

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

C.R.P.No.4402 of 2016

Between:

Dhruv Medical Centre, A Partnership Firm, Having its place of
Business at Vinayak Towers, Secunderabad

.....Petitioner

and

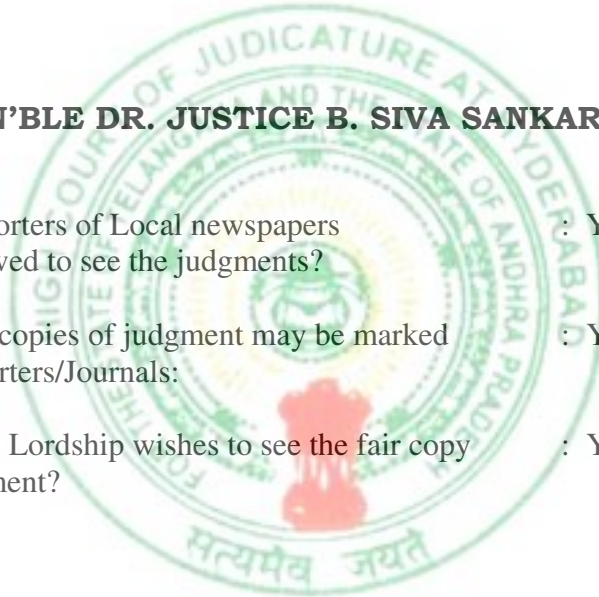
Vijay Shanker Patel and another

.....Respondent

Date of Judgment pronounced on : 20-01-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?



*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

+ C.R.P.No.4402 of 2016

% 20-01-2017

Dhruv Medical Centre, A Partnership Firm, Having its place of Business at Vinayak Towers, Secunderabad

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> HEAD NOTE:

! Counsel for the petitioner : Sri Sharad Sanghi

^ Counsel for the respondent : Sri SS Prasad

? Cases referred

1. (2012) 9 SCC 552
2. AIR 1954 SC 340
3. 2008 (10) SCC 308
4. 1969 (2) ALT 346
5. 2011 (3) ALD 354
6. 1961(2) An.W.R 255
7. 1992 (1) An.W.R 220 (DB)
8. 1988 (2) ALT 586
9. 2001 (6) ALD 272
10. 1963 (1) An.W.R 182
11. MANU/AP/0979/2012
12. 1913 Indian Cases (6)
13. 2016 (5) ALD 482 (DB)
14. AIR 1953 SC 198
15. AIR 1955 AP 87
16. 2001 (4) ALD 660
17. AIR 1988 All 313
18. 2003 (1) ALD 778
19. 2004 (4) ALD 719
20. 2000 (1) ALD 277
21. 2007 (2) ALD 17 (DB)
22. 2015 (1) SCC 32
23. 2015 (6) ALD 629 (DB)
24. 2015 (6) ALD 486

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.4402 of 2016****ORDER:**

The revision is maintained by M/s.Dhruv Medical Center, a partnership firm with Office at Vinayak Towers near Bowenpally, Secunderabad, against Vijay Shanker Patel and his wife Smt. Sumanthi Patel. It is impugning the order of the Chief Judge, City Civil Court, Hyderabad dated 08.08.2016 passed in the Tr.O.P.No.312 of 2016 by transferring the arbitration O.P.No.2139 of 2015 pending on the file of IX Additional Chief Judge, City Civil Court, Hyderabad to the file of I Additional Chief Judge, City Civil Court, Secunderabad, to be tried along with E.P.No.32 of 2015 pending on the file of I Additional Chief Judge, City Civil Court, Secunderabad.

