

\*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

\*THE HON'BLE SRI JUSTICE N. BALAYOGI

+CIVIL REVISION PETITION No. 2528 of 2017

% 07-06-2017

# Mr. Gaurav Sanghi, Director,  
M/s. Vaartha Broadcasting Pvt. Ltd.,  
Hyderabad.

.. Petitioner

Vs.

\$ M/s. Prajavani Broadcasting Pvt. Ltd.,  
rep. by its Director, Basheerbagh,  
Hyderabad and three others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Mr. Ch. Ramesh Babu

^ Counsel for 1<sup>st</sup> respondent : Mr. M. Sultan Basha

? CASES REFERRED : ----



**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**  
**AND**  
**THE HON'BLE SRI JUSTICE N. BALAYOGI**  
**CIVIL REVISION PETITION No. 2528 of 2017**

**ORDER:** (*Per VRS,J*)

Aggrieved by the decision of the 2<sup>nd</sup> respondent/sole arbitrator not to take a decision with regard to his jurisdiction under Section 16(2) of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2016, the 1<sup>st</sup> respondent before the Arbitral Tribunal has come up with the present civil revision petition under Article 227 of the Constitution.

2. Heard Mr. Ch. Ramesh Babu, learned counsel for the petitioner. Mr. M. Sultan Basha, learned counsel, takes notice for the 1<sup>st</sup> respondent/claimant before the Arbitral Tribunal.

3. The petitioner is a Director of a Private Limited Company. The said Company entered into an agreement with another Company, which is the 1<sup>st</sup> respondent herein, on 15.01.2014. The said agreement contained an arbitration clause under Clause-13, which reads as follows:

*“In the event of any dispute or differences arising between the parties hereto either touching upon the subject matter of this agreement or the interpretation thereof or in relation to the obligations of the parties upon termination of this agreement in respect of rights and liabilities of the parties thereafter or in any way connected therewith or in respect thereof it shall be referred to the arbitration of sole arbitrator, to be appointed in mutual consent between both parties and it shall be deemed to be a reference under the Indian Arbitration & conciliation Act, 1996. All the arbitration proceedings shall be held at New Delhi.”*

4. The 1<sup>st</sup> respondent herein appointed the 2<sup>nd</sup> respondent herein as the sole arbitrator, on the ground that despite the service of a notice containing the names of three persons, the petitioner herein did not choose to select one among them, and that, therefore, the 1<sup>st</sup> respondent was entitled to appoint any one of its choice as the sole arbitrator. After the said arbitrator issued a notice to the petitioner herein, the petitioner filed I.A.No.1 of 2017 seeking the 2<sup>nd</sup> respondent/sole arbitrator to decide the question of his jurisdiction under Section 16(2). But, by an order, dated 29.04.2017, the 2<sup>nd</sup> respondent postponed the interlocutory application to be adjudicated along with the claim petition. Aggrieved by such an order passed by the 2<sup>nd</sup> respondent, the petitioner, who is the 1<sup>st</sup> respondent before the Arbitral Tribunal, has come up with the present revision.

5. Section 16 contemplates a detailed procedure to be followed, whenever the competence of the Arbitral Tribunal is questioned. Under sub-section (2) of Section 16, a plea regarding the lack of jurisdiction should be raised not later than the submission of the statement of defence. Under sub-section (3), a plea regarding the

exercise of authority in excess of what was conferred by the contract may also be raised.

6. Sub-sections (5) and (6) of Section 16 indicate the procedure to be followed, when the question of competence is raised, and the procedure to be followed, if an award is passed. Sub-sections (5) and (6) of Section 16 read as follows:

*“Sub-section (5) – The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.*

*Sub-section (6) – A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34.”*

7. Once the Arbitral Tribunal concludes that it has jurisdiction, the Tribunal has power to continue the arbitral proceedings and pass an award. Once such an award is passed, the same is open to challenge only in the manner prescribed by Section 34.

8. In case the Arbitral Tribunal decides that it has no jurisdiction, the same may also become an award, amenable to challenge in the manner prescribed by the Act.

9. Unfortunately, the 2<sup>nd</sup> respondent in this case has not decided his competence, but has chosen to postpone the decision.

10. Two types of cases may arise out of arbitration agreements entered into between parties. One type of cases may contain an

arbitration clause of the nature contained in the present case, which we have extracted above. The other type of cases may contain a detailed arbitration clause prescribing the procedure to be followed in the matter of appointment of arbitrators, service of notice by one disputing party upon the other indicating the names of the arbitrators of his choice, a reply by other party accepting or refusing to accept the names of any of those parties, and consequences of failure of the other party to respond to such a notice.

11. In cases where the arbitration clause contains a prescription entitling one of the parties to appoint a sole arbitrator, in the event of failure of the other party to respond to a notice, the procedure followed by the 1<sup>st</sup> respondent herein may be perfectly in order. But, in this case, such a detailed arbitration clause is not found in the contract between the parties. Therefore, the question of jurisdiction raised by the petitioner herein goes to the very root of the competence of the 2<sup>nd</sup> respondent/sole arbitrator, and hence, the sole arbitrator was liable to decide it as per sub-section 5 of Section 16. If the arbitrator comes to the conclusion that he lacked inherent jurisdiction, then he cannot even proceed to hear the case on merits. Therefore, we are of the considered view that the arbitrator should first decide his competence to adjudicate. It is only then the procedure prescribed under sub-section (6) would follow.

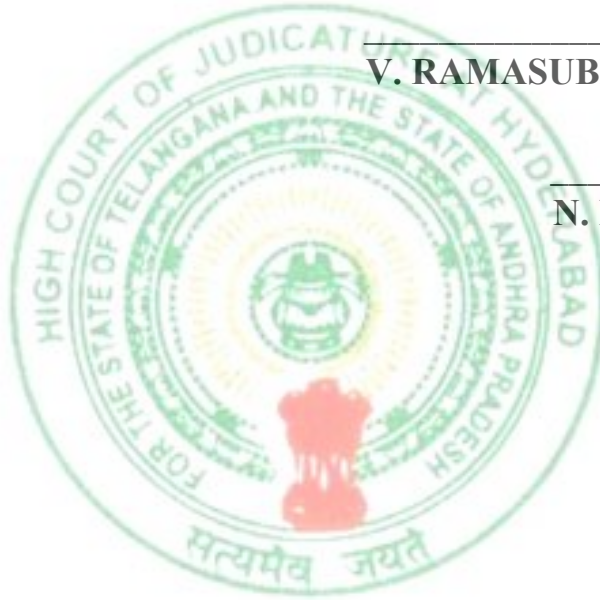
12. In view of the fact that the 2<sup>nd</sup> respondent/sole arbitrator did not decide the question of his competence, we are of the considered view that the civil revision petition deserves to be allowed. Accordingly, it is allowed, the order of the 2<sup>nd</sup> respondent is set aside, and the matter remanded back to him for a decision on his competence under Section 16(2).

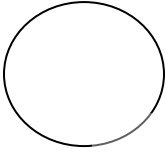
Consequently, miscellaneous petitions if any pending in the civil revision petition shall stand dismissed. No order as to costs.

**V. RAMASUBRAMANIAN, J**

**N. BALAYOGI, J**

7<sup>th</sup> June, 2017  
cbs





**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN ✓**  
**AND**  
**THE HON'BLE SRI JUSTICE N. BALAYOGI**



Civil Revision Petition No. 2528 of 2017  
(allowed)

7<sup>th</sup> June, 2017

cbs

