

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

CIVIL REVISION PETITION NOS.787 AND 2637 OF 2017

C.R.P. NO.787 OF 2017:

P. Prabhakar Reddy

... Petitioner

Vs.

The State of Andhra Pradesh rep. by its
Principal Secretary, Transport & Roads &
Buildings Department and others

... Respondents

C.R.P. NO.2637 OF 2017:

The State of Andhra Pradesh rep. by its
Principal Secretary, Transport & Roads &
Buildings Department and others

... Petitioners

Vs.

P. Prabhakar Reddy and another

... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 19th JANUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

J.UMA DEVI, J

***THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI**

+ CIVIL REVISION PETITION NOS.787 AND 2637 OF 2017

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<Gist:

>Head Note:

! Counsel for petitioner in
CRP No.787 of 2017 : Sri S.Sriram

^Counsel for respondent Nos.1 to 3
in CRP No.787 of 2017 : Advocate General (AP)

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in CRP No.787 of 2017 : --

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CRP No.2637 of 2017 : Advocate General (AP)

^Counsel for respondent No.1
in CRP No.2637 of 2017 : Sri S.Sriram

^Counsel for respondent No.2
in CRP No.2637 of 2017 : --

? CASES REFERRED:

1. (2000) 4 SCC 539
2. (2007) 1 SCC 467
3. (2015) 1 SCC 32
4. 2003 LawSuit (SC) 1276
5. (2009) 17 SCC 796
6. (2000) 3 SCC 755
7. (1995) 4 SCC 718

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CIVIL REVISION PETITION Nos.787 AND 2637 OF 2017

C O M M O N O R D E R

(per Justice Sanjay Kumar)

These civil revision petitions under Article 227 of the Constitution arise out of the order dated 28.11.2016 passed by the learned Principal District Judge, Kadapa, in I.A.No.763 of 2015 in S.R.No.2764 of 2015 in A.A.No.1 of 1998. The State of Andhra Pradesh and officers of its Roads and Buildings Department (*hereinafter*, 'the authorities'), the petitioners in the subject I.A., filed C.R.P.No.2637 of 2017 aggrieved thereby, while C.R.P.No.787 of 2017 was filed by the Contractor, the first respondent in the said I.A. The second respondent is the sole Arbitrator. The I.A. was filed by the authorities under Section 14 of the Limitation Act, 1963 (*for brevity*, 'the Act of 1963') to condone the delay and to number the main petition filed by them under Section 34 of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), to set aside Arbitration Award No.1 of 1998 passed by the second respondent.

By the order under revision, the Court below allowed the I.A. in part, condoning the delay under Section 14 of the Act of 1963, while holding that it had no jurisdiction to entertain the main petition under Section 34 of the Act of 1996. The Court below opined that the Principal District Court at Chittoor alone had jurisdiction to entertain the main petition under Section 34 of the Act of 1996, in the light of Section 42 thereof, as execution proceedings in E.P.No.5 of 2014 were already instituted before it by the Contractor. The authorities are aggrieved by this finding of the Court below while the Contractor is aggrieved by the fact that the

Court below, despite holding that it had no jurisdiction to entertain the main petition, condoned the delay in its presentation under Section 14 of the Act of 1963.

As regards the latter aspect, the learned Special Government Pleader representing the learned Advocate General, State of Andhra Pradesh, appearing for the authorities, would fairly concede that if the Court below was of the opinion that it lacked jurisdiction, it had no power to even condone the delay, as such lack of jurisdiction would be all pervasive and would not clothe the Court below with even the limited power of condoning such delay. Therefore, C.R.P.No.787 of 2017 would necessarily have to be allowed in the event we agree with the Court below that it lacked jurisdiction to entertain the main petition under Section 34 of the Act of 1996. The issue that falls for consideration is whether the Court below was correct in concluding so.

Facts relevant for the purpose of this determination are as follows: The Contractor filed Arbitration Application No.1 of 1998 on 19.12.1998 seeking appointment of an arbitrator to decide his claims arising under Agreement dated 21.07.1993, relating to construction of a high-level approach bridge across River Arniar. This Agreement was executed in Kadapa District but the work thereunder was executed in Chittoor District. The Contractor issued notice dated 18.11.1997 to the authorities seeking reference of his claims to arbitration, but to no avail. The aforesaid arbitration application was then filed by him before the learned Senior Civil Judge at Kadapa and the sole Arbitrator, the second respondent, was appointed on 28.02.2000. After conclusion of the arbitral proceedings, the sole Arbitrator rendered the Award dated

10.10.2011. Thereupon, the authorities filed a petition on 18.01.2012, under Section 34 of the Act of 1996, to set aside the said Award. This petition was filed by them before the learned Principal District Judge, Kadapa, who returned the same on 03.02.2012 with the endorsement:

‘It should be presented in proper Court under Section 42 of the Arbitration and Conciliation Act, 1996’.