2. The contentions in the grounds of revision vis-à-vis the submissions of the learned counsel for the revision petitioner supra impugning the transfer order supra are that the impugned order dated 08.08.2016 is opposed to Section 42 of the Indian Arbitration and Conciliation Act, 1996 (for short 'the Act') which speaks on jurisdiction that, notwithstanding anything contained elsewhere in this part or in any other law for the time being in force where with respect to an arbitration agreement in application under this part has been made in a Court that Court alone shall have jurisdiction over the arbitral proceedings and of subsequent applications arisen out of that agreement and arbitral proceedings shall be made in that Court and in no other Court. It is the contention therefrom that the lower Court did not consider the factum of the respondents themselves filed O.P.No.1123 of 2014 on

the file of X Additional Chief Judge, City Civil Court, Hyderabad, for interim measure under Section 9 of the Act. Thereby according to Section 42 of the Act supra that very same Court (X Additional Chief Judge, CCC, Hyderabad) alone shall have jurisdiction to try all subsequent applications including the proceedings challenging the award passed, invoking Section 34 of the Act which is the present arbitration O.P. pending as 2139/2015 before that Court and transfer of the same to the I Additional Chief Judge, CCC, Secunderabad invoking Section 24 CPC by the learned Chief Judge, CCC, Hyderabad, by the impugned order dated 08.08.2016 in Tr.O.P.No.312 of 2016 is unsustainable which is nothing but assumed jurisdiction not provided and further that Court is no way subordinate to the Chief Judge, City Civil Court, but for at equal footing and lower Court also not considered the same in proper prospective so also of the Constitution Bench expression in **Bharat Aluminium Company Vs. Kaiser Aluminium Technical Services Inc.**¹ in relation to territorial jurisdiction on arbitration case holding that both the Courts where the arbitration Tribunal has passed the award and the Courts where the property is situated shall have jurisdiction to try the application under Section 34 of the Act and it is for the petitioner to file Section 34 application in O.P.No.2139 of 2015 to choose any of the 2 places and it is left open to the Chief Judge to transfer the same despite opposed. It is also the contention that the learned Chief Judge did not appreciate of no provision in the Act for transfer of the proceedings arisen out of the Act to another Court to try along with the proceedings which are not arisen out of the Act, but under the provisions of the

¹ (2012) 9 SCC 552

general law including from reading of Section 19 of the Act that it is only in the event of 2 proceedings arisen out of the Act if pending before 2 different Courts, the same can be tried by one Court to avoid conflict in decisions and multiplicity. The learned Chief Judge also did not properly consider there is nothing to adjudicate in the E.P.No.32 of 2015 the lis covered by arbitration O.P.No.2139 of 2015 under Section 34 of the Act, for transfer despite opposed, that too prejudice to the revision petitioner. In the event of O.P.No.2139 of 2015 by virtue of the transfer decided by the I Additional Chief Judge, CCC, Secunderabad, the same will be without jurisdiction and orders passed being nullity and the expressions of the Apex Court Constitution Bench in **Kiransingh v. Chaman Paswan**² at Para 7 supports to the same and thereby, the impugned order is liable to be set aside by allowing the revision.

3. Whereas the learned counsel for the respondents submits that impugned order no way requires interference, the transfer is not a bar by invoking Section 24 CPC and Additional Chief Judge so far as the transfer concerned within the jurisdiction of Chief Judge who got right to made over and withdraw the matter made over including on administration grounds or on request of the parties, thereby the revision is liable to be dismissed and several contentions raised have no locus to stand.

4. Heard both sides and perused the material on record.

5. Section 2(1)(e) of the Act defines that, Court means the principal Civil Court of original jurisdiction in a district, and

² AIR 1954 SC 340

includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes. As per Section 19 of the Act the arbitral Tribunal shall not be bound by the code of CPC or the Indian Evidence Act. Subject to this part, the parties are free to agree on the procedure to be followed by the arbitral Tribunal in conducting its proceedings. Failing any agreement referred to Sub Section (2) supra the arbitral Tribunal may, subject to this part, conduct the proceedings in the manner it considers appropriate. The power of the arbitration Tribunal under Sub Section 3 supra includes the power to determine the admissibility, relevancy, materiality and weight of any evidence. The Apex Court in **M/S. Indtel Technical Services Vs. W.S. Atkins Plc**³ held where arbitration agreement is silent as to law and procedure followed in implementing it, the law governing such agreement would ordinarily be the same as governing the contract itself. Section 34 of the Act says recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub Sections 2 and 3. Sub Section 4 says on receipt of application under sub Section (1) supra the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral Tribunal any opportunity to resume the arbitral proceedings or to

³ 2008 (10) SCC 308

take such other action as in the opinion of the arbitral Tribunal will eliminate the grounds by setting aside the arbitral award.

