
(2001) 06 AP CK 0048

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1945 of 2001

Managing Director, Sundaram Finance Ltd.

APPELLANT

Vs

G.S. Nandakumar

RESPONDENT

Date of Decision : 28-06-2001

Acts Referred:

Arbitration Act, 1940 — Section 2

Arbitration and Conciliation Act, 1996 — Section 2, 2(1), 36, 8, 9

Civil Procedure Code, 1908 (CPC) — Section 2(4)

General Clauses Act, 1897 — Section 3(17)

Citation : (2001) 4 ALT 383 : (2001) 2 APLJ 95 : (2001) 3 ARBLR 37

Hon'ble Judges : B. Sri Atchutananda Swamy, J

Bench : Single Bench

Advocate : Prabhakar Sripada, for the Appellant; D. Vijaychandra Reddy, for the Respondent

Final Decision : Allowed

Judgement

1. The Managing Director, Sundaram Finance Ltd., Madras and the local Branch Manager at Chittoor filed this revision petition aggrieved by the order to the extent that it went against their interest.

Heard both the counsel.

2. The respondent filed a suit O.S. No. 185 of 2001 on the file of First Addl. Junior Civil Judge, Chittoor for rendition of accounts against the petitioners herein along with I.A. No. 150 of 2001 seeking injunction restraining the petitioners herein from seizing the two lorries which were hypothecated to the petitioners on hire purchase agreement and obtained exparte injunction. Thereafter, the petitioner herein filed I.A. Mo. 214 of 2001 bringing to the notice of the Court that the hire purchase agreement contains a clause for appointment of an Arbitrator to be nominated by the first petitioner herein and as such the Court has no jurisdiction to entertain the suit and the same has to be dismissed. The Court seemed to have been taken an objection that two reliefs cannot be

claimed in a single petition. While representing the matter the petitioner herein agreed to confine the relief for appointment of an Arbitrator without prejudice to their right to contest the temporary injunction granted earlier. The Court having heard the matter at length directed the parties to settle the dispute through arbitration. But at the same time the Court observed that the respondent, i.e., the plaintiff in the suit shall possess and enjoy the two vehicles in issue herein till the attainment of finality of the prospective arbitral award which may be passed between them and subject to the said award on his written undertaking to keep the said vehicles intact in his safe custody in a road worthy condition without creating any charge or encumbrance over the same and on his furnishing security for a sum of Rs. 50,000 to the satisfaction of the Court by 12-4-2001, failing which automatically he shall not be entitled to enjoy the benefits of the order any more. Aggrieved by the order of the lower court to that extent, the petitioner-company filed the revision petition.

3. The case of the petitioners herein is that the application was filed before the Court below u/s 8 of the Arbitration and Conciliation Act, 1996 ("the Act"), where under an obligation is cast on the judicial authority to refer the parties to arbitration, when the arbitration agreement contains such a clause and one of the parties applies for a reference to the Arbitrator as contemplated under the agreement. Hence, the Court below having referred the parties to arbitration exceeded its limits in directing the custody of the two lorries covered by hypothecation with the respondent. If any party intends to get any interim orders during the pendency of the arbitration proceedings, such a party can only make an application to a Court u/s 9 of the Act. It is not in dispute that Section 9 deals with interim measures to be taken by a Court at the instance of one of the parties to the dispute either before or during arbitral proceedings or after making the arbitral award, but before it is enforced in accordance with Section 36 of the Act.

4. The only question to be considered now in this revision petition is which is the Court that the parties have to approach in the light of the definition given for the word "Court" in Section 2(1)(e) of the Act. It is useful to extract the definition of Court.

"(e) "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."

While it is the case of the petitioner that the parties have to approach the District Court seeking any interim orders in the light of the language used in Section 2(1)(e), the respondent contends that any Principal Civil Court of original jurisdiction having jurisdiction to decide the questions forming the subject matter of arbitration if the same had been the subject matter of the suit may be

approached. In other words, the contention of the counsel for the respondent is that either of the parties can approach civil court having original jurisdiction if that Court is having competence to decide the subject of the suit and as the value of the suit is less than three lakhs, the Court was well within its competence in passing the above order and do not call for any interference from this Court.