The authorities then represented the petition before the learned Senior Civil Judge, Kadapa, on the same day, stating thus:

‘As per the direction of the Hon’ble District Court, Kadapa, the suit and I.A. are presented before the Court of the Senior Civil Judge, which is the proper Court as per Sections 42 & 34 of Arbitration and Conciliation Act.’

This petition was however returned by the learned Senior Civil Judge, Kadapa, with the following endorsement:

‘How the petition is maintainable when this Court is not Principal Civil Court of original jurisdiction and award has already been passed by the Arbitrator appointed’.

Though the above docket endorsement reads to the effect that the learned Senior Civil Judge, Kadapa, returned the petition on 20.01.2014, the date next to the signature is 22.01.2015. The delay in returning the petition was because the record was misplaced by the Court of the learned Senior Civil Judge, Kadapa. The authorities then represented the petition before the learned Senior Civil Judge, Kadapa, on 30.01.2015 stating thus:

‘This Hon’ble Court which appointed arbitrator has jurisdiction to entertain the present proceedings’.

However, on the very same day, the learned Senior Civil Judge, Kadapa, again returned the petition with the endorsement:

‘Previous objection not complied’.

The petition was then presented before the learned Principal District Judge, Kadapa. However, by endorsement dated

25.02.2015, the learned Principal District Judge, Kadapa, returned the petition stating:

‘It should be presented in proper Court under Section 42 of the Arbitration and Conciliation Act, 1996’.

Thereupon, the authorities asked for the matter to be called on the Bench, *vide* the endorsement dated 26.02.2015 made by their counsel. The matter was then called on the Bench on 02.03.2015 and underwent adjournments. On 25.03.2015, the authorities filed the subject I.A. under Section 14 of the Act of 1963, seeking condonation of delay. The docket proceedings reflect that the learned Principal District Judge, Kadapa, then adjourned the matter through the years 2015 and 2016, till the impugned order dated 28.11.2016 was passed and the petition was returned for filing before the Principal District Judge, Chittoor.

This was because the Contractor, in the meanwhile, had filed execution proceedings on 14.11.2013, in relation to the Award dated 10.10.2011 before the learned Principal District Judge, Chittoor. The execution proceedings were taken on file in E.P.No.5 of 2014 and notice was served upon the authorities on 26.06.2014. They entered appearance through counsel on 11.07.2014.

In the light of these facts, the essential question that arises is as to whether the Principal District Court, Kadapa, or the Principal District Court, Chittoor, has jurisdiction to entertain the petition filed by the authorities under Section 34 of the Act of 1996. Be it noted that both these Courts are competent to entertain the subject petition as parts of the cause of action arose within both their jurisdictions. The agreement, which was the basis of the litigation, was executed in Kadapa District, while the contracted work thereunder was executed in Chittoor District.

Section 42 of the Act of 1996 states that, with respect to an arbitration agreement, if any application under the Act of 1996 has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and that all subsequent applications, arising out of that agreement and the arbitral proceedings, should be made only in that Court. Section 2(1)(e) of the Act of 1996 defines 'Court' to mean, apart from a High Court having ordinary original civil jurisdiction, the Principal Civil Court of original jurisdiction in the district, which has jurisdiction to decide the questions forming the subject matter of the arbitration. Further, Rule 10 of the Andhra Pradesh Arbitration Rules, 2000 framed by this Court provides that applications under Sections 34 and 36 of the Act of 1996 should be filed in the Court as defined in Section 2(e) of the Act of 1996, subject to Section 42 thereof.

The issue presently is as to which of the two Courts, *viz.*, the Principal District Court, Kadapa, or the Principal District Court, Chittoor, was approached first by way of an application under the Act of 1996, thereby vesting it with exclusive jurisdiction over subsequent applications arising out of the arbitral proceedings, in terms of Section 42 of the Act of 1996.