6) Here Court as defined in Section 2(1)(e) of the Act is the Principal Civil Court of original jurisdiction in a District which is obviously the District Court which is envisaged by Section 2 (4) CPC and clause (17) of Section 3 of the General Clauses Act. Section 2 (4) CPC which defines district mean the local limits of the jurisdiction of a principal civil Court of original jurisdiction (hereinafter called a district Court), and includes the local limits of the ordinary original civil jurisdiction of High Court. As per Section 3 CPC which deals subordination of Courts for the purpose of code that District Court is subordinate to High Court and every civil Court of grade inferior of a civil Court and every Court of small causes is subordinate to the High Court and District Court. Section 4(1) CPC which is the saving provision says in the absence of any specific provision to the contrary, nothing in this code shall be deemed to limit or otherwise effect any special or local law now in force or any special jurisdiction to confer, or any special forum of procedure prescribed, by or under or in any other law for the time being in force. As per Section 15 CPC every suit shall be instituted in the Court of the lowest grade competent to try it. As per Section 22 CPC on the power to transfer where suit may be instituted in more than one Court, any defendant after notice to the other parties may at the earliest opportunity apply to have the suit transferred to another Court and the Court to which such application is made, after considering the objections of the other parties if any shall determine in which of the several Courts having jurisdiction, the suit shall proceed.

7) As per Section 24 CPC it is the general power of transfer and withdrawal, which reads as follows:

“24. General power of transfer and withdrawal— (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and— (i) try or dispose of the same; or (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of any order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,— (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court; (b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) the Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

8). In this regard this Court in **Gurram Veeranna Vs. Gorrela Ramanna**⁴ from the practical view point and the practice in voyage observed that made over and withdrawal made by the Court are different from the power of transfer under Section 24 CPC. Regarding the scope of Section 24 CPC on the issue as to whether the Additional District Judge is subordinate to the

⁴ 1969 (2) ALT 346

Principal District Judge for transfer of the case as per Section 3 read with Section 24 CPC, in **Manchukonda Venkata Jagannadham Vs. Chettipalli Bullamma and Others**⁵, learned single Judge of this Court observed that the general power of transfer and withdrawal vested in District Court cannot be exercised in respect of a matter pending in Court of Additional District Judge for Additional District Judge is not subordinate Court to District Judge and the phrase Additional Judge contained in Section 24 (3)(a) CPC cannot be construed as Additional District Judge and for such transfer, transfer application to be filed in High Court and not before the Principal District Judge to transfer any matter from Additional District Judge Court and for that referred also Sections 2 and 11(2) of the Civil Courts Act. Section 2 (a) defines Court means a civil Court established or deemed to be established under this Act and as per Sections 10 and 11, the Government in consultation with High Court by notification established such number of district Courts as may be deemed necessary and appoint District Judge for each District. As per Section 11(1) where in the event of the High Court the state of business pending in a district Court so requires the Government may after consultation with the High Court appoint one or more Additional District Judges to the District Court for such period as may be deem necessary. As per Section 11(2) an Additional District Judge was appointed shall perform all or any of the functions of the District Judge under this Act or any other law which the District Judge may assign to him and the performance of these functions same powers as the District Judge. From the

⁵ 2011 (3) ALD 354

above, the District Judge and Additional District Judge form part of only district Court and there for each there is only one District Judge, Additional District Judges along with Principal District Judge function under the district Court and even for statistical purpose Additional District Court is constituted for functioning of the Additional District Judge, it is only the District court which consists of Principal District Judge and Additional District Judges from the definition and the functions of the Additional District Judge is the work assigned to him by the Principal District Judge and all put together is only one district Court.

