

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

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CIVIL REVISION PETITION No.3744 of 2014

ORDER: (*Per Hon'ble Sri Justice A. Shankar Narayana*)

Assailing the order dated 25.02.2014 in I.A.No.39 of 2013 in O.S.No.20 of 2013 on the file of the Additional District Judge at Miryalaguda, Nalgonda District, whereby and whereunder, the request made by the petitioners-defendants (respondents herein) under Sections 5 and 8(1) of the Arbitration and Conciliation Act, 1996 (for short, "the Act") read with Order 7 Rules 10 and 10(a) read with Section 151 of the Code of Civil Procedure, 1908 (for short, "CPC") was allowed, the respondent-plaintiff preferred the instant Civil Revision Petition.

2. The fact-situation occurring in the instant case is that the revision petitioner filed suit in O.S.No.20 of 2013 against the respondents herein for recovery of a total amount of Rs.45,50,601/- for three consecutive years, 2009-10, 2010-11 and 2011-12, i.e., Rs.5,96,530/-, Rs.22,87,596/- and Rs.16,67,475/- for the respective years, in connection with their business related disputes. The revision petitioner was the distributor of the respondents herein. Claiming that though, there is a clause contained in the arbitration agreements between them relating to the years 2011-12 and 2011-12 to the

effect that any dispute or disputes arising from the agreement of the matters incidental or related thereto, the same shall be resolved initially by means of mutual discussion, deliberation, etc., and on its failure, the same shall be resolved by means of arbitration by referring the matter to the sole-arbitrator to be appointed by the company (the agreement between them for the year 2009-10 does not contain arbitration clause), he filed a consolidated suit was filed by the revision petitioner.

Contending that he has paid court fee distinctly for the amount relating to each financial year and cause of action for each year is distinct and that since the consolidated claim cannot be bifurcated giving a go-by to the arbitration clauses for the agreements for the latter two years, he laid the suit.

3. Respondents herein on receipt of summons, along with the vakalat filed the petition in I.A. No.39 of 2013 seeking the aforesaid reliefs stating therein that any dispute including the arbitration proceedings shall be subject to jurisdiction of the court at Bangalore and that there is no arbitration clause for the memorandum of understanding and the minutes of meeting between the parties for the year 2009-10, still, the court can return the plaint, and, therefore, they requested to refer the matter to arbitration relating to arbitration agreements for the years 2010-11 and 2011-12.

4. It appears, during the course of arguments before the court below, the respondents herein got canvassed through their learned counsel that for convenience sake, if the court feels that all the disputes can be referred to the arbitrator irrespective of the fact that there is no arbitration clause in the agreement for the year 2009-10 instead of giving two judgments by the court below and the other by the arbitrator separately and an arbitrator may give a verdict on all the three issues.

5. Revision petitioner resisted the request by filing a counter stating therein that since there is no arbitration clause in the agreement between the parties for the year 2009-10, but there is an arbitration clause for the other two agreements for the years 2010-11 and 2011-12 to refer the disputes between them to the sole-arbitrator, and despite the same, since the petitioner failed to refer the dispute for the latter two years by appointing an arbitrator, it has to be construed that the respondents waived the arbitration clause. It is also stated that on the complaint, II Town Police, Miryalaguda registered a case in Crime No.107 of 2012 and even laid charge sheet against the respondents herein and another, for the offences punishable under Sections 418, 427, 406 and 506 I.P.C., which was pending in C.C.No.1092 of 2012 on the file of the Judicial Magistrate of First Class, Miryalaguda. Also raising other pleas not that significant,

sought to dismiss the petition.

6. During enquiry, arbitration trade agreements for the years 2010-11 and 2011-12 were marked as Exs.P.1 and P.2 on behalf of the respondents herein; and on behalf of the revision petitioner, no documents were marked.

7. The court below initially referred to the facts which are not in dispute between the parties. Thereafter, referred to the decisions, on which learned counsel on either side placed reliance, in **Sukanya Holdings Pvt. Ltd., v. Jayesh. H. Pandya and another**^[1], **Atul Singh and others v. Sunil Kr. Singh**^[2], **Cholamandalam Dbs Finance Ltd., v. K. H. Abdulla and another**^[3] of Kerala High Court, **M. Venugopal v. The Deputy Salt Commissioner of Madras High Court**^[4], **N. Radha Krishnan v. M/s. Maestro Engineers and others**^[5], **India House Hold and Health Care Limited v. L.G. House Hold and Health Care Limited**^[6] and **Penumalli Sulochana v. Harish Rawtani**^[7] and the decision in **Rashtriya Ispat Nigam Limited and another vs. Verma Transport Company**^[8] and **Everest Holding Limited v. Shyam Kumar Shivastava and others**^[9]. The court below observing firstly, that the dispute is between the