It is now well settled that applications under Sections 8 and 11 of the Act of 1996 do not count as applications for the purpose of determining jurisdiction under Section 42 of the Act of 1996 (See **P.ANAND GAJAPATHI RAJU V/s. P.V.G.RAJU**¹, **PANDEY & CO. BUILDERS (P) LTD. V/s. STATE OF BIHAR**² and **STATE OF WEST BENGAL V/s. ASSOCIATED CONTRACTORS**³). Therefore, merely because the learned Senior Civil Judge's Court at Kadapa

¹ (2000) 4 SCC 539

² (2007) 1 SCC 467

³ (2015) 1 SCC 32

was approached first in point of time for appointment of an arbitrator, it is not the Court competent to entertain the petition under Section 34 of the Act of 1996, in terms of Section 42 thereof. However, significantly, the authorities did not approach the said Court in the first instance. The petition under Section 34 of the Act of 1996 was originally filed by them before the Principal District Court, Kadapa, but was returned by the said Court under the impression that, in terms of Section 42 of the Act of 1996, the learned Senior Civil Judge, Kadapa, alone had jurisdiction, as he had appointed the arbitrator. It may be noted at this stage that the very same petition filed by the authorities in January, 2012, has now been returned by the Principal District Court, Kadapa, for presentation to the Principal District Court, Chittoor, before which execution proceedings had been initiated by the Contractor, under Section 36 of the Act of 1996.

In this regard, it is pertinent to note that Section 36 of the Act of 1996, prior to its amendment in 2015, provided that mere filing of a petition under Section 34 thereof to set aside the arbitral award would operate as a prohibition for enforcement of such award, without requiring an independent order to that effect. Reference may be made to **NATIONAL ALUMINIUM COMPANY LIMITED V/s. PRESSTEEL & FABRICATIONS PVT. LTD.**⁴, wherein the Supreme Court opined that the moment an application challenging the arbitral award is filed under Section 34 of the Act of 1996, it leaves no discretion in the Court to put the parties on terms and there would be automatic suspension of execution of the award. Again, in **FIZA DEVELOPERS AND INTER-TRADE P. LTD.**

⁴ 2003 LawSuit (SC) 1276

V/s. AMCI (I) PVT. LTD.⁵, the Supreme Court observed that a petition under Section 34 of the Act of 1996 has to be made within three months and the maximum delay that can be condoned thereafter is 30 days, while Section 36 provides that an award shall be enforced as if it were a Court decree but only on the expiry of the time for making an application to set it aside under Section 34 or if such application, having been made, has been refused. Thus, *per* the Supreme Court, until disposal of the application under Section 34 of the Act of 1996, there is an implied prohibition to enforcement of the award, as the very filing of the application under Section 34, in effect, operates as a stay of the award.

Earlier, in **KHALEEL AHMED DAKHANI V/s. HATTI GOLD MINES CO. LTD.**⁶, the Supreme Court was dealing with a case where the arbitral proceedings were held at Bangalore and the petition under Section 34 of the Act of 1996 was presented before the learned Principal City Civil Judge, Bangalore. However, the decree holder filed execution proceedings before the Principal District Court at Raichur in relation to the arbitral award and the said Court ordered attachment of properties. The application filed before the said Court bringing it to its notice that a Section 34 petition was pending before the Bangalore Court did not yield the desired result as the Principal District Court, Raichur, held that the Bangalore Court had no jurisdiction to entertain the Section 34 petition. Dealing with this factual matrix, the Supreme Court, while observing that both the Courts had jurisdiction, posed the question as to whether the Principal District Court, Raichur, could have passed the order of attachment when it was apprised of the

⁵ (2009) 17 SCC 796

⁶ (2000) 3 SCC 755

fact that a Section 34 petition filed by the other side was pending before the Bangalore Court. The Supreme Court observed that the Principal District Court, Raichur, should have stayed its hand and should not have entertained the execution proceedings, as the Bangalore Court had been approached earlier in point of time and the award was yet to attain finality.

This was, thus, the legal position obtaining on this aspect. However, various provisions of the Act of 1996, including Section 36 thereof, were amended by the Arbitration and Conciliation (Amendment) Act, 2015 (*for brevity*, the Amendment Act, 2015), which came into force on 23.10.2015. The amended provisions of Section 36 of the Act of 1996 read very differently from how it was earlier. Section 36(2) now provides that the filing of an application to set aside the arbitral award under Section 34 shall not, by itself, render the award unenforceable, unless the Court grants an order of stay of operation of the said award on a separate application made for that purpose. The question is whether the amended provisions of the Act of 1996 would have application presently. Section 26 of the Amendment Act, 2015 provides that such amended provisions shall not apply to arbitral proceedings that commenced before the Amendment Act, 2015 came into force, unless the parties agree otherwise, and shall apply to arbitral proceedings that commence on or after the date of commencement of the Amendment Act, 2015.

