

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.4900 OF 2013**

**ORDER:**

The Civil Revision Petition is filed impugning the order dated dated 22.08.2013 passed in I.A. No.1729 of 2011 in O.S. No.702 of 2010 on the file of III Additional Chief Judge, City Civil Court, Hyderabad.

2) The revision petitioner is the defendant No.1 in O.S. No.702 of 2010 and petitioner in I.A. No.1729 of 2011. The said suit was filed for recovery of money pursuant to the works said to have been done fallen due. There are two defendants including 2<sup>nd</sup> defendant—M/s.Agro Mech. Industries, rep. by Sri Sanjay C.Jain. The defendants were served with suit summons. The application covered by the impugned order dated 22.08.2013 in I.A. No.1729 of 2011, was filed by 1<sup>st</sup> defendant invoking Section 8 (3) of the Arbitration and conciliation Act, 1996 (for short 'the Arbitration Act') seeking to return the plaint to work out the remedies available under the Arbitration Act pursuant to the agreement and to refer the dispute to the arbitration. The counter filed by the plaintiff as 1<sup>st</sup> respondent, from the 2<sup>nd</sup> respondent did not choose to contest, is with the contention that the suit is perfectly maintainable and the so-called construction for recovery of which, the suit claim made is not based on the original agreement do not have own clause for arbitration but for pursuant to subsequent oral arrangement and subsequent works done and thereby it has nothing to do with the original agreement for construction to resolve the dispute in relation thereto under Arbitration and sought for dismissal of petition saying the defendants have to put forth their defence and be subjected to the trial process.

3) Heard and perused the material on record.

4) A perusal of the impugned order shows that the contest by respondent of the suit claim is that, the subject matter of subsequent oral agreement has nothing to do with the original agreement that contains arbitration clause cannot be extended subsequent to oral arrangement construction and fallen due and it requires adjudication for no undisputed agreement for arbitration and it can be decided after taking the evidence.

5) It is now impugning the same, the revision petitioner maintained the revision stating that the said order *per se* is unsustainable and the provision containing Section 8 of the Arbitration Act, 1996. In fact, when Section 37 (1) (a) of Arbitration Act provides right of appeal against refusal to refer the parties to arbitration in a pending suit from application filed before postponement in the proceedings. When pointed out on maintainability of the revision, it is the submission of the learned counsel for revision petitioner that when there is no order of refusal but for postponement of decision, which is not contemplated by Section 37 of the Act has no application to maintain the revision but for to set-aside the order with a direction at best to decide on either way to refer or not to refer than the postponement.

6) Having regard to the above and from hearing of bothsides, the revision is disposed of, with a direction to the lower Court to pass an order within (15) days from the date of receipt of the order, if at all it is prone to Arbitration, if not, to direct the defendants to file their defence and participate in the trial. No order as to costs.

7) Consequently, miscellaneous petitions, if any, pending shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Dt.04.08.2016**

**Knl**