

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT. JUSTICE T. RAJANI

CIVIL REVISION PETITION No. 6220 of 2009

ORDER: (*Per VRS,J*)

This revision arises out of an order passed by the trial Court, allowing the application under Section 8 of the Arbitration and Conciliation Act, 1996.

2. Heard Mr. Vedula Srinivas, learned counsel for the petitioner. The counsel for the respondent was not present both on the earlier occasion and even today.

3. The application under Section 8 was filed by the 1st defendant in the suit, on the basis of the agreement purportedly filed by the petitioner/plaintiff, along with the plaint. In other words, the 1st defendant did not file either the original or a copy of the arbitration agreement, which is one of the pre-conditions for the Court to pass an order under Section 8.

4. Even in cases where the defendant is not in possession of a copy of the arbitration agreement, it may be open to the defendant to serve a notice in a manner known to law, get a copy of the arbitration agreement, and then file an application. Even that procedure has not been followed. The affidavit in support of the application under

Section 8 merely says that the petitioner/plaintiff had filed the original agreement.

5. Therefore, the order of the trial Court allowing the application under Section 8, without the 1st defendant satisfying the pre-requisite, is contrary to law.

6. It appears that the respondent/1st defendant initiated proceedings under Section 138 of the Negotiable Instruments Act as against the petitioner/plaintiff, after which, the parties have settled the dispute between themselves. But, since the petitioner/plaintiff has already obtained an injunction in respect of the bank guarantee, the closure of the C.R.P. may open up a fresh litigation. Therefore, we have gone into the merits of the dispute.

7. In view of the above, the Civil Revision Petition is allowed and the impugned order is set aside.

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

V. RAMASUBRAMANIAN, J

T. RAJANI, J.

10th August, 2017
cbs



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THE HON'BLE SMT. JUSTICE T. RAJANI



C.R.P.No. 6220 of 2009
(allowed)

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% 10-08-2017

M/s. Vimal Selections, rep. by its Proprietrix,
Smt.C.Vimala, Vimal Towers, Kukatpally
Main Road, Kukatpally,Hyderabad .. Petitioner

Vs.

\$ M/s. Nahar Retail Limited, premises M/s.Nahar
Industrial Enterprises Limited, Focal Point,
Ludhiana-141010. .. Respondent

<GIST:



>HEAD NOTE:

! Counsel for petitioner : Mr. Vedula Srinivas

^ Counsel for respondent : None

? CASES REFERRED : ----