Sri S.Sriram, learned counsel for the Contractor, would argue that as the petition under Section 34 of the Act of 1996 filed by the authorities was not taken judicial note of and was only returned and presented time and again, it would not constitute 'an

application made in a Court' for the purposes of Section 42 of the Act of 1996. He would further contend that as his client filed the execution petition on 14.11.2013 before the other competent Court *viz.*, the Principal District Court, Chittoor, it became the Court in which 'an application was made', for the purposes of Section 42 of the Act of 1996. He would further contend that in the light of Section 26 of the Amendment Act, 2015, the unamended provisions of Section 36 would no longer have application and the authorities necessarily have to obtain stay of the Arbitral Award dated 10.10.2011.

Per contra, the learned Special Government Pleader would contend that once an application was made by the authorities before the proper Court and the same application still remains operative even as on date, it is deemed to have been 'made' on the date of its original presentation in January, 2012 itself and would therefore satisfy the requirements of Section 42 of the Act of 1996 for determining jurisdiction. He would assert that, in consequence, the amended provisions of Section 36 of the Act of 1996 would have no application, as the 'making' of the application under Section 34 of the Act of 1996 by the authorities automatically operated as a stay of the award, in terms of Section 36 of the Act of 1996, as it then stood.

The second issue would turn upon whether, in terms of Section 26 of the Amendment Act, 2015, the amended provisions of Section 36 would be applicable to the case on hand. However, though both the learned counsel addressed copious arguments supported by plethora of precedential wisdom on this aspect of the matter, we are of the opinion that this issue does not fall for

determination presently. All that we are now concerned with is as to which Court has jurisdiction to entertain the petition filed by the authorities under Section 34 of the Act of 1996. No doubt, execution proceedings were initiated by the Contractor before the Principal District Court, Chittoor, in the year 2013, but the incontrovertible fact remains that the petition under Section 34 of the Act of 1996 was filed by the authorities in January, 2012 itself and is still alive.

Sri S.Sriram, learned counsel, however argued that the expression ‘any application..... has been made in a Court’, in Section 42 of the Act of 1996, would require not just entertainment of such application but also actual hearing thereof. He would contend that the word ‘made’ should be construed to mean fruition of an effort to give legal completion.

Now, a look at case law:

In **Pt.RISHIKESH V/s. SALMA BEGUM**⁷, the Supreme Court was dealing with the connotations of the word ‘make’. In that context, a reference was made to Collins English Dictionary, which defined the said word to mean “cause to exist”, “to bring about” or “to produce”; and to Black’s Law Dictionary, 6th Edition, which defined it to mean “to cause to exist...to do in form of law; to perform with due formalities; to execute in legal form; ...”.

In **ASSOCIATED CONTRACTORS**³, the question that fell for consideration before a Bench of three Judges of the Supreme Court was as to which Court would have jurisdiction to entertain and decide a petition under Section 34 of the Act of 1996. On the one hand, it was contended that it was only the Principal Civil Court, as defined in Section 2(1)(e) thereof, which could entertain and

⁷ (1995) 4 SCC 718

decide such a petition, while on the other, it was contended that as the Calcutta High Court had already exercised jurisdiction by passing an interim order under Section 9 of the Act of 1996, even before commencement of the arbitration, it would have sole jurisdiction to entertain and decide the petition, by virtue of Section 42 of the Act of 1996. Affirming that applications made under Sections 8 and 11 of the Act of 1996 would not constitute applications for the purpose of determining jurisdiction under Section 42 thereof, the Supreme Court observed that an application under Section 9 of the Act of 1996 moved before the competent Court would be sufficient to preclude making of subsequent applications to any Court except the Court to which such application has been made under Section 9 of the Act of 1996. Observing that the purpose of Section 42 is to see that one Court alone should have jurisdiction over all applications with respect to arbitration proceedings, the Supreme Court pointed out that the rule of *forum conveniens* is expressly excluded by Section 42. The conclusions of the Supreme Court were summed up thus:

‘(a) Section 2(1)(e) contains an exhaustive definition marking out only the Principal Civil Court of Original Jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as “court” for the purpose of Part I of the Arbitration Act, 1996.