9). It is within this power the Principal District Judge may confer power on any Additional District Judge within the district to exercise the functions of the Principal District Judge. Once such power is conferred for that area so far as filing and disposal including transfer of cases concerned that Additional District Judge conferred with the powers of District Judge as per Sections 10 and 11 shall be called as Principal District Judge for all purpose since power is already delegated to say even from there is concurrent jurisdiction to entertain transfer applications and once the Principal District Judge delegated to the part of the district by conferring the power. Generally wisdom of Principal District Judge not to entertain not only the filing of original petitions and other matters to exercise the power as a Principal District Judge by the Additional District Judge from the power conferred but also any transfer application. As once the power conferred unless it is cancelled the power cannot be set at naught by intruding into it by District Judge out of his judicial wisdom.

10). From this coming back to the expression Manchukonda supra it is observed that as per the said definitions contained in Sections 10 and 11 of A.P. Civil Courts Act, 1972 read with Section 24 CPC once there is one District Court and within the district Court besides the Principal District Judge there may be more than one Additional District Judges they perform same functions for the Additional District Judges to function those assigned by Principal District Judge which is the power of the distribution of the work and said power is different from power under Section 24 CPC for withdrawal and transfer and when power can be exercised by the district court only in case of matter pending before subordinate court since Additional District Judge is not subordinate to the Principal District Judge, Principal District Judge has no power to withdraw a case from the Additional District Judge and transfer to some other Court, in Section 24 CPC the word is used not the District Judge, but District Court. For that conclusion relied upon the expression in **Western India Match Co. Limited Vs. Haji Abbas Hussain Mullah Eshan Ali**⁶ holding the Chief Judge and Additional Chief Judge of City Civil Court are the Courts of coordinate jurisdiction and a division bench of this Court in **New Jaji Labour Society, Vijayawada Vs. Haji Abdul Rahaman Saheb**⁷ upholding making over of a case or proceedings under A.P. Land Grabbing (Prohibition) Act by the principal District Judge to the Additional District Judge referring to Section 11(2) of the AP Civil Courts Act which provides for making over and assigning of Principal District Judge to Additional District Judge for deciding. Another Bench earlier to it of this Court in **S. Srinivasa Rao Vs.**

⁶ 1961(2) An.W.R 255

⁷ 1992 (1) An.W.R 220 (DB)

High Court of A.P.⁸ in relation to Section 20 of the AP Buildings (Lease, Rent and Eviction) Control, 1960, observed that Chief Judge, City Small Causes Court, Hyderabad, either can try or assign to any Additional Chief Judge, City Small Causes, Hyderabad, as per Sections 5 and 6 of A.P. Civil Courts Act (equal to Sections 10 and 11). In **Kvaerner Cementation India Limited Vs. Bharat Heavy Plate and Vessels Limited**⁹ it was held by another single Bench of this Court in relation to Section 34 of the Act 1996 that application for setting aside the award under Section 34 of the Act filed before the Principal District Judge can be validly assigned to any Additional District Judge from the reading of provision with reference to Section 11 of the A.P. Civil Courts Act as District Judge got the power to make over or assign the case instituted before him to the additional district judge. In **Prabhakar Rao H. Mawle Vs. Hyderabad State Bank**¹⁰ a Division Bench of this Court categorically held that the Chief Judge and Additional Chief Judges of City Civil Court are not subordinate Courts but all constitute the City Civil Court.

11) From the above as also referred supra from the expression in Gurram Veeranna supra, the District Court can assign or make over any case to any additional district Judge rather trying by Principal District Judge of the district Court and the assigning includes withdrawal and make over to another district Judge on the administrative grounds which are not be considered as transfer under Section 24 CPC since transfer is different to make over, assigning and withdrawal.

