

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE T. RAJANI

+ CIVIL REVISION PETITION No.5126 of 2007

% Date: 03-08-2017

Between:

M/s. Bansilal Champalal Biyani

A proprietary concern rep. by its proprietor

Mr. B.c.Biyhani presently M/s. B.C. Biyani Project

Pvt. Ltd., situated at Bhuswal, Dist, Jalgaon, Maharastra State.

... Petitioner

And

1. Kancharla Ravindra Naidu, S/o. Sanjeeva Naidu (died)

... Respondent/plaintiff

2. The Secretary, Corporate Office, National Thermal Power Corporation Ltd.,
NTPC, Bhavan Core 7 scope complex, 7-Instituion Area, Lodhi Road, New
Delhi-3.

3. The Chief Administrative Officer, Simhadri Thermal Power Project, A unit
of NTPC, Parawada, Visakhapatnam,

4. Smt. Kancharla Nirmala, W/o. Late Ravindra Naidu, R/o.H.No.3-1040,
Chetty Gunta Road, Nellore, Nellore district.

5. Kancharla Kiran Kumar, S/o. Late Ravindra Naidu, R/o.H.No.3-1040,
Chetty Gunta Road, Nellore, Nellore district.

6. Kancharla Kalpana, D/o. Late Ravindra Naidu, R/o.H.No.3-1040, Chetty
Gunta Road, Nellore, Nellore district.

... Respondents
(Defendant Nos.2 to 6)

! Counsel for the Petitioner : Mr. V.R. Avula

^ Counsel for the Respondents : Mr. Shaik Jilani

< LIST:

> HEAD NOTE:

? Cases referred

HONOURABLE MR. JUSTICE V.RAMASUBRAMANIAN

And

HON'BLE SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION No.5126 of 2007

ORDER: (Per VRS,J)

This revision petition arises out of the dismissal of an application under Section 8 of the Arbitration and Conciliation Act, 1996.

2. Heard Mr. V.R.Avula, learned counsel for the petitioner and Mr. Shaik Jilani, learned counsel for the respondents.

3. The 1st respondent herein filed a suit for recovery of money against a partnership firm and its partners. The 1st defendant was described in the suit as a partnership firm.

4. However, a person claiming to be the proprietor of a concern and also claiming to be the very same 1st defendant, filed an application in I.A.No.163 of 2006 under Section 8 of the Act. This application was dismissed by the trial Court only on the short ground that the dispute between the parties was not an arbitrable dispute. Therefore, the person, who described himself to be the 1st defendant has come up with the above revision.

5. At the out set, there is a dispute with regard to the identity of the revision petitioner. The revision petitioner describes itself as a proprietary concern and also as the 1st defendant. But in the suit the petitioner was described as a partnership firm. Therefore, we do not know as to how a person claiming to be the 1st defendant in a suit, can come up with a revision, describing itself in a different manner without first correcting its description in the trial Court.

6. The second aspect of the matter is that it appears that the suit was filed in the year 2004 and the 1st defendant in the suit filed a written statement. After two years thereon, the present petitioner moved an application under Section 8. The pre condition for maintaining an application under Section 8 of the Act is

that the same is filed before the first submission of defence into the Court. Since this condition is not satisfied, the application was liable to be rejected.

7. Unfortunately the Court below dismissed the application on the ground that there was no arbitrable dispute. We do not approve of the said finding. Still the conclusion reached by the Court below was correct for the reason that we have specified here. Hence the civil revision petition is dismissed.

8. As a sequel, miscellaneous petitions pending in this revision petition, if any, shall stand closed. There shall be no order as to costs.

V.RAMASUBRAMANIAN, J.

T. RAJANI, J.

3rd August, 2017.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND
HON'BLE SMT JUSTI CE T. RAJANI

C.R.P.No.5126 of 2007

(Per VRS,J)



3rd August, 2017

Js.