same parties in all the three agreements, though, for different periods, but there is no arbitration clause only in the first agreement for the year 2009-10; second, the provisions of Section 89 of CPC provides for settlement of disputes outside the court, in which the reference to arbitrator under the Act is also provided as one of the modes of settlement of disputes; third, since the revision petitioner (plaintiff) filed a comprehensive suit, though, there are three separate agreements for three separate years, but clubbed the cause of actions under Section 6 of the A.P.Stamps and Suit Valuation Act; and lastly, distinguishing the fact situation occurring in each of the cases relied on by the revision petitioner, opined that the matter can be referred to an arbitrator as no prejudice would be caused to the revision petitioner by giving liberty to the parties to appoint a mutually agreed arbitrator to settle the dispute between the parties, and allowed the petition to return the plaint to the revision petitioner in order to refer the entire suit dispute to an arbitrator to be appointed by both parties on mutual consent as per the arbitration clause.

8. Aggrieved by the aforesaid order, the petitioner-plaintiff preferred the instant revision petition stating in the grounds that the court below overlooked the fact that on the complaint preferred by him to the II Town Police, Miryalaguda, a case in Crime No.107 of 2012 was registered against the respondents and one K.M.Rao and

also C.S.Srinivas for the offences punishable under Sections 418, 427, 406 and 506 I.P.C. and the same is pending before the Judicial Magistrate of First Class, Miryalaguda in C.C.No.1092 of 2012, which relates to the allegation that the agreement for the year 2011-12 is a fabricated document and the said fact has to be established in the above said crime, which was pending final adjudication. It is stated that the issue in the agreement for the years 2010-11 and 2011-12 is split up from the issue of recovery of money in respect of agreement for the year 2009-10, it will consume valuable time of the court and also lead to multiplicity of litigation, which the court below totally sidelined. It is also stated that several letters were addressed to the respondents for reference to arbitrator concerning the issues relating to the years 2010-11 and 2011-12, but the same were ignored by the respondents and after the suit was instituted, the respondents have filed I.A.No.39 of 2013 seeking appointment of an arbitrator. Hence, it has to be construed that the respondents waived the arbitration clause in the said agreement, and, therefore, sought to set aside the order under challenge.

9. Heard Sri P.Bhaskara Mohan, learned counsel for the revision petitioner, and Sri P.N.A.Christian, learned counsel for the respondents.

10. Learned counsel for the respondents would

submit that since the consolidated suit was filed for recovery of the amounts for the consecutive years of 2009-10 to 2011-12 and since the arbitration clauses are existing in the agreements for the latter two years, the order passed by the court below referring the matter to the arbitrator giving liberty to parties to appoint a mutually agreed arbitrator to settle the suit dispute between the parties cannot be faulted with. He would also submit that the issue relating to the claim for the year 2009-10 is identical with the issues relating to the latter two years and the parties are one and the same, and, therefore, even in the absence of arbitration clause in the agreement for the first year would not cause any prejudice to the revision petitioner in resolving the disputes through the arbitral proceedings.

11. Learned counsel for the revision petitioner, to substantiate his submissions placed reliance on the following decisions of the Hon'ble Supreme Court and other High Courts:

- 1) **Sukanya Holdings** case (Supra 1);
- 2) **Atul Singh's** case (Supra 2);
- 3) **Cholamandalam Dbs Finance's** case (Supra 3);
- 4) **M. Venugopal's** case (Supra 4);
- 5) **N. Radha Krishnan's** case (Supra 5);
- 6) **Rashtriya Ispat Nigam's** case (Supra 8);
- 7) **Everest Holding's** case (Supra 9);
- 8) **AESSEAL India Pvt. Ltd., Pune and another v. Nageswara Rao and others** [\[10\]](#);
- 9) **India House Hold and Health Care's** case (Supra 6);

- 10) **Penumalli Sulochana's** case (Supra 7);
- 11) **Nijma Hussain v. Manjari Jain and another**^[11];
- 12) **Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra and another**^[12];
- 13) **P. Anand Gajapathi Raju and others v. P.V.G. Raju (died) and others**^[13]
- 14) **AFCONS Infrastructure Limited and another v. CHERIAN VARKEY Construction Company Private Limited and others**^[14];