5. To decide the Court is having jurisdiction, it is useful to refer to the definition of the District in the Code of Civil Procedure, 1908 and District Judge under the General Clauses Act, 1897.

Section 2(4) of the CPC defines :

""district" meaning the local limits of the jurisdiction of a Principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court";

In Section 3(17) of the General Clauses Act, a District Judge is defined as:

""District Judge" shall mean the judge of principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;"

From the above, it is seen that the words used in Section 2(1)(e), i.e., Principal Civil Court of original jurisdiction in a District is referable to the District as defined in the CPC and District Judge as defined in the General Clauses Act.

6. This issue was considered in I.T.I. Ltd., Naini, Allahabad Vs. District Judge, Allahabad and others, . The learned Judge having taken into consideration the definition of the District as well as District Judge and also by considering the words "means", "includes" and "does not include" employed in Section 2(1)(e) held that the Court is referred in Section 9 is the Principal District Court having original jurisdiction in the District in the following terms :

"5. Unless the context otherwise requires the term "Court", as defined in Section 2(e) of the Act, "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 question forming the subject matter of 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". The term "Court" as elucidated in Section 2(c) of the Arbitration Act, 1940, meant "a Civil Court having jurisdiction to decide the questions forming the subject matter of the reference if the same had been the subject matter of a suit". A small Causes Court was expressly excluded, except for the purpose of Section 21, from the purview of the term "Court" as defined in the said Act. By using the words "means", "includes" and "does not include" in Section 2(e) of the new Arbitration Act, the Parliament has exhaustively explained the meaning of the term "Court" in that the word "means" is a term of restriction, while the word "includes" is a term of enlargement and when both

the words "means" and "includes" are used together to define a thing, the intendment of the Legislature is to supply restricted meaning to the term (See Smt. Lachcho Vs. Dwari Mal, ; M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh, ; P. Kasilingam and others Vs. P.S.G. College of Technology and others, . The expression "but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes" used in Section 2(e) of the Act, further restricts the meaning of the term "Court" defined therein. The statement of objects and reasons as given in the Arbitration and Conciliation Bill, 1995 would point to the fact that one of the main objects, sought to be achieved by the Bill was "to minimize the supervisory role of Courts in arbitral process". This object might be overreached by giving an amplified meaning to the term "Court". Section 3(17) of the General Clauses Act, 1897 defines the term "District Judge" as "the Judge of a principal civil Court of original jurisdiction". The High Court in the exercise of its ordinary original jurisdiction is not included in the term "District Judge" as defined in Section 3(17) of the General Clauses Act, 1897 albeit the term "Court" used in the Act includes the High Court in exercise of its original jurisdiction." (p. 314)

I am in respectful agreement with the reasoning given in the above judgment and hold that the Court that is referred in Section 9 is the Court having Principal Original jurisdiction in the District, i.e., the Principal District Court.

Further, this view gets support from the language used in sections 8 and 9. In Section 8 the word used is Judicial Authority, which means and includes any forum exercising judicial powers. In Section 9 the word used is "Court" referable to the Court as defined in Section 2(1)(e). From the above distinction also it can be safely concluded that the Court referred in Section 9 is District Court but not any other Court having original jurisdiction.

In the light of the view taken by me, the suit filed by the respondent in the Court of First Addl. Junior Civil Judge, Chittoor is not maintainable in law. But, at the same time, as the word used in Section 8 is judicial authority I need not interfere with the order of the Court below to the extent of directing the parties to settle the dispute through arbitration as per the terms of the agreement. The rest of the order cannot be sustained in law and it is accordingly set aside. But, at the same time, as the Act made a provision for obtaining interim orders even before arbitration proceedings are commenced, I direct the respondent to approach the District Court if he is so advised seeking interim orders with regard to the custody of the vehicles. As and when an application is filed by the respondent, the District Judge shall consider the same on merits and in accordance with law. As the respondent is still in possession of the lorries I direct the petitioners not to affect seizure of the vehicles for a period of four weeks from today.

7. Accordingly, the Civil Revision Petition is allowed in part.