

HON'BLE SRI JUSTICE R.SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION Nos.1725 and 1734 of 2015

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COMMON ORDER : (per Hon'ble Sri Justice R.Subhash Reddy)

Since the issue involved in both these civil revisions petitions is similar and the parties are also one and the same, they are heard together and being disposed of by this common order.

2 . These Civil Revision Petitions, under Article 227 of the Constitution of India, are filed by the petitioners/defendant Nos.1 and 2 aggrieved by the orders in I.A.No.1011 of 2014 in O.S.No.177 of 2014 and I.A.No.1012 of 2014 in O.S.No.178 of 2014, both dated 02.04.2015, respectively, passed by the I Additional District Judge, Warangal, dismissing the applications filed by them under Section 8 of the Arbitration and Conciliation Act, 1996 (for brevity "the Act").

3. The 1st respondent/plaintiff has filed the suits being O.S.Nos.177 and 178 of 2014 seeking dissolution of Partnership and rendition of accounts of Partnership Firm - M/s.Amruth Industries, Warangal. In the aforesaid suits, the petitioners/defendant Nos.1 and 2 have filed applications being I.A.No.1011 of 2014 in O.S.No.177 of 2014 and I.A.No.1012 of 2014 in O.S.No.178 of 2014 under Section 8 of the Act, to refer the parties to Arbitration, mainly on the ground that in the Partnership Deed, there is a clause to refer to the Arbitrator in the event of any dispute. The said applications are opposed by the 1st respondent/plaintiff. After considering the material on record, the Court below has passed the impugned orders dated 02.04.2015 dismissing the said applications, mainly on the ground that, at the

instance of both the parties, arbitration proceedings have already been initiated before the selected Arbitrators, namely Sri Srikishan Malani and Kanyalal Bajaj and in view of pendency of such proceedings, the present applications filed by the petitioners/defendant Nos.1 and 2 to refer the dispute to the Arbitrator cannot be entertained, at this stage again. Hence, the present civil revision petitions.

4. In these revisions, it is contented by the learned counsel for petitioners that having recorded a finding that there is a arbitration clause in the original Partnership Deed and having regard to the proceedings initiated before the Arbitrator, the Court below has committed an error in dismissing the applications.

5. On the other hand, it is submitted by Sri E. Manohar, learned Senior Counsel, representing Dr. P.B. Vijay Kumar, learned counsel for the 1st respondent/plaintiff that the petitioners/defendant Nos.1 and 2 have indulged in mis-appropriation of huge amounts of the Partnership Firm and diverted crores of rupees into their personal accounts and the accounts of third parties without the knowledge and consent of the 1st respondent/plaintiff and, as such, the suits are maintainable and the dispute need not be referred to the Arbitrator. In support of his contention, the learned Senior Counsel has placed reliance on a provision under Section 44 (g) of the Indian Partnership Act, 1932 and also a judgment of the Apex Court in N. RADHAKRISHNAN vs. MAESTRO ENGINEERS.

6. Having heard learned counsel for the parties, we have perused the impugned orders and the material available on record.

7. Although it is the contention of the petitioners/defendant Nos.1 and 2 that there is a Arbitration clause in the Partnership Deed to refer the disputes to Arbitrator, at the same time, it is the contention of the 1st respondent/plaintiff that the petitioners/defendant Nos.1 and 2 have indulged in mis-appropriation of huge amounts of the Partnership Firm and diverted crores of rupees into their personal

accounts and the accounts of third parties without the knowledge and consent of the 1st respondent/plaintiff. In the aforesaid judgment relied on by the learned Senior Counsel, the Apex Court has categorically held that when there are serious allegations of fraud and mal-practice, such cases need not be driven to be decided by the Arbitrator and for furtherance of justice, such disputes should be tried in a Court of law, which would be more competent and have the means to decide such a complicated matter. Although the 1st respondent/plaintiff has alleged that the petitioners/defendant Nos.1 and 2 have indulged in mis-appropriation of huge amounts of the Partnership Firm and diverted crores of rupees into their personal accounts and the accounts of third parties without his knowledge and consent, the same has not been properly adverted to and considered by the Court below.

8. It is to be noticed that though there is a clause in the Partnership Deed, pursuant to which some disputes were already referred to the Arbitrators nominated by both the parties, at the same time, there is an allegation by the 1st respondent/plaintiff about mis-appropriation of huge amounts of the Partnership Firm by the petitioners/defendant Nos.1 and 2. Therefore, in view of the law laid down by the Apex Court in the case of N. RADHAKRISHNAN (supra), we are of the considered view that it is evidently a fit case for reconsideration of the matter by the Court below having regard to the pleadings on record.

9. It is also brought to our notice that the petitioners/defendant Nos.1 and 2 have also filed applications under Order VII Rule 11 of C.P.C., for rejection of plaints and also applications in I.A.No.820 of 2014 in O.S.No.177 of 2014 and I.A.No.821 of 2014 in O.S.No.178 of 2014 seeking appointment of receiver, which are pending consideration.

10. Accordingly, the impugned orders dated 02.04.2015 are set aside and the matters are remanded to the Court below with a direction to consider the matters afresh and pass appropriate orders

in accordance with law in I.A.No.1011 of 2014 in O.S.No.177 of 2014 and I.A.No.1012 of 2014 in O.S.No.178 of 2014 along with the applications filed under Order VII Rule 11 of C.P.C., seeking rejection of plaints. Till disposal of the aforesaid applications, the Court below is further directed to defer pronouncement of orders in I.A.No.820 of 2014 in O.S.No.177 of 2014 and I.A.No.821 of 2014 in O.S.No.178 of 2014 filed for appointment of receiver.

11. Subject to the above directions, both the civil revision petitions are allowed. As a sequel, miscellaneous petitions pending, if any, in these revisions shall stand closed. No order as to costs.

JUSTICE R. SUBHASH REDDY

JUSTICE A. SHANKAR NARAYANA

15.06.2015.

Msr

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