

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**Civil Revision Petition No.4955 of 2013**

**ORDER:**

This revision petition is filed under Article 227 of Constitution of India challenging the orders dated 24.07.2013 in I.A.No.1585 of 2012 in O.S.No.353 of 2011 on the file of the Judge, Family Court – cum – V Additional District and Sessions Judge, Visakhapatnam.

Heard the learned counsel for both parties.

A perusal of the record reveals that the respondent herein filed O.S.No.353 of 2011 on the file of the V Additional District Judge, at Visakhapatnam against the petitioner for recovery of an amount of Rs.65,95,560/-. After receipt of the summons, the petitioner herein filed I.A.No.1585 of 2012 contending that the V Additional District Judge's Court has no jurisdiction to entertain the suit in view of the arbitration agreement between the parties dated 24.05.2007. In order to appreciate the rival contention, it is not out of place to extract hereunder Clause 20 of the arbitration agreement, which reads as follows:

Clause 20 ARBITRATION: In case of any dispute arose out of the contract and could not be settled mutually, the parties are at their discretion may resort to Arbitration as per Indian Arbitration Act 1996. The venue for arbitration shall be Visakhapatnam, India. All the transactions covered in the contract are subject to Visakhapatnam jurisdiction.

The trial court dismissed the petition by making following observations:

4. Having regard to the material with regard to the petitioner/defendant not showed. There is mutual settlement was offered to the plaintiff/respondent and even it happens and failed to say that the mutual settlement is failed, in my opinion the terms and conditions in Clause (20) in the arbitration clause is not complied. Hence the petitioner/defendant is not entitled for referring the matter to the arbitration. Hence this petition is dismissed.

It appears that the trial Court misconstrued the scope of Clause 20 of the Arbitration Agreement and dismissed the petition.

The question involved in this petition is whether the Court has jurisdiction to entertain the suit or not.

Learned counsel for the petitioner, to substantiate his arguments, has drawn the attention of this Court to the decision in **Greaves Cotton Limited v. United Machinery and Appliances**<sup>1</sup>. If this Court expresses any opinion at this point of time, the same may cause prejudice to one of the parties to the proceedings.

Having regard to the facts and circumstances of the case, the order dated 24.07.2013 in I.A.No.1585 of 2012 in O.S.No.353 of 2011 is set aside and the trial Court is hereby directed to dispose of I.A.No.1585 of 2012 afresh in the light of the terms and conditions of arbitration agreement and also the principle enunciated in the case cited supra without insisting the petitioner to file a written statement.

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<sup>1</sup> (2017)2 Supreme Court Cases 268

Accordingly, Civil Revision Petition is allowed. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

**T.SUNIL CHOWDARY, J**

13<sup>th</sup> April, 2017.  
Rns

