

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2863 of 2016

Dated : 08.07.2016

Between:

Kanukuri Rajesham S/o.Chinna Mallaiah,
Aged about 48 yrs, Occu : Business,
R/o.Yadava Nagar, Hanamkonda Mandal,
Warangal District.

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Petitioner/Respondent/Plaintiff

And

Shriram Finance Transport Co. Ltd.,
Rep., by its Branch Manager,
Located at Balasamudram, Near Ekasila Park,
Hanamkonda, Warangal District.

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Respondent/Petitioner/Defendant

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2863 of 2016

ORDER :

This revision petition is filed questioning the order dated 10.06.2016 in I.A.No.421 of 2016 in O.S.No.49 of 2016 on the file of II Additional Senior Civil Judge, Warangal.

2. Heard learned counsel for revision petitioner and learned counsel for the respondent.

3. The revision petitioner is a borrower from the respondent. Suffice to note that the petitioner instituted a suit in O.S.No.49 of 2016 against the respondent praying to grant permanent injunction restraining the defendant and its staff from seizing the suit vehicle from physical possession and enjoyment of the plaintiff.

4. The respondent herein filed I.A.No.421 of 2016 in O.S.No.49 of 2016 praying to return the plaint on the ground that the hire purchase agreement contemplates reference to arbitrator for settlement of disputes, if any, arising out of hire purchase agreement and in view of provision in Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') the suit is not maintainable. The plea raised by the respondent was accepted and plaint was returned to the revision petitioner/plaintiff. The said order is under challenge in this revision.

5. One of the contentions urged by the learned counsel for revision petitioner is that in accordance with Section 8 of the Act, it is mandatory to file original arbitration agreement or duly certified copy thereof, along with the application, raising objection with regard to maintainability of the suit, whereas no original arbitration agreement or

certified copy thereof was filed along with the I.A.

6. As seen from the counter affidavit filed in the I.A., revision petitioner has raised specific objection as above noted, but the same was not adverted to in the order of trial Court.

7. On obtaining instructions, learned counsel for the respondent submits that since this issue was not decided by the trial Court, the matter may be remitted to the trial Court for consideration of the applications filed by the respondent afresh. Learned counsel also seeks leave of this court to file the original or certified copy of the hire purchase agreement before the trial Court. The said plea of the learned counsel for the respondent is not opposed by the learned counsel for the revision petitioner.

8. Having regard to the said submissions, the following orders are passed :

(i) The order under revision is set aside and the matter is remanded to the trial Court for fresh consideration of I.A.No.421 of 2016 filed by the respondent herein.

(ii) Liberty is granted to the respondent herein to place before the trial Court, the original or certified copy of the Arbitration agreement entered by the respondent with the revision petitioner .

(iii) The revision petitioner is also at liberty to seek further time to file additional counter affidavit, if he is so advised.

(iv) The trial Court shall consider all the pleas raised by the petitioner and respondent herein and pass appropriate orders as warranted by law and as expeditiously as possible,. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

P.NAVEEN RAO,J

8th July, 2016.

Rds

