

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

CIVIL REVISION PETITION No.2181 of 2015

-
ORDER: (Per R. Subhash Reddy, J)

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the plaintiff in O.S.No.128 of 2013 on the file of the Judge, Family Court-cum-VII Additional District Judge, Medak at Sangareddy, aggrieved by the order dated 20.04.2015 passed in I.A.No.450 of 2014.

The petitioner-plaintiff filed the aforesaid suit for recovery of Rs.55,56,756/- with interest at 18% per annum. The petitioner-plaintiff is a company incorporated under the Companies Act, 1956 engaged in the business of manufacturing custom-engineered, high quality, cost effective metal building systems and construction services thereof for commercial, industrial, institutional, recreational and other specialty applications. A written proposal dated 28.11.2006 was submitted by the petitioner-plaintiff for building at the factory site of the respondent-defendant at Nashik. The scope of work covers design, fabrication, supply, regulation of pre-fabricated steel building as per specifications attached in the proposal dated 28.11.2006. On executing such proposal, contract order dated 01.12.2006 was entered between the parties which was subsequently amended vide amendment dated

07.12.2006.

As per clause 14 of the proposal dated 28.11.2006, disputes or differences between the seller and buyer will be resolved by mutual discussions and agreement and unresolved issues, if any, will be settled by arbitration as per the Indian Arbitration & Conciliation Act.

In the suit filed by the petitioner-plaintiff, respondent-defendant filed I.A.No.450 of 2014 under Section 8(1) of the Arbitration and Conciliation Act, 1996 to refer the parties to the suit to arbitration as per the terms and conditions of the contract dated 01.12.2006. The said application is allowed by the impugned order, referring the parties to settle the dispute by way of arbitration.

Heard Sri M.S. Srinivasa Iyengar, learned counsel for the petitioner and Sri C.R. Sridharan, learned senior counsel assisted by Sri Salloori Ramesh, learned counsel for the respondent and perused the material on record.

In this case, mainly, it is submitted by the learned counsel for the petitioner that though there was an arbitration clause in the proposal dated 28.11.2006, there is no such clause in the contract order dated 01.12.2006 as amended subsequently vide amendment dated 07.12.2006. It is further submitted that I.A.No.450 of 2014 is not accompanied by original agreement as required under Section 8(1) of the Act.

On the other hand, it is submitted by the learned counsel for the respondent, that contract order dated

01.12.2006 is pursuant to acceptance of the proposal of the petitioner dated 28.11.2006, as such, it is not open for the petitioner to plead that there is no clause for arbitration. It is further submitted that the original documents are already filed on record along with the suit, as such, there are no grounds to interfere with the impugned order in this petition under Article 227 of the Constitution of India.

In this case, it is not in dispute that the petitioner has signed proposal dated 28.11.2006 for supply, erection and commissioning of pre-fabricated steel building, which culminated into order dated 01.12.2006, which reads as under:

“Building at our proposed factory at Nashik.
Scope of work covers design, fabrication, supply
& erection of
pre-fabricated steel building as per specifications
attached (KIRBY DQ No.301-1377 REV-02,
dated 28/11/2006 and Annexure)”

It is clear from the contract order dated 01.12.2006 that acceptance of contract as entered between the parties is only consequent to proposal of the petitioner dated 28.11.2006. In the offer of the petitioner in the proposal dated 28.11.2006, undisputedly there is clause for arbitration, which is accepted by the respondent and therefore the same forms part of the contract. In view of the acceptance of proposal of the petitioner dated 28.11.2006, it is not open to the respondent to plead that

in the contract order dated 01.12.2006 and modified order dated 07.12.2006, there is no clause for arbitration. When the proposal is signed by the petitioner subject to certain terms and conditions and when the same is accepted by the respondent, the terms of such proposal form part of the contract. Hence, the submission made by the learned counsel for the petitioner cannot be accepted. Though learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Atul Singh and others v. Sunil Kumar Singh and others*^[1], having regard to the fact situation of the case on hand, the same would not render any assistance in support of the case of the petitioner. Equally, the submission of the learned counsel for the petitioner that I.A.No.450 of 2014 is not accompanied by original agreement cannot be accepted for the reason that a copy of the plaint filed in O.S.No.128 of 2013 is placed on record and it is clear that original agreement is already on record.

For the aforesaid reasons, the Civil Revision Petition is devoid of merits and is accordingly dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the C.R.P., stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

18th September, 2015
MRR

[\[1\]](#) (2008) 2 SCC 602