

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON' BLE SRI JUSTICE N. BALAYOGI

Civil Revision Petition No.717 of 2014

ORDER (oral): (*per Suresh Kumar Kait, J*)

Vide present petition, the revision petitioner challenged the order dated 01.03.2014 passed in IA No.2 of 2014 in A.A.No.39 of 2012 on the file of the Arbitral Tribunal at Visakhapatnam (Sri N. Jagannadha Rao, District Judge (Retd.) Sole Arbitrator).

2. Learned counsel appearing for the revision petitioner submits that the sole Arbitrator ought to have seen that the appointment of arbitrator is to resolve the dispute between the applicant and the 2nd respondent in Arbitration Application No.39 of 2012 on the file of this court. The learned sole Arbitrator erred in allowing the application for impleading the 2nd respondent herein as 2nd claimant. The Arbitrator ought to have seen that as per the contents of the affidavit filed by respondents 1 and 2 in support of I.A. No.2 of 2014, it is the specific case that the development agreement dated 17.06.2009 was entered in the capacity of the Managing Director of Saravana Aawas Pvt. Ltd., but not in his personal capacity. Therefore, the impleadment of 2nd respondent does not arise.

3. It is not in dispute that M/s Saravana Aawas Pvt. Ltd., filed an application under Section 11(6) of the Arbitration & Conciliation Act, 1996 (for short 'the Act') to appoint an Arbitrator under Section 11(5) of the Act for adjudication of the dispute between the applicant and respondents. We note the learned Single Judge of this court, observed in its order dated 22.04.2013 that it is just and necessary to appoint an arbitrator, who shall decide all the disputes, even with regard to the nature of the concluded contract and enforceability etc. It is further

note that the 2nd respondent contended before this court that the petition was filed by the Company, whereas the contract was shown to have been entered into between Mr. B.R. Ramesh Naidu and the respondents, therefore, the petition is not maintainable. On this issue, the learned Single Judge of this court observed that this is also a decision, which has to be taken by the arbitrator by considering the material evidence or documents and the intention of parties.

4. The said order is not challenged by the revision petitioner herein, however, impugned before this court the order dated 01.03.2014 passed in I.A.No.2 of 2014, whereby the 2nd respondent sought impleadment.

5. Since, the 2nd respondent has taken the plea that the agreement is not signed by the Company, however, in his personally capacity, therefore, the impleadment to resolve the dispute is necessary. Accordingly, We find no perversity and illegality in the order dated 01.03.2014.

6. Finding no merit in the instant petition, the civil revision petition is accordingly dismissed.

7. We hereby made it clear that the Arbitrator shall also decide the issue, whether the contract is signed on behalf of the Company by Mr. B.R. Ramesh Naidu, being Managing Director or in his personal capacity. No order as to costs. Pending miscellaneous petitions, if any, in this revision petition shall stand closed.

SURESH KUMAR KAIT, J

N. BALAYOGI, J

Date: 06.09.2017
BSS

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