

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE Dr.JUSTICE B. SIVA SANKARA RAO**

CIVIL REVISION PETITION No.4283 OF 2015

ORDER: (Per NRR,J)

This Civil Revision Petition is preferred by the 1st respondent in A.A.O.P.No.42 of 2015 on the file of the Principal District Judge, Rajahmundry. The A.A.O.P.No.42 of 2015 was preferred by the 1st respondent herein for setting aside the order dated 19.06.2015 passed by the 2nd respondent-Arbitrator herein and in the said O.P., she also filed I.A.No.1513 of 2015 seeking stay of all further proceedings before the 2nd respondent-Arbitrator pending disposal of the main O.P., that I. A. was allowed granting stay of arbitral proceedings.

2. The disputes, between the petitioner-Hindustan Petroleum Corporation Limited and the 1st respondent herein, who was their dealer, were referred for a resolution to the 2nd respondent-Arbitrator and before the learned Arbitrator, the petitioner herein filed a detailed claim statement enclosing thereto a copy of the dealership agreement, dated 11.01.2010, a copy of the loan agreement dated 11.01.2010, a copy of the promissory note as well as copy of the hypothecation agreement dated 11.01.2010. The 1st respondent has filed an application before the 2nd respondent-Arbitrator raising the question of jurisdiction of the Arbitral tribunal to decide and resolve the disputes between the parties. The Arbitral tribunal has recorded reasons for its order dated 19.07.2015, holding the preliminary objection raised by the 1st respondent as devoid of merits and rejected it. The learned Arbitrator directed the 1st respondent to file her reply to the claim statements latest by 03.07.2015.

3. Calling in question this order dated 19.06.2015 of the Arbitrator holding that he has jurisdiction to enter upon the reference for resolution of the disputes that have arisen between the parties, the 1st respondent has moved AAOP No.42 of 2015 before the learned Principal District Judge, Rajahmundry. In that O.P., I.A.No.1513 of 2015 was moved seeking stay of all further proceedings. On that the learned District Judge framed the following point:-

Whether there are any grounds to grant stay of proceedings, as prayed for?

Thereafter in paragraph No.6, the learned District Judge, adverted to the contentions canvassed on behalf of the petitioner in that I.A.No.1513 of 2015 and in paragraph No.7, the contentions canvassed on behalf of the 1st respondent are recorded. Proceeding thereafter all that the learned Judge did in paragraph No.8 was to moot out that it would be appropriate to decide the principal question about the maintainability of the O.P. when the main O.P. itself is taken up for hearing and while directing the parties to get going with the main O.P. on day-to-day basis, granted interim directions as prayed for by the order passed on 07.09.2015. It is this order which gave rise to the present revision (C.R.P.).

4. During the course of passing the order, the learned Principal District Judge's attention has been drawn to the judgment rendered by the 7 Judge Constitutional Bench of the Hon'ble Supreme Court in **M/s SBP & Company Vs. M/s Patel Engineering Limited**^[1] popularly called as Patel Engineering Limited case. The Hon'ble Supreme Court has considered whether earlier judgment rendered by it in **Konkan Railway Corporation Limited Vs. Rani Construction (P) Limited**^[2] has laid down the principle correctly or not. Since Konkan

railway was decided by a Constitutional Bench of 5 Judges, Patel Engineering case was considered by a Constitutional Bench comprising of 7 Judges. Justice P.K.Balasubramanyam speaking for the majority has pointed out in paragraph 45 of his opinion as under:-

“When the tribunal decides these two questions, namely, the question of jurisdiction and the question of exceeding the scope of authority, or either of them, the same is open to immediate challenge in an appeal, when the objection is upheld and only in an appeal against the final award, when the objection is overruled. Sub-section (5) enjoins that if the Arbitral Tribunal overrules the objections under Sub section (2) or (3), it should continue with the arbitral proceedings and make an arbitral award.”

5. In that view of the matter, the order now passed in I.A.No.1513 of 2015 is not only in the teeth of the principle enunciated by the Hon'ble Supreme Court on the subject but runs contra to the mandate contained in Sub Section 5 of the Section 16 of the Arbitration and Conciliation Act, 1996(for short, 'the Act'). In fact, the AAOP itself is not maintainable at this stage. Since the objection raised about the jurisdiction of the arbitral tribunal is overruled, the AAOP has to be instituted only after the final award is passed by the Arbitral Tribunal, wherein, the question about the jurisdiction of the tribunal can also be agitated and examined.

6. In that view of the matter, we declare that AAOP No.42 of 2015 is not maintainable before the learned District Judge, Rajahmundry at this stage and the petitioner in the AAOP(1st respondent herein) whose objection about the lack of jurisdiction for the 2nd respondent-Arbitrator to entertain the dispute between the parties is overruled, has to necessarily wait for the arbitral tribunal to make its final award and then raise such a question but not at this stage.

7. In the result, the Revision is allowed rejecting the

A.A.O.P.No.42 of 2015 on the file of the learned District Judge, Rajahmundry, reserving liberty to the 1st respondent herein to raise the said question of jurisdiction of the Arbitral tribunal to decide and resolve the dispute between the parties, after the 2nd respondent-Arbitrator pronounces or makes his/her award. No costs.

8. Consequently, miscellaneous Petitions, pending if any, shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

Dr. B.SIVA SANKARA RAO, J

Date: 11.03.2016.

VVR

[\[1\]](#) AIR 2006 SC 450 =2005(8) SCC page 618

[\[2\]](#) 2002(2) SCC page 388