⁸ 1988 (2) ALT 586

⁹ 2001 (6) ALD 272

¹⁰ 1963 (1) An.W.R 182

12) From this coming to another single Judge expression of this Court in **T. Niranjan Vs. Sri Ch. Ramesh Chander Reddy**¹¹ contra to Manchukonda supra referring to it and it is in relation to transfer a case filed before the Chief Judge, City Civil Court, made over to II Additional Chief Judge, back to the Chief Judge from connected cases pending before the Chief Judge the issue arisen there it is observed referring to Section 24 CPC that Senior Civil Judges and Junior Civil Judges are no doubt subordinate to the District Judge and District Court is subordinate to the High Court. The District Court at any stage can transfer any suit, appeal or other or other proceeding before it for trial and disposal to any Court subordinate to it and competent to try or dispose of the same or withdraw any suit, appeal or other proceeding in any Court subordinate to it and there is no need to mention additional or assistant judges are subordinate to the district judge and the Punjab High Court in **Obrien, M.W. Vs. Haji Abdul Rahman**¹² in a civil revision of 1911 observed referring to Section 24 (3) CPC of 1908 that district Judge got power to transfer a case to the Court of Additional District Judge and negated the plea of the decree passed by the additional district judge is a nullity from district Judge has no jurisdiction to transfer.

13) From these 2 expressions one is contra to the other, reference is made to the Division Bench of this Court in **Tadikonda Surya Venkata Satyanarayana Murthy Vs. Tammana Seethamahalakshmi and Others**¹³, which answered the reference saying as per Section 2(4) CPC district means the local limits of the

¹¹ MANU/AP/0979/2012

¹² 1913 Indian Cases (6)

¹³ 2016 (5) ALD 482 (DB)

jurisdiction of the principal civil court of original jurisdiction. Therefore the expression district court also denotes the principal civil court of original jurisdiction of a district and all other civil courts of original jurisdiction even if presided over by officers of the very same rank and status will not be treated as district Courts and they do not happen to the Principal Civil Court of the district. The expression judge defined in Section 2(8) CPC to mean presiding officer of the civil Court and need not be presiding officer of the principal civil Court of original jurisdiction. Section 2(1) provides general power of transfer and withdrawal to the principal civil Court of original jurisdiction to a District and to High Court the emphasis in clause (a) of sub Section 3 of Section 24 CPC is not simple on additional Judges and assistant Judges, but is actual on Courts of Additional and Assistant Judges vis-à-vis District Court. This important aspect has not been taken note of in Manchukonda supra the fact that Principal District Judge cannot sit in judgment or appeal against the judgment of the Additional District Judge is not a ground to hold that Principal District Judge would not even got power to transfer a case pending on the file of one Additional Judge to another. The transfer is not a judgment as held by the Apex Court in **Asrumati Debi Kumar Vs. Rupendra Deb Raikot**¹⁴ that was followed by Division Bench of the Madras High Court and also a Full Bench of A.P. High Court in **M.Subbarayudu Vs. The State**¹⁵. Thus Principal District Judge has power to withdraw a suit, appeal or other proceeding pending on the file of one Additional District Judge and transfer to other Additional District Judge.

¹⁴ AIR 1953 SC 198¹⁵ AIR 1955 AP 87

14) From the above it is not only made over and assigning of work, but also the power to withdraw and remade over or re-assign to another Court by transfer. The Principal District Judge of the Principal District Court can do transfer from Additional District Judge to another Additional District Judge of the same district court. Here district Court is one though District Judges including the Principal District Judge or more than one. The word Principal Civil Court of original jurisdiction used in Section 2(e) reference to the Court and not to the judge. Thus any Principal or Additional District Judge from the Principal District Judge made over or withdrawn or made over to another can decide of statute including any of them from such power as Principal Court of original jurisdiction.

15) From this even the expression in **Managing Director, Sundaram Finance Limited, Madras and Another Vs. G.S. Nandakumar**¹⁶ referred under Sections 8 and 9 read with Section 2(1)(e) of the Act 1996 what all says is only the District Court that is competent to pass the interim orders and not for interim protection and there is nothing to say it is only the Principal District Judge alone and not the Additional District Judge much less Principal District Judge cannot made over or withdraw or transfer. In fact Section 3(17) of the General Clauses Act which defines a District Judge to mean a Judge of a Principal Civil Court of original jurisdiction, but shall not include a High Court in exercise of ordinary or extra ordinary jurisdiction. If it is to be read with Section 2(4) CPC and Sections 5 and 6=10 and 11 of A.P. Civil Courts Act and Section 2(1)(e) of the Act, 1996, it is clear that

