

**O.P.No. 920 of 2013
and A.No. 4675 of 2014**

K.RAVICHANDRABAABU, J.

Original Petition No. 920 of 2013 is filed challenging the order dated 22.11.2013 passed by the 7th respondent rejecting the objections raised by the applicant herein, who is the 2nd respondent in the arbitral proceedings. The objections raised are to the effect that there is no arbitral dispute between the parties and therefore, initiation of arbitration is not maintainable; that the applicant herein is not liable to pay the sum claimed in claim petition as he has already resigned from the firm and that the applicant had doubt about the independence and impartiality of the Arbitrator in conducting the arbitral proceedings. The learned Arbitrator rejected all the contentions through the impugned order which has resulted in filing the present original petition.

2. The respondent No. 1 who is the claimant before the Arbitrator filed a counter affidavit and opposed this petition.

3. Learned counsel for the petitioner submitted that the Arbitrator while deciding the objections raised by the applicant has gone into the merits of the claim and found that the objections raised by the applicant with regard to his liability to pay the due has not been ascertained by the applicant himself. Thus, he contended

that even before completion of the pleading and allowing the parties to lead evidence and continue the arbitration proceedings and passing the final order, the Arbitrator has predetermined the issue. Therefore, it is contended by the learned counsel that since the Arbitrator has predetermined the issue, he cannot be allowed to continue as Arbitrator and therefore this Court can pass appropriate orders in this original petition for continuation of the arbitral proceedings through some other Arbitrator.

4. Learned counsel appearing for the respondent No.1 contended that the order under challenge is not an award passed by the Arbitrator entitling the petitioner to file this original petition, as the petitioner can very well canvas all these points after an award is passed by the Tribunal finally, if at all the points raised have any basis or merits. He invited this Court's attention to the relevant provisions under the Arbitration and Conciliation Act, 1996, in support of his contention that the Arbitral Tribunal shall continue the arbitral proceedings and pass an arbitral award if a challenge to such proceedings made has not become successful.

5. It is further submitted by both sides that now the applicant herein as the respondent No. 2 therein, has filed his reply to the claim petition before the Arbitral Tribunal and the proceedings are pending.

6. Heard both sides.

7. It is settled proposition that the question with regard to the maintainability of the Arbitral proceedings is also a question that can be gone into and decided by the Arbitral tribunal itself. In this aspect the following decision of the Apex Court in the case of **Hindustan Petroleum Corporation Ltd. Vs Pinkcity Midway Petroleums reported in (2003) 6 SCC 503** is usefully referred to hereunder;

“16. It is clear from the language of the section, as interpreted by the Constitution Bench judgment in *Konkan Rly.* that if there is any objection as to the applicability of the arbitration clause to the facts of the case, the same will have to be raised before the Arbitral tribunal concerned. Therefore in our opinion, in this case the courts below ought not to have proceeded to examine the applicability of the arbitration clause to the facts of the case in hand but ought to have left that issue to be determined by the Arbitral Tribunal as contemplated in clause 40 of the Dealership Agreement and as required under Sections 8 and 16 of the Act.”

8. Likewise, in view of Section 13(4) and Section 16(5) of the Arbitration and Conciliation Act, 1996, the continuance of the arbitral proceedings after rejecting the objection made by the applicant cannot be found fault with, as it is always open to the

applicant to challenge the ultimate award to be passed if the same is made against him, by raising all the grounds available to him including the one raised hereunder.

9. Therefore, I find that the present Original Petition filed challenging the order passed by the Arbitrator rejecting the objection raised by the applicant cannot be sustained even on the ground of its maintainability. It is also made clear that any of the observations or finding rendered by the Arbitrator in the impugned proceedings with regard to the liability of the petitioner herein cannot influence the mind of the Arbitrator while passing the final award since such finding has to be rendered only after considering the rival pleadings of the parties as well as evidence let in by them.

10. Accordingly, this original petition is dismissed and the learned Arbitrator is directed to complete the arbitral proceedings and pass final award on merits and in accordance with law within a period of two months from the date of receipt of copy of this order. Consequently, connected application is also closed.

17.03.2016

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