

(1999) 09 AP CK 0028
In the Andhra Pradesh High Court
Case No : OP No. 2 of 1999

Radiant Electornics Ltd., Bhubaneswar	APPELLANT
Vs	
Electronics Corporation of India, Hyd.	RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 2, 34, 42

Citation : (1999) 6 ALD 173

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : Mr. K. Somakonda Reddy, for the Appellant; Mr. C. Trivikrama Rao, for the Respondent

Judgement

1. This order will dispose of the preliminary objection of the respondent regarding the maintainability of the application.
2. In IA No. 16 of 1997, Justice P. A. Choudari (former Judge of this Court) had been appointed Arbitrator u/s 11 of the Arbitration and Conciliation Act, 1996 (for short, "the new Arbitration Act"). The Arbitrator has passed the award on 15-1-1999. The petitioner has filed the application u/s 34 of the new Arbitration Act for setting aside the Award passed by the Arbitrator on 15-1-1999
3. The question that falls for determination is whether the application u/s 34 of the new Arbitration Act for setting aside the Award lies in this High Court, because it is not a Court within the meaning of Section 34 *ibid*.
4. Learned Counsel of the petitioner has argued that u/s 42 of the new Arbitration Act, the Court, where the application has been made for appointment of Arbitrator, alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of the agreement and no other Court shall have jurisdiction try it. Because the arbitrator has been appointed by the High Court and, therefore, no other Court, except the High Court, is competent to decide the application which has been filed u/s 34 of the new Arbitration Act for

setting aside the Award.

5. Section 42 of the new Arbitration Act reads as under:

"Notwithstanding anything contained elsewhere in this part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court."

6. A look at Section 42 of the new Arbitration Act shows that when an application on an arbitration agreement has been made in a Court, then that Court alone shall have jurisdiction over the arbitral proceedings and as also on all subsequent applications arising out of that agreement shall be filed in that Court and in no other, Court.

7. The question is whether the application for appointment of an Arbitrator had been made in a Court. I had the occasion to deal with almost similar matter in the case of Bommisetty Prasada Rao, and others Vs. SAS Mines and Minerals Ltd., Hyderabad and another, . I have found that the High Court of Andhra Pradesh is not a Court exercising original civil jurisdiction and therefore it is not a Court within the meaning of Section 2(e) of the new Arbitration Act. Court is defined in Section 2(e) of the new Arbitration Act; u/s 11 of the new Arbitration Act a request for appointment of an Arbitrator is to be made to the Chief Justice or any person or institution designated by him to appoint an Arbitrator and under subsection (10) of Section 11, the Chief Justice may make such Scheme as he deemed fit and proper for appointment for dealing with the matters, under sub-section (4) or sub-Section (5) or sub-section (6) of the new Arbitration Act. In the Scheme for Arbitration for appointment of Arbitrators, 1996, the Judge of the High Court, who had at the relevant time has been original side work in the High Court, where the value of the subject matter exceeds Rs.5,00,000 but does not exceed Rs. 1,00,00,000 is the authority to deal with the request for appointment of Arbitrator vide Clause 3(e) of the Scheme. The function of the Judge of the High Court is only to appoint an Arbitrator to decide the application made for appointment of an Arbitrator, but it does not mean that the original side work in the High Court means civil suits of all types or any type including the proceedings civil in nature, but it relates to exercising original jurisdiction under the special enactments like Indian Companies Act, Indian Divorce Act, Representative of peoples Act etc. It is also pertinent to note that the application for setting aside arbitral Award is to be filed in a Court u/s 34 of the new Arbitration Act. Because, High Court is not a Court and the appointment of Arbitrator has not been made in the capacity of the Court within the meaning of Section 2(e) of the new Arbitration Act, with the aid of Section 42 of the new Arbitration Act, it cannot be said that the application for setting aside the Award of the Arbitrator u/s 34 of the new Arbitration Act has to be made in the High Court. u/s 11(6) of the new Arbitration Act, a request for appointment of Arbitrator may be made to the Chief

Justice or person or institution designated by him.

8. If it is assumed for the sake of arguments that Chief Justice designates a private person or an institution to consider the application for appointment of the advocate and in turn that person or institution appoints an Arbitrator, can it be said that the application for setting aside the Award can be filed before it u/s 34 read with Section 42 of the new Arbitration Act treating him or it to be a Court?

9. For the foregoing reasons, I reach the conclusion that the impugned application does not lie in the High Court and therefore it is returned to the petitioner to be filed before competent Court, having jurisdiction to try it, within a period of one month.

10. The petition is accordingly disposed of.