¹⁶ 2001 (4) ALD 660

it is the district Court which is single even there are Principal District Judge and Additional District Judges which all form part of the Principal Civil Court of original jurisdiction and any decision rendered by any of them is the same from the Principal District Judge or from the power conferred by the Principal District Judge on Additional District Judge to exercise the original jurisdiction. Once entertained and made over or withdrawn or transfer to another Additional District Judge same decided by the Additional District Judge is within the meaning of decision of District Court to say principal Court of original jurisdiction of the district which is meaning of the Court and that is also the meaning that can be seen from Section 2(c) of the old Arbitration Act 1940. The expression of the Allahabad High Court **I.T.I. Limited Vs. District Judge, Allahabad and Others**¹⁷ even was considered and answered in *Sunder Finance Limited* supra to that conclusion and no more requires any further discussion thereon in this regard.

16) In **L.K. Phanesh Babu and Another Vs. Mohd. Akbar and Another**¹⁸ it was held that High Court even in exercise of powers under Section 24 CPC cannot order transfer of rent control case under Act 1996 to a Civil Court from the Rent Controller in the absence of a new provision in the Rent Control Act. It is no doubt to say the learned Chief Judge should not have been transferred the arbitration matter to try along with regular civil Court under execution. Coming to the other expression of **Dr. Reddy's Laboratories Vs. Pulletikurthi Varaha Chandra**¹⁹ it is observed as a general principle under Section 24 CPC of the

¹⁷ AIR 1988 All 313

¹⁸ 2003 (1) ALD 778

¹⁹ 2004 (4) ALD 719

exercise of the power of transfer that, it is not as a matter of course or routine for mere asking but if there exists any similarity of cause of actions and commonality of parties or reliefs claimed in one matter to the other for withdrawal from one court and transfer to the other Court where the other matter is pending for common trial and disposal.

17) Coming to the other expression on the general power of transfer in **J.S. Ravichandra Vs. Statistical Analysis and Research Bureau, Chennai**²⁰ it is held that transfer of consumer dispute pending before the District Consumer Forum to a civil Court is impermissible for no enabling provision in saying the Consumer District Forum is not subordinate to the District Court either what is further observed of Consumer District Forums are not subordinate to the High Court is not the right conclusion from subsequent expressions of those are subordinate to the High Court and within the supervisory jurisdiction of High Court to entertain a writ petition or revision petition against the orders passed, but for to say if there is a machinery provided under the provisions of that Act writ petition is substituted without availing that remedy to invoke as a matter of course.

18) Coming to the other Division Bench expression in **Dr. V. Rajeshwar Rao Vs. M. Yadagiri Reddy and Others**²¹ it is in relation to A.P. Land Grabbing Prohibition Act, Section 8 on competency of special Courts to direct transfer of suit pending in civil Court for adjudication in holding although special Court have all the trappings of a regular civil Court, it cannot invoke to

²⁰ 2000 (1) ALD 277

²¹ 2007 (2) ALD 17 (DB)

Section 24 CPC to direct transfer as District Court under Section 24 CPC cannot even withdraw a suit pending before any subordinate Court and direct transfer to the special Court under the Act since jurisdiction of district Court and special Court are mutually exclusive.

19) Coming to the three Judge bench expression of the Supreme Court in **State of West Bengal and Others Vs. Associated Contractors**²² under the Arbitration Act, 1996 referring to Sections 2(1)(e), 8, 11, 9, 34 and 42 of the Act and it was held that when High Court within the original jurisdiction granted permission under clause (12) of the LPA in respect of arbitration agreement entertained the proceeding and granted ad interim exparte injunction under Section 9 of the Act before commencement of arbitral proceedings and subsequent award passed and the award challenged, which was when questioned under Article 227 of the Constitution before the High Court on the ground of jurisdiction of district Court is excluded before Principal Civil Court of District say when original proceeding filed before the High Court, Sections 34 r/w 42 proceedings should also be filed before the High Court and not before the District Court.

