
(2009) 03 AP CK 0044
In the Andhra Pradesh High Court
Case No : Tr.C.M.P. No. 480 of 2008

The Superintendent Engineer (R and B)	APPELLANT
Vs	
Propressive Construction Limited and Others	RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 36
Civil Procedure Code, 1908 (CPC) — Section 151, 20, 24
Contract Act, 1872 — Section 28

Citation : (2009) 5 ALD 59

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.Y.K. Rayudu, for the Appellant; C.H. Purnachandra Rao, for the Respondent

Judgement

P.S. Narayana, J.—Heard Sri M.Y.K. Rayudu and Sri C.H. Purnachandra Rao, the learned Counsel representing the parties.

2. The Transfer C.M.P. is filed u/s 24 r/w. Section 151 of the CPC (hereinafter in short referred to as "Code" for the purpose of convenience) praying for transfer of O.P. No. 400/2008 pending on the file of District Judge, Karimnagar to the Court of III Additional Chief Judge, City Civil Court, Hyderabad to be tried along with O.P. No. 1409/2008 filed by the petitioner and to pass such other suitable orders.

3. Sri M.Y.K. Rayudu, the learned Counsel representing the petitioner had taken this Court through the contents of the affidavit filed in support of the Transfer C.M.P. u/s 24 of the Code and would maintain that in the facts and circumstances of the case, the transfer to be ordered. The learned Counsel also relied upon certain decisions to substantiate his submissions.

4. On the contrary, Sri Purnachandra Rao, the learned Counsel representing the contesting respondent would maintain that the Court in which the O.P. had been filed has no jurisdiction to entertain the said O.P. and now realizing the same, to

cure the defect this Transfer C.M.P. had been thought of by invoking Section 24 of the Code and under the guise of invoking Section 24 of the Code, such defect cannot be cured and hence it is impermissible to order the transfer as prayed for.

5. Heard the Counsel.

6. The petitioner, Superintending Engineer (R&B), R&B Circle, Karimnagar filed the present Transfer C.M.P. u/s 24 of the Code praying for transfer of O.P. No. 400/2008 pending on the file of District Judge, Karimnagar to the Court of III Additional Chief Judge, City Civil Court, Hyderabad to be tried along with O.P. No. 1409/2008 filed by the petitioner and to pass such other suitable orders. It is stated that the respondent entered into an agreement on 27-10-1999 to do the work of improvement of Karimnagar-Jagitial road from K.M. 23 to 49 and Karimnagar-Kama Reddy road from K.M. 33 to 42 for a sum of Rs.9,49,80,087-39 and the said work was to be completed within 12 months from 27-10-1999, but he could complete the work only by 31-12-2001 after obtaining three extensions and received final bill on 31-7-2002. The respondent-contractor by letter dated 10-6-2002 which was handed over in the petitioner's office on 31-7-2002 requested to consider his ten claims raised therein and those claims were rejected on 26-8-2002. It is also further stated that the respondent-contractor by letter dated 27-3-2004 requested that his letter dated 10-6-2002 may be treated as notice for arbitration of his claim raised therein. It is further stated that the respondent-contractor approached Arbitral Tribunal raising nine claims and out of those four claims were new claims which were not raised in his letter dated 10-6-2002. The said claims were opposed. It is also stated that by award dated 15-8-2007 the Arbitral Tribunal allowed claims 1 and 3 and partly allowed claim No. 4 with interest at 12% p.a. and dismissed the other claims. Further it is stated that the petitioner filed O.P. No. 1409/2008 on the file of Chief Judge, City Civil Court, Hyderabad on 31-5-2008 praying to set aside the award so far as it is against the petitioner. The said O.P. had been subsequently made over to the III Additional Chief Judge, City Civil Court, Hyderabad. The respondent-contractor also filed O.P. No. 400/2008 on the file of District Judge, Karimnagar seeking to set aside the award against the claims rejected. In such circumstances, the present Transfer C.M.P. had been filed praying for transfer specifying the undernoted reasons:

1. The respondent and its Advocate are permanent residents of Hyderabad.
2. The Arbitral proceedings were held and award was passed in Hyderabad.
3. The Chief Engineer's (R&B) office is situate at Hyderabad.
4. The O.P. arise out of the same award and if they are tried together it is not only convenient to the parties, but it avoids possibility of conflicting orders being passed.
7. No doubt certain submissions were made by the Counsel on record placing reliance on certain decisions as well. The learned Counsel representing the

contesting respondent placed strong reliance on Nila Construction Company Vs. Sanghi Industries Ltd., Cement Division, wherein the learned Judge of this Court at para-14 observed:

It need not be emphasized that the CPC in its entirety applies to proceedings under the Arbitration Act. The jurisdiction of the Courts under the Arbitration act to entertain a proceeding for filing an award is accordingly governed by the provisions of the Code of Civil Procedure. In Hakam Sing Vs. Gammon (India) Ltd., by Clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the City of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the Courts at Bombay. It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act. Therefore, it is the contention of the learned Counsel for the respondent that when a part of cause of action has arisen at Rangareddy, there is nothing wrong in the respondent approaching Principal Dist. Judge, Rangareddy. This contention of the learned Counsel for the respondent cannot be countenanced in view of the stand taken before the Hon'ble Chief Justice of Gujarat high Court taking the aid of arbitral clause in the agreement and also Clause 66, under which jurisdiction is conferred on the Courts at Hyderabad alone. In view of the same, the petitioner cannot now turn round and say that any such clause in the agreement, jurisdiction cannot be conferred on the Court, which it does not possess. I am fortified in this view by a judgment of the Apex Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, wherein it is held that when parties transacted on the basis of a clause in the agreement, the clause must be deemed to have formed part of the agreement and the parties would be bound by it and the validity of the clause depends on the validity of the agreement. Therefore, the respondent herein is bound by the principle of estoppel by conduct. The question of conferring jurisdiction on more than one Court under the CPC to try a suit or proceeding, does not arise, in view of Section 2(e) of the Arbitration Act, 1996, inasmuch as it is only Principal Civil Court of Original jurisdiction in a district. The incorporation of jurisdiction clause in the general conditions of agreement, does not mean, conferring of jurisdiction on any Court, which it does not possess. Same is the principle laid down by a Division Bench of this Court in Bank of India CBD Belapur Branch, Navi Mumbai v. U.A.N. Raju and Anr. 2004 (1) AW.R. 310, wherein this Court held that neither consent nor waiver can cure the defect of inherent lack of jurisdiction and consent of parties cannot operate to confer jurisdiction on a Court which has no competence to try it. For these reasons, the ratio laid down in the above decisions cannot be made applicable to the facts and

circumstance of the case on hand. Therefore, the contention of the learned Counsel for the petitioner that the Principal Dist. Court, Rangareddy, is not having jurisdiction and the O. P. has to be filed before the Chief judge, City Civil Court, Hyderabad, deserves merit.

8. The learned Counsel representing the petitioner in the Transfer C.M.P. placed strong reliance on National Hydroelectric Power Corporation Limited. v. Sova Enterprises 1991 (2) ALR 317 wherein the Division Bench of Calcutta High Court held:

According to Section 2(c) of the Act any court which would have jurisdiction to decide the question arising from the subject matter of the reference is the court in whose jurisdiction the parties reside, or a part of the cause of action arises. It is necessary that whole cause of action should have arisen within its jurisdiction. In the instant case the cause of action arose at Bidyutnagar in District Jalpaiguri when the petitioner failed to refer the matter for arbitration. The agreement between the parties was signed at Bidyutnagar. The explanation to Section 20 of C.P.C. lays down that a Corporation shall be deemed to carry on business at its sole or principal office in India, or in respect of any cause of action arising at any place where it has also subordinate office, at such place. This on consideration of facts, as disclosed by the materials placed on record, it can be said that the learned Additional District Judge, Jalpaiguri has not committed any jurisdictional error.

