

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

Civil Revision Petition No.173 of 2013

Date: 01.03.2017

Between:

Pakalapati Venkatasatyanarayana Raju

... Petitioner

and

M/s.Karvy Stock Broking Ltd.,
Hyderabad
rep. by its Company Secretary,
Hyderabad and another.

...Respondents

Counsel for the Petitioner: Mr.EVVS.Ravi Kumar

**Counsel for the respondents: Mr.N.Chandrasekhar Reddy
for Mr.H.Prahlad Reddy**

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Civil Revision Petition arises out of Order, dated 03.02.2012, in IA.No.865 of 2012 in OS.No.522 of 2011 on the file of the I Additional Junior Civil Judge, Kakinada.

We have heard Mr.E.V.V.S.Ravi Kumar, learned Counsel for the petitioner, and Mr.N.Chandrasekhar Reddy, learned Counsel representing Mr.H.Prahlada Reddy, learned Counsel for the respondents.

The petitioner has filed the aforementioned suit for recovery of a sum of Rs.50,963/- with subsequent interest on Rs.40,994.27 ps @ 24% p.a., from the date of filing of the suit till the date of realisation. The respondents filed their written statement opposing the claim of the petitioner on 17-01-2012. They have also filed IA.No.865 of 2012 under Section 8 of the Arbitration and Conciliation Act, 1940 (for short 'the Act') for reference of the dispute raised in the suit for arbitration. This Application was allowed by the lower Court and the suit itself was subsequently disposed of.

The learned Counsel for the petitioner submitted that the order of the lower Court suffers from patent procedural illegality,

in that the application filed by the respondents after they have submitted their written statement is not maintainable in view of the provisions of Section 8 of the Act.

For proper appreciation of the above submission, it is necessary to refer to Section 8 of the Act, which reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement:-

[(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.]

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court].

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

From a reading of the above reproduced provision, it is clear that a party seeking reference of dispute to arbitration has to necessarily make his application not later than the date of submitting his first statement on the substance of the dispute. It necessarily means that an application for reference to arbitration is barred, if the same is filed after filing of the first statement of the party, who seeks such reference. Admittedly, more than six months after filing of the written statement, the respondents have filed the application under Section 8 of the Act for reference of the dispute for arbitration. These facts are not disputed by the learned Counsel for the respondents. From these undisputed facts and the legal position as noted above, IA.No.865 of 2012 filed by the respondents was not maintainable and the lower Court has committed a jurisdictional error in not only entertaining this application but also allowing the same.

For the aforementioned reasons, the Civil Revision Petition is allowed and the order under revision is set aside. The lower Court is directed to reopen the suit and decide the same on merits by following the procedure under the provisions of the CPC.

As a sequel, CRPMP.No.242 of 2013, filed by the petitioner
for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 1st March, 2017
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