
(2005) 06 AP CK 0038
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2309 of 2005

Tulasi Viswa Karma Home Pvt. Ltd.	Vs	APPELLANT
Vayunandan Estates Pvt. Ltd.		RESPONDENT

Date of Decision : 29-06-2005

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 9
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 7 Rule 11

Citation : (2005) 5 ALD 392 : (2005) 4 ALT 512 : (2006) 1 ARBLR 445

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : T. Ashok Reddy, for the Appellant; Resu Mahender Reddy and Achyutha Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This C.R.P., is filed against the order dated 9-3-2005 passed by the Principal Junior Civil Judge, Ranga Reddy District in I.A. No. 760 of 2005 in O.S. No. 44 of 2005.

2. The petitioner and the respondent are private limited companies. The respondent filed the suit for the relief of perpetual injunction restraining the petitioner herein or his authorized persons and subordinates from developing or alienating the suit schedule property, till the disputes under the agreement dated 14-9-2003, are settled finally. It also obtained an order of temporary injunction in I.A. No. 137 of 2005 under Order 39 Rule 1 C.P.C .

3. The petitioner filed I.A. No. 760 of 2005 under Order 7 Rule 11 C.P.C , to reject the plaint. The basis for filing this application was that there exists a clause for resolution of the disputes between the parties through the medium of Arbitration and in fact notices were exchanged between the parties for appointment of such Arbitrator. This application was resisted by the respondent. The trial Court took the view that even if there is a bar for filing the suit in the light of the existence of a Clause for settlement of disputes through Arbitration, it

has jurisdiction to deal with the matter u/s 9 of the Arbitration and Conciliation Act, 1996 (for short "the Act"). It further took the view that it answers the discretion of the "Court" as defined u/s 2(e) of the Act.

4. Sri T. Ashok Reddy, the learned counsel for the petitioner submits that the suit is not the one filed u/s 9 of the Act and if it were to be so, specific reference ought to have been made to the initiation of Arbitration or the stage thereof. He further submits that even if the suit is to be treated as the one u/s 9 of the Act, it ought to have been filed in the Principal Court of civil jurisdiction in the District, as is evident from the definition of the word "Court" u/s 2(e) of the Act and not in a grade inferior to it.

5. Sri Achyutha Reddy, the learned counsel for the respondent, on the other hand, submits that though the Clauses of Arbitration in the agreement are not specifically referred to and Arbitration had commenced as yet, the relief claimed in the plaint fits into the one provided for u/s 9 of the Act. He further contends that being a Principal Court, at that stage of hierarchy, the trial Court had jurisdiction to entertain the suit.

6. The suit was filed in the light of certain disputes in relation to the working of an agreement dated 14-9-2003 between the parties. It is admitted that Clause 12 of that agreement provides for resolution of disputes between the parties through the medium of Arbitration. The record discloses that the parties have moved to certain extent, in that direction.

7. It is true that Section 9 of the Act provides for filing of suits for interim measures either before or during the pendency of Arbitration proceedings. In the instant case, no reference is made to the Arbitration proceedings. As on the date of filing of the suit, no Arbitrator was appointed nor did the respondent approach the Court for such a relief. That being the case, it cannot be said that the suit was in relation to the Arbitration proceedings or for any interim measures, pending Arbitration.

8. Even assuming that the intention of the respondent in filing the suit was to obtain certain interim measures pending the Arbitration proceedings, there is a serious doubt as to the Court in which, suit ought to have been filed. Section 9 of the Act enables the parties to apply to a "Court". This word is defined u/s 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;

9. From this, it is evident that irrespective of the value of the suit that a party intends to file u/s 9 of the Act, it is to be presented in a Principal Court of civil

jurisdiction in the District. In that way, it is only the Principal District Judge's Court or the Court of Chief Judge, City Civil Court, Hyderabad that is conferred with the jurisdiction. Apart from describing the word "Court", as the one of "Principal Civil Court of Original Jurisdiction," the definition further proceeds to exclude the Court, which is of a grade inferior to such Principal Civil Court. The learned Principal Junior Civil Judge, before whom, the suit was pending proceeded as though his Court answers the description of the "Court" as defined u/s 2(e). From an analysis of Section 2(e) of the Act, it is evident that except the Court of Principal District Judge, no other Court can entertain the suits or O.Ps., u/s 9 of the Act.

10. Hence, the C.R.P. is allowed and the order under revision is set aside. Consequently, the I.A., shall stand allowed.

11. The learned counsel for the petitioner submits that his client undertakes to withdraw the suit, and that it may be permitted to present the suit in an appropriate forum.

12. The Arbitration and Conciliation Act is a self-contained Code and depending on the stages at which the Arbitration between the parties is pending, they can certainly approach an appropriate Court for relief.

13. There shall be no order as to costs.