9. Further, strong reliance was placed on Ankati Satyamaiah Vs. Sallangula Lalaiah and Another, wherein the learned Judge at para-13 observed as hereunder:

It may further be exemplified having regard to the facts in this case thus. Here is a case where, according to the facts, the parties are residents of Miryalaguda, Hyderabad and Nalgonda, respectively. They referred the matter to the Arbitrators who are the residents of Hyderabad. It is not known whereat the arbitral agreement was entered into between the parties inter se. However, the Arbitrators ultimately after due deliberations passed the award on 18-9-2001 at Hyderabad. Having regard to the nature of the dispute between the parties, which pertains to execution of a contract work, when we look at the provisions of the C.P.C., the residuary provision of Section 20 is applicable for deciding the question of jurisdiction of the court. Having regard to the above criterion, the jurisdiction is either with the Court at Miryalaguda or the Courts at Hyderabad. Therefore, either of the parties, if need be, can approach the Courts at Hyderabad or at Miryalaguda in Nalgonda District, or at Nalgonda having due regard to the residence of the parties and the cause of action that has arisen either in whole or in part. If a suit were to be filed, the suit shall have to be instituted before one of the courts either at Nalgonda or at Miryalaguda or at Hyderabad. That Court, which has jurisdiction to entertain the suit between the parties, shall be the Principal Civil Court of original jurisdiction in a district and it shall not be inferior to such Principal Civil Court or any Court of Small Causes.

Therefore the suit shall have to be filed before the Principal civil Court of original jurisdiction either at Nalgonda, or at Hyderabad. Obviously the same Court can enforce the award as if it were a decree passed by that Court having regard to Section 36 of the Act.

10. Further reliance was placed on the decision of the learned Judge of this Court made in Transfer C.M.P. Nos. 1 & 91/2006 and the learned Judge of this Court while allowing the Transfer C.M.P.1/2006 and dismissing the Transfer C.M.P. No. 91/2006 observed as hereunder:

It is true that the place where the contract is to be executed is, within the territorial jurisdiction of the District Court, Kurnool, and no exception can be taken to the filing of O.P. No. 60 of 2005, by the respondent, in that Court. The fact, however, remains that the entire records are maintained by the petitioner, stationed at Hyderabad and the negotiations etc., are said to have taken place in Hyderabad, in the matter of awarding the contract. It is also stated that the respondent is a permanent resident of Hyderabad. In that view of the matter, no prejudice would be caused to the respondent, in case both the O.Ps. are heard by the Court at Hyderabad.

For the foregoing reasons, Transfer C.M.P. No. 1 of 2005 is allowed, and O.P. No. 60 of 2005, pending on the file of Principal District Judge, Kurnool is transferred to the Court of Chief Judge, City Civil Court, Hyderabad and on such transfer, it shall be heard along with O.P. No. 1004/2005, pending in that Court. Consequently, Tr. C.M.P. No. 91 of 2006 is dismissed. There shall be no order as to costs.

11. The main objection which was putforth by the learned Counsel Sri Purnachandra Rao, representing the 1st respondent/contesting respondent is that when the O.P. itself could not have been entertained by a particular Court and when such O.P. had been entertained, just to cure that defect, aid of Section 24 of the Code cannot be taken praying for transfer of such O.P. to a Court which otherwise would have jurisdiction. In other words, the attempt to get over the other problems in the event of a fresh O.P. being instituted, such attempt on the part of the petitioner cannot be permitted under the guise of exercising power u/s 24 of the Code. It is however made clear that in the light of the decisions relied upon, this aspect also may have to be urged at the appropriate stage. However, in the light of the facts and circumstances, this Court is of the considered opinion that the Transfer C.M.P. to be ordered.

12. Accordingly, O.P. No. 400/2008 pending on the file of the learned District Judge, Karimnagar is withdrawn and transferred to the Court of III Additional Chief Judge, City Civil Court, Hyderabad to be tried along with O.P. No. 1409/2008 filed by the petitioner.

The Transfer C.M.P. is accordingly ordered. No costs.