12. The facts are not in dispute except to the extent of lodging complaint by the revision petitioner and the pendency of the calendar case as mentioned in the above. The parties are common for the issue of each year from 2009-10 to 2011-12. The learned counsel for the revision petitioner placed reliance on **Sukanya Holdings'** case (Supra 1) for the proposition that it is impermissible to bifurcate cause of action, i.e., subject matter of suit, or in some cases bifurcation of a suit between the parties, who are parties to the arbitration agreement and others, in referring the matter to arbitrator under Section 8 of the Act, and the observations of the Hon'ble Supreme Court contained in paragraph Nos.15 to 17 are thus:

"15. The relevant language used in Section 8 is "in a matter which is the subject matter of an arbitration agreement", court is required to refer the parties to arbitration. Therefore, the suit should be in respect of 'a matter' which the parties have agreed to refer and which comes within the ambit of arbitration agreement.

Where, however, a suit is commenced - "as to a matter" which lies outside the arbitration agreement and is also between some of the parties who are not parties to the arbitration agreement, there is no question of application of Section 8. The words 'a matter' indicates entire subject matter of the suit should be subject to arbitration agreement.

16. The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed.

17. Secondly, such bifurcation of suit in two parts, one to be decided by the arbitral tribunal and other to be decided by the civil court would inevitably delay the proceedings. The whole purpose of speedy disposal of dispute and decreasing the cost of litigation would be frustrated by such procedure. It would also increase the cost of litigation and harassment to the parties and on occasions there is possibility of conflicting judgments and orders by two different forums. "

13. Learned counsel for the revision petitioner placed reliance on the decision of the Hon'ble Supreme Court in **Rashtriya Ispat Nigam's** case (Supra 8). Even the learned counsel for the respondents herein placed

reliance on the very same decision referring to the observations in paragraph Nos.45 and 46. The Hon'ble Supreme Court while distinguishing the fact situation holding that the relief sought in **Sukanya Holdings'** case (Supra 1) was not only for dissolution of the firm, but a different cause of action had arisen in relation whereto apart from the parties in arbitration agreement, other parties had also been impleaded, observed in paragraph Nos.45 and 46 thus;

"45. Reliance placed by the learned counsel on *Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya and another* [(2003) 5 SCC 531] is misplaced.. Therein, not only a suit for dissolution of the firm was filed, but a different cause of action had arisen in relation whereto apart from parties to the arbitration agreement, other parties had also been impleaded. In the aforementioned fact situation, this court held:

"Secondly, there is no provision in the Act that when the subject-matter of the suit includes subject-matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject-matter of the suit to the arbitrators.

46. It was further stated: (SCC p. 536, paras 16-17)

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and, thus, held that the application filed under Section 8 of the Act by the appellant was maintainable.

14. In **Atul Singh's** case (Supra 2), there was non-compliance of sub-section (2) of Section 8 of the Act. In the instant case, such is not the situation since Exs.P.1 and P.2, which are the arbitration agreements for the years 2010-11 and 2011-12, contain arbitration clauses respectively. In **Cholamandalam Dbs Finance's** case (Supra 3), the very agreement which contained arbitration clause was not produced before the court at all and it was held that bifurcation of the suit between the parties, who are parties to the arbitration agreement and others is

impermissible, since it would be laying down a totally new procedure not contemplated under the Act in case such a request is acceded to by giving an interpretation to Section 8 of the Act and rendered in the context of the non-compliance of Section 8(2) of the Act. In **N. Radha Krishnan's** case (Supra 5), since the allegation of fraud and serious malpractices on part of respondents by committing malpractices of account books and manipulation of finances of the partnership firm was the issue, it was held by the Hon'ble Supreme Court, such situation was only to be settled in court through furtherance of detailed evidence by either parties and cannot be properly gone into by arbitrator. Even non-compliance of mandatory requirements under Section 8(2) of the Act was also addressed. Such is not the fact situation occurring in the instant case. In **Everest Holding's** case (Supra 9), in the context of fact-situation occurring therein, it was held by the Hon'ble Supreme Court that if the matter is referred to arbitrator, it would not in any manner amount to bifurcation of cause of action of the suit between the parties. In the said case, the Hon'ble Supreme Court had occasion to refer to **Rashtriya Ispat Nigam's** case (Supra 8), in which, the decision in **Sukanya Holdings'** case (Supra 1) was distinguished. In **AESSEAL India Pvt. Ltd., Pune's** case (Supra 10), a Division Bench of this court held that once it is evident that the parties of the suit are over and above the parties to the

