

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2656 of 2017

ORDER:

1) Assailing the order dated 20.01.2017, passed in I.A.No.26 of 2013 in O.S.No.172 of 2012 on the file of the IV Additional District Judge, Tirupati, wherein an application filed under Order VII Rule 1 of C.P.C. to reject the suit as maintainable, is dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) Respondent Nos.1 and 2 herein filed O.S.No.172 of 2012 on the file of the IV Additional District Judge, Tirupati, for recovery of Rs.8,73,75,000/- from the petitioners herein personally with interest at 18%p.a. on Rs.7,50,00,000/- from the date of suit, till realization. Pending the suit, the petitioners, who are defendant Nos.2 to 4 in the said suit, filed I.A.No.26 of 2013, to reject the suit on the ground that the plaintiffs have no cause of action and the Court has no jurisdiction to entertain the suit. The averments in the affidavit filed in support of the petition would show that the plaintiffs, filed the above suit for recovery of money basing on an award said to have been passed by the arbitrator. Since the award was passed by the sole arbitrator, the Court has no jurisdiction whatsoever to entertain the suit in view of

bar contained in Section 36 of the Arbitration and Conciliation Act, 1996. It is also stated that award becomes a decree and is executable and no suit lies. It is also stated that the first defendant company is a public limited company and the liability will be limited to the shares held by the share holders and no personal liability can be fastened. Hence, there is no cause of action, as contemplated in C.P.C., for the plaintiffs to maintain the above suit.

3) A counter came to be filed by respondent No.2 denying the averments in the affidavit filed in support of the petition. It is also stated that the petitioners are adopting delay tactic methods. Aggrieved by the said award, the petitioners filed A.O.P.No.238 of 2012 before the District Court, Chittoor and the same is pending consideration. Only to drag on the proceedings, the present petition came to be filed.

4) After considering the material on record, the trial Court dismissed the said petition holding that the objection raised by the petitioners that there is a bar to file a suit before the civil Court under Section 36 of the Arbitration and Conciliation Act, 1996. The Court held that there cannot be a dispute, in relation to cause of action, but the dispute relates to a bar, can be decided as a preliminary issue apart

from jurisdictional issue. Challenging the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioner raised various issues to show that the suit is not maintainable. According to him, only proceedings under the Arbitration Act have to be invoked for the purpose of deciding the issue, though the person, who mediated the issue, was not appointed as an arbitrator under the provisions of the Act.

6) Learned counsel for the respondents/plaintiffs would submit that since the arbitrator was not appointed under the Act, the question of filing an execution petition directly without initiating a suit would not arise. In any event he submits that the similar issue, namely as to “whether the suit is maintainable or not”, is being considered by the trial Court as a preliminary issue and as such the same warrants no adjudication in this Civil Revision Petition.

7) It may be true that the petitioner herein can challenge the very maintainability of the suit before this Court. But at the same time it is also to be noted here that the issue as to maintainability of the suit is pending adjudication before the trial Court. The same is not disputed by the learned counsel for the petitioner and respondent. It is also not in dispute that the said issue is still pending consideration.

8) Having regard to the above, this Court is of the opinion that it would be just and proper for the trial Court to consider the same and pass appropriate orders on the said preliminary issue if not already passed. If the petitioner is aggrieved of the orders passed by the trial Court, he can challenge the same before this Court.

9) For the aforesaid reasons, I see no merit in the Civil Revision Petition and the same is accordingly dismissed. There shall be no order as to costs.

10) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

22.09.2017
gkv

JUSTICE C. PRAVEEN KUMAR



