

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4038 of 2014

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This revision is directed against the interlocutory order passed in I.A. No.236 of 2013 in O.S. No.44 of 2011.

2) The petitioner herein is the plaintiff in suit O.S. No.44 of 2011. The said suit is instituted for a declaration that the agreement said to have been entered into by and between the plaintiff and the defendant on 29.01.2009 as not valid and binding on the plaintiff. In that suit, the defendant moved Interlocutory Application No.236 of 2013 in terms and in accordance with Section 8 of Arbitration and Conciliation Act, 1996 requiring the plaint to be rejected by referring the parties to arbitrator for resolution of the disputes that arose between them in working out the said agreement. Accepting the said application moved under Section 8 of the Arbitration and Conciliation Act, 1996, the learned IV Additional District Judge, Kakinada rejected the plaint and directed the parties to secure resolution of the disputes arising between them through the process of arbitration. That order was passed on 18.09.2014. Instead of rejecting the plaint, altogether, the suit has been stayed though we are unable to decipher for what purposes it is so done.

3) Now, the learned counsel for the petitioner Sri M.R.S. Srinivas has brought to our notice that the defendant in the suit has already moved the Delhi High Court by way of Arbitration Application No.359 of 2011. That application came to be decided on 03.09.2015. A plaintiff in the present suit, who is petitioner herein, is respondent to the said arbitration application No.359 of 2011. The learned single Judge of the Delhi High Court has accepted the plea of the petitioner

in that case and appointed a learned Arbitrator for the purpose of adjudicating the claims and counter claims of both the parties including the issue of validity of the agreement dated 29.01.2009. In view of the subsequent order passed by the Delhi High Court and in view of the fact that the learned Arbitrator has already entered upon the reference and started adjudicating the claims and counter claims of both the parties, it is appropriate that the learned Arbitrator so appointed by the Delhi High Court shall in no manner be influenced by any of the observations that are made during the course of passing the order in I.A. No.236 of 2013 in O.S. No.44 of 2011 on the file of IV Additional District Judge, Kakinada and instead proceed further in the matter and decide on merits all the issues including the validity and binding nature of the service agreement said to have been entered into by and between the parties on 29.01.2009.

4) In view of referring the parties to the mechanism of resolution of the *inter se* disputes by way of arbitration, the Court should have normally rejected the plaint as a whole, instead of staying it. Therefore, we modify that part of the order passed by the learned IV Additional District Judge, Kakinada by treating the plaint in O.S. No.44 of 2011 to have been returned to the plaintiff as the disputes between the parties are now referred for adjudication through the mechanism of Arbitration.

5) With these observations, the revision stands disposed of. No costs.

6)

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

16.02.2016
ksh

Dr. JUSTICE B.SIVA SANKARA RAO