agreement providing arbitration, there does not exist any scope for splitting the cause of action in the suit and referring part-1 of the arbitration. In **India House Hold and Health Care's** case (Supra 6), the request was made under sub-sections (5) and (6) of Section 11 of the Act for appointment of Arbitration and the same was rejected being not maintainable at that stage, as the procedure and mechanism agreed to by parties therein was not complied with. In **Penumalli Sulochana's** case (Supra 7), a Division Bench of this court held that in the absence of subsequent contract between the parties since the contract covered by the lease deed expired with effect from 31.01.2012, arbitrator cannot deal with the matters agitated therein. In **Nijma Hussain's** case (Supra 11), it was held by a Division Bench of this court that the court below was not right in referring the matter to the arbitrator, since the cause of action for filing application under Section 8(1) of the Act was different from the subject matter of suit. In **Bharat Rasiklal Ahsra's** case (12 Supra), the Hon'ble Supreme Court held that existence of valid and enforceable arbitration agreement in respect of disputes raised is a condition precedent for appointment of arbitrator by Chief Justice/Designate. In **P. Anand Gajapathi Raju's** case (13 Supra), while emphasizing on the requirements of Section 8 of the Act, the Hon'ble Supreme Court held that during pendency of appeal also matter can be referred to arbitration stating that if the party

who wants the matter to refer to the arbitrator applied to the court after submission of the statement and the party who has brought the action does not object, there is no bar on the court referring the parties to arbitration. In **AFCONS Infrastructure's** case, it was held by the Hon'ble Supreme Court that if there is no agreement between the parties for reference to arbitration, the court cannot refer the matter to arbitration under Section 89 of CPC.

15. Learned counsel for the revision petitioner mainly relied on the decision of the Hon'ble Supreme Court in **Sukanya Holdings'** case (Supra 1) in support of his submission that bifurcation of cause of action is impermissible, and, therefore, the order passed by the court below in referring the dispute between the parties to arbitrator, despite non-existence of arbitration clause in the agreement between the parties for the issue relating to the year 2009-10 cannot be sustained. It is clear from the fact-situation occurring in **Sukanya Holdings'** case (Supra 1) that the parties in the suit were not only parties to the arbitration agreement, but there were others also. In that view of the matter, the Hon'ble Supreme Court held that it is impermissible to refer the matter to an arbitrator by bifurcating the cause of action or in some cases, where bifurcation of suit between the parties who are parties to the arbitration and others.

16. Turning to the facts in the instant case, the parties are common, i.e., parties to the agreements for all the three years are common, and the agreements for the years 2010-11 and 2011-12 contained identical arbitration clauses, and, though, the agreement is not filed so far as the issue relating to the year 2009-10 is concerned, admittedly, there is no arbitration clause being incorporated, still, in view of the fact that the parties are one and the same and the issue relating to the agreement for the year 2009-10 is identical with the issues relating to the years 2010-11 and 2011-12, and the claim made by the revision petitioner being a consolidated one, in our considered view, the order passed by the court below referring the matter to an arbitrator to be appointed on mutual consent of the parties cannot be faulted with as it does not suffer from any legal infirmity. It is no doubt true, the calendar case was registered on the file of the learned Judicial Magistrate of First Class, Miryalaguda on the allegation that the agreement for the year 2011-12 is a fabricated document, but, that circumstance cannot operate as a bar in referring the matter to the arbitrator, since the very claim and cause of action relating to the year 2011-12 arises from Ex.P.2 and based on Ex.P.2, in regard to which the revision petitioner raised such an allegation. We, therefore, find no merit in the instant revision petition.

17. Accordingly, the instant Civil Revision Petition is dismissed confirming the order dated 25.02.2014 passed by the court below in I.A.No.39 of 2013 in O.S.No.20 of 2013. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous petitions, if any, pending in the instant revision, shall stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

Date: 28-08 -2015
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- [\[1\]](#) 2003(3) ALD 75 = (2003) 5 SCC 531
 - [\[2\]](#) AIR 2008 SC 1016
 - [\[3\]](#) Decided on 04.07.2008 in C.R.P.No.1109 of 2007
 - [\[4\]](#) Decided on 15.12.2011 in O.S.A.No.416 of 2010
 - [\[5\]](#) AIR 2010 SC 307
 - [\[6\]](#) (2007) 5 SCC 510
 - [\[7\]](#) 2013(5) ALD 573 (DB)
 - [\[8\]](#) (2006) 7 SCC 275
 - [\[9\]](#) (2008) 16 SCC 774
 - [\[10\]](#) 2013 (4) ALD 625 (DB)
 - [\[11\]](#) 2006 (1) ALD 423 (DB)
 - [\[12\]](#) (2012) 2 SCC 144
 - [\[13\]](#) AIR 2000 SC 1886
 - [\[14\]](#) (2010) 8 SCC 24