviewing the law on the subject and the distinction between a "Court" and "persona designata", held that the Chief Judge exercising appellate jurisdiction u/s 20 of the Rent Control Act is not persona designata and so, can transfer the appeals filed before him u/s 20 of the Rent Control Act to Additional Chief Judge, City Small Causes Cases and the Additional Chief Judge has power to dispose of the appeals Made over or assigned to him by the Chief Judge. The Division Bench further held that the Principal Subordinate Judge

exercising appellate jurisdiction, u/s 20 of the Rent Control Act in mufissil area also is not persona designata and so appeals filed before him can be made over or assigned to the Additional Subordinate Judge of that place.

5. In New Jaji Labour Society's case (supra), another Division Bench of this Court, was dealing with Section 7 of the A.P. Land Grabbing (Prohibition) Act, 1982 prior to its amendment by Act and XVI of 1987, when the "Special Court" ; under the said Act was "District Judge". After amendment to the said Act by Act XVI of 1987, the District Judges are designated as Special Tribunal u/s 7A of that Act. The question before the Division Bench was whether the District Judge acting as "Special Court" under the Provisions of the that Act has power to make over the case filed by him under the Act to Additional Disrict Judge, and whether the Additional District Judge has power to deal with the case made over to him. After referring to Srinivas Rao's case (supra) and other cases, a Division bench of this Court held that the "District Judge" while discharging the functions of a "Special Court" (under the Unamended Land Grabbing (Prohibition) Act) does not discharge the duties as persona designata, but acts only as a civil Court of original jurisdiction and, as such, has power to transfer or make over the cases under the said Act to the Additional District Judge. The ratio in those decisions applies on all fours to the facts of this case also, because Section 2(e) of the Act only contemplates the "Court" in which the proceedings referred to Section 34 of the Act have to be instituted and nothing more. There is no other provision in the Act which lays down that only that Court where the proceedings were instituted should try and dispose the case as PERSONA DESIGNATA and not as a "Court". Therefore, the Principal Civil Court of original jurisdiction, before whom proceedings under the Act are instituted, acts only as "Civil Court", but not as "persona designata" and therefore the proceedings instituted u/s 34 of the Act would be governed by the provisions of the Civil Courts Act. u/s 11 of the Civil Courts Act, District Judge has power to make over or assign the cases instituted before him under the Act to the Additional District Judge. Hence, contention of the learned counsel for the respondent that Additional District Judge has no power to deal with and dispose of the cases under the Act is not sustainable.

6. I am unable to agree with the contention of the learned counsel for the respondent that since the petitioner did not question the order in I.A. No. 819 of 2001 refusing to transfer the O.P. to any other Additional District Judge at Visakhapatnam, this petition is not maintainable. It is well settled that the District Judge and the High Court have concurrent power or jurisdiction to transfer cases u/s 24 of the Code of Civil Procedure. Proceedings for transfer can be instituted either simultaneously or separately before the High Court and the District court. Therefore, even after dismissal of the petition by the District Judge, a fresh application seeking transfer the same can be filed before the High Court u/s 24 of the Code of Civil Procedure. So, merely because the petitioner did not challenge the order of the District Judge dismissing the petition the I.A. for transfer, it cannot be said that the present petition is not maintainable.

7. There appears to be force in the contention of the Petitioner that the file of the District Judge is over burdened with the proceedings of the Act and so it may not be possible for the District Judge to dispose of the cases under the Act expeditiously. The Act was brought into force to settle disputes expeditiously, and if cases arising u/s 34 of the Act are not disposed of expeditiously, the object of the Act would get frustrated, and the proceedings u/s 34 of the Act would also become proceedings like civil suits.

8. Therefore, the petition is allowed and O.P. No. 1743 of 2000 on the file of the District Judge, Visakhapatnam is transferred to the Court of the II Additional District Judge, Visakhapatnam, who shall dispose of the same at an early date, at any rate, within a period of 3 months from the date of receipt of a copy of this order.