

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

CIVIL REVISION PETITION No.3963 OF 2007

Date:30.10.2018

Between:

Mahindra & Mahindra Financial Services Ltd.,
Saraswathi Nagar, Hyderabad Road, Nizamabad and another
... Petitioners

v.

Talamadla Durga Goud S/o. Shiv Linga Goud,
R/o.Kyasampally Village, Kamareddy Mandal,
Nizamabad District and others.
.. Respondents

For Petitioners : Sri K.S.R. Murthy

For Respondents : Sri Y.S.Yellanand Gupta

Gist :

Head Note :

Cases Referred : Nil

C/15

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

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ORDER: *(Per V. Ramasubramanian, J)*

This revision arises out of the dismissal of an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

2. Heard Mr. K. Sai Ram Murthy, learned counsel for the petitioners and Mr. Y.S. Yellanand Gupta, learned counsel for the respondents.

3. The respondents filed a suit in O.S No.128 of 2006, for appropriate reliefs against the petitioners, on the file of the Senior Civil Judge, Nizamabad. Upon receipt of the summons in the suit, the petitioners, who were defendants, filed an application in I.A. No.680 of 2006 under Section 8 of the Act.

4. It appears that the trial Court unfortunately did not proceed to hear the application under Section 8 of the Act. Instead the trial Court proceeded to deal with an application in I.A No.541 of 2006 filed by the respondents under order 38 Rule 5 CPC. Eventually, the petitioners/defendants were set exparte in the suit and the suit was posted for exparte evidence on 19.06.2007.

5. The petitioners filed an application under Order 9 Rule 7 CPC to set aside the exparte order. It was allowed on condition that they filed a written statement within the date fixed. The order was

carried to this Court by way of a Civil Revision Petition in CRP No. 3735 of 2006 and this Court passed an order to treat the order of attachment as show cause notice.

6. After all this had happened, the trial Court leisurely took up the application under Section 8 of the Act and dismissed it on very curious reasonings. The reasons on the basis of which the trial Court dismissed the application under Section 8 of the Act, are (1) that the petitioners failed to file their written statement, (b) that the petitioners did not comply with the order of this Court in CRP No.3735 of 2006 and (c) that the petitioners had already seized the hypothecated vehicle without invoking the arbitration clause.

7. All the above reasonings given by the trial Court are completely contrary to law. The mandate of Section 8 of the Act is that before a defendant could file his first statement of defence, the application should be filed. The trial Court has rejected the application under Section 8 of the Act for the reason that the petitioners did not file their written statement. When the law requires them not to file their written statement before filing an application under Section 8 of the Act, we do not know how the Court below wanted the petitioners to act contrary to law.

8. There is no prohibition in law for the petitioners to take possession of the hypothecated vehicle without invoking the arbitration clause. In fact, the arbitration clause is a double edged weapon. It could have been invoked even by the respondent, after the

vehicle was seized. Therefore, the seizure cannot be put against the petitioners.

9. The non-compliance with the conditional order passed by this Court in CRP No.3735 of 2006 is no relevance to the issue of Section 8 of the Act. All that is required to be satisfied while dealing with an application under Section 8 of the Act is to see (1) whether there was an arbitration agreement and (2) whether the application under Section 8 of the Act was filed before the first statement of defence was filed. Both these conditions were satisfied in this case. Unfortunately, the trial Court dismissed the application for the reasons which are completely contrary to law.

10. Hence, the Civil Revision Petition is allowed, the impugned order is set aside and the application under Section 8 of the Arbitration and Conciliation Act shall stand allowed. As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

October 30, 2018

KTL