
(2014) 02 AP CK 0137
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 151 of 2014

M/s. RAM Informatics Limited	Vs	APPELLANT
CMS Computers Ltd. and Another		RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Arbitration Act, 1940 — Section 21
Civil Procedure Code, 1908 (CPC) — Section 89
Constitution of India, 1950 — Article 12 226
Legal Services Authorities Act, 1987 — Section 20

Citation : (2014) 3 ALD 88 : (2014) 3 ALT 630

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : B. Chandrasen Reddy, for the Appellant; K. Gopal for Respondent No. 1 and Government Pleader for General Administration Dept., for the Respondent

Final Decision : Disposed Off

Judgement

Kalyan Jyoti Sengupta, C.J.—This writ appeal is filed against the judgment and order of the learned trial Judge, dt. 12.12.2013 by which the writ petition has been dismissed. All the parties are present before us. We admit the appeal and decide the matter finally after consent of all the parties.

2. The appellant before us filed the writ petition against CMS Computers Limited, which is admittedly a private identity not having any instrumentality of the State in any manner whatsoever within the Article 12 of the Constitution of India, nor even in our view is the "other authorities" within the meaning of Article 226 of the Constitution of India. Why we say so, there has been no pleading as such in the affidavit filed in support of the writ petition before the learned trial Judge.

3. Learned counsel for the appellant/petitioner submits that the observations of the learned trial Judge are not correct and the learned trial Judge should have entertained the writ petition and granted the relief.

4. Learned counsel for the respondents support the judgment and submit jointly that highly disputed questions of fact are mentioned in the writ petition and these disputes emanate from a contractual agreement arrived at between the parties to execute the works in private law.

5. We have gone through the impugned judgment and order of the learned trial Judge. We are in full agreement with His Lordship that the matter of this nature cannot be decided by Writ Court. We are also of the view that even if for arguments sake, CMS Computers Limited is assumed "other authority" within the meaning of Article 226 of the Constitution of India, nature of the transaction between the appellant on one hand and CMC Computers Limited and Government of Andhra Pradesh on the other hand is absolutely that of commercial and private character. According to us, "other authorities" as defined under Article 226 of the Constitution of India are amenable to Writ jurisdiction only when it discharges statutory duty of public character. In this case the transaction is not in relation to the duty of public character to be discharged. Therefore, the decision of the Supreme Court relied on by the learned counsel for the appellant in Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, is not applicable, as has been correctly observed by the learned trial Judge. We would have ended the matter here dismissing the writ appeal, but we think we will be failing to discharge our duty if we do not consider the provisions of Section 89 of the CPC (CPC), which have been adopted by Rule 24 of the Writ Rules framed by this Court.

6. The confidence and faith of the public litigant in the judiciary is preserved, in our opinion the moment the litigant gets justice as early as possible, whether by the regular Court or by alternative method. After all, the administration of justice as a whole has been rested with the judiciary and the judiciary is to take up such measure for which the people will get justice without any hassles and without being entangled unnecessarily by procedural formalities.

7. Before the introduction of Section 89 of CPC, there was no mechanism for getting the disputes involved in pending litigation resolved outside the Court after repealing Arbitration Act, 1940. Of course, in the Arbitration Act, 1940 such provision was there, but in the present Act - the Arbitration and Conciliation Act, 1996 there is no such provision. Section 89 of CPC had supplemented and in true sense has restored the provisions of Section 21 of the Arbitration Act, 1940. Under the circumstances, we think that Section 89 of CPC shall be invoked in this case. Section 89 of CPC provides as follows:

89. Settlement of disputes outside the Court.-

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for -

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred -

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

8. Taking note of the provision, we find there is a clause, being clause 8.4, in the tripartite agreement, which is set out hereunder:

Twins and operator have agreed to appoint Managing Director of Andhra Pradesh Technology Services Ltd., Sri Suresh Chanda, I.A.S., to be the Adjudicator and in the event of his willingness to go out of adjudicatorship, a new adjudicator can be appointed by mutual agreement.

9. It appears on a close reading of the clause that all the parties have essentially agreed for adjudication of the matter by the adjudicator, named Sri Suresh Chanda, I.A.S., Managing Director of Andhra Pradesh Technology Services Limited. According to us, the aforesaid provision is nothing but initiation of the parties of getting the matter resolved outside Court by alternative mechanism. However the said Clause is not clearly understandable as its nature or character of alternative disputes resolution mechanism. Section 89 of CPC provides for various options in absence of arbitration agreement, and the Court can on agreement of the parties creates amongst other an arbitration mechanism. When we noticed the intention of the parties for adjudication of the disputes outside the Court, we think that the option of the arbitration would be best one having regard to the nature of the disputes involved. We are happy to note that all the parties have agreed to get their disputes resolved by arbitration mechanism.

10. Under the circumstances, we refer all the disputes which emanate from the tripartite agreement amongst the parties to the sole Arbitrator, Mr. Justice A. Gopal Reddy, a retired Judge of this Court, who will make and publish an Award within a period of five months from the date of entering upon the reference.

11. The learned Arbitrator will fix his own remuneration and also costs and expenses of the arbitration proceedings upon deliberation and consultation with the parties.

12. The writ appeal is accordingly disposed of. There will be no order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.