20) This decision though says as per Section 2 (i) (e) of the Act, the competent Court is the Principal Civil Court or a High Court exercising original jurisdiction and no other Court, it nowhere says, Principal Civil Court to mean only the Principal District Judge. It even nowhere says where Section 9 proceedings filed before the District Court made over to Additional District

²² 2015 (1) SCC 32

Judge, Sections 34 and 42 proceedings under the Act can be said to be filed before said Additional District Judge alone, for the reason High Court consists of several Benches and all put together is the High Court and District Court consists of several District Judges and all put together is the District Court. What the provision says is, if filed before one District Court, has to be filed before that District Court and not before another District Court or High Court or vice-versa as the case may be.

21. Coming to the constitution Bench of the Apex Court placed reliance in **Bharat Aluminium Company** (supra) what it is held mentioned in the grounds of revision clause (3) no way requires repetition however that expression is not saying an arbitration proceeding interim measure of principal arbitral proceedings taken from a District Court and subsequent from the award passed challenged under Section 34 filed before the same Court cannot be made over by the Principal District Judge of the district Court to another District Judge of the District Court.

In **Pottabathuni Srikanth vs Sreeram City Union Finance Limited**²³, it was held in relation to execution of arbitration award as per Section 36 r/w Section 2 (i) (e) of the Act, that execution application must be filed in Principal Civil Court. It did not say as only before Principal District Judge and he shall not even made over to any additional District Judge.

23. The application of the provisions of C.P.C in Section 24 C.P.C Orders 38, 39 C.P.C nowhere in dispute. The Division

²³ 2015 (6) ALD 629 (DB)

Bench expression of this Court in ***M/s.ICICI Bank Limited vs M/s.IVRC Limited***²⁴ can be said to be one of the authorities on it.

24) Thus, the Principal District Judge who is herein the Chief Judge, City Civil Court, Hyderabad, is within the meaning of the Principal Civil Court of original jurisdiction under Section 2(1)(e) of the Act, 1996 got jurisdiction to entertain the application impugning the award under Section 34 of the Act either to decide by him or to make over to another Chief Judge to mean any Additional Chief Judge of the City Civil Court within the City Civil Court's jurisdiction. However the fact remains that there are no grounds in the case on hand to transfer the Section 34 arbitration O.P. proceedings covered by O.P.No.2139 of 2015 from the file of X Additional Chief Judge, City Civil Court, Hyderabad to the file of I Additional Chief Judge, City Civil Court, Secunderabad, where E.P.No.32 of 2015 is pending to decide with the same by clubbing for the issues involved in both matters are not one and the same and the scope of lis therein respectively is also different. Thereby the interim order passed by this Court on 02.11.2016 having heard the matter and reserved for orders pending disposal authorizing the I Additional Chief Judge, CCC, Secunderabad not to club the matters but for at best to decide independently and simultaneously holds good.

25) Accordingly and in the result, the revision is allowed in part while holding that the Chief Judge, CCC, Hyderabad got jurisdiction being the Principal Civil Court of original jurisdiction under Section 2(1)(e) of the Act, 1996 to entertain the application

²⁴ 2015 (6) ALD 486

under Section 34 r/w Section 42 of the Act does not mean he shall decide and cannot made over or transfer as he can either to retain with him to decide by himself or made over to any Additional District Judge and even once made over and assigned either to any Additional District Judge, got power to withdraw and either to decide himself or remade over and assign by transfer to any other Additional District Judge, as not only the District Judge (which term include Chief Judge) but also the Additional District Judges as may as they are all put together to be termed as District Court-cum-Principal Civil Court including within the meaning of Section 2 (i) (e) of the Act, 1996. However, on facts as the Chief Judge, City Civil court, Hyderabad is unsustainable in directing the I Additional Chief Judge to try the O.P.No.2139 of 2015 along with the pending E.P.No.32 of 2015 on the file of that Court, same is set-aside to the extent of joint trial/ common enquiry. Consequently the learned I Additional Chief Judge by virtue of this order shall decide both the matters independently and at best simultaneously if at all so to do is convenient and necessary.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date:20.01.2017

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LR Copy to be marked - yes