(b) The expression “with respect to an arbitration agreement” makes it clear that Section 42 will apply to all applications made whether before or during arbitral proceedings or after an award is pronounced under Part I of the 1996 Act.

(c) However, Section 42 only applies to applications made under Part I if they are made to a court as defined. Since applications made under Section 8 are made to judicial authorities and since applications under Section 11 are made to the Chief Justice or his designate, the judicial authority and the Chief

Justice or his designate not being court as defined, such applications would be outside Section 42.

(d) Section 9 applications being applications made to a court and Section 34 applications to set aside arbitral awards are applications which are within Section 42.

(e) In no circumstances can the Supreme Court be “court” for the purpose of Section 2(1)(e), and whether the Supreme Court does or does not retain seisin after appointing an arbitrator, applications will follow the first application made before either a High Court having original jurisdiction in the State or a Principal Civil Court having original jurisdiction in the district, as the case may be.

(f) Section 42 will apply to applications made after the arbitral proceedings have come to an end provided they are made under Part I.

(g) If a first application is made to a court which is neither a Principal Court of Original Jurisdiction in a district or a High Court exercising original jurisdiction in a State, such application not being to a court as defined would be outside Section 42. Also, an application made to a court without subject-matter jurisdiction would be outside Section 42.’

Thus, the dictionary meaning of the word ‘make’, accepted by the Supreme Court, is ‘to cause to exist or to bring about’. The petition under Section 34 of the Act of 1996 which has now been returned by the Principal District Judge, Kadapa, is the very same petition which was instituted on 18.01.2012 by the authorities, and the said petition would invariably date back to 18.01.2012, notwithstanding the fact that it has been returned and presented time and again. Therefore, the said petition is deemed to have been ‘caused to exist and brought about’ for all practical purposes on 18.01.2012 itself. All the more so, as it was filed before a Court having competence and jurisdiction to entertain it, viz., the Principal District Court, Kadapa. As the said petition was ‘made’

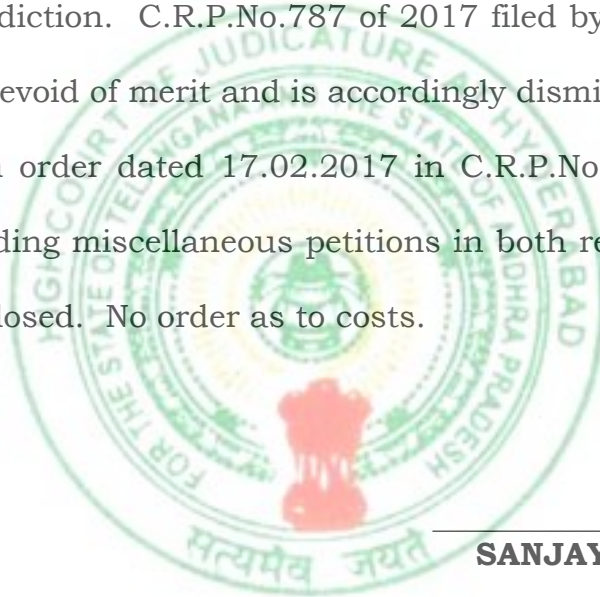
earlier in point of time to the execution proceedings moved by the Contractor before the Principal District Court, Chittoor, under Section 36 of the Act of 1996, the mandate of Section 42 of the Act of 1996 requires that all subsequent applications arising out of the subject arbitral proceedings should be made only before the Principal District Court, Kadapa.

On the above analysis, we find that the petition under Section 34 of the Act of 1996 filed by the authorities on 18.01.2012 before the Principal District Court, Kadapa, was proper as the said Court was one of the two competent Courts which had jurisdiction to entertain the same. However, the Principal District Court, Kadapa, did not entertain the same under the mistaken impression that it lacked jurisdiction under Section 42 of the Act of 1996. As this was a misconception of the said Court on facts and in law, we affirm that the Principal District Court, Kadapa, had the jurisdiction to entertain the said application on the date of its presentation, viz., 18.01.2012. As it is the very same petition which is still being shunted from Court to Court, it is deemed to have been 'made' on 18.01.2012 for all purposes. In consequence, the Principal District Court, Kadapa, is the Court which was approached in the first instance for the purposes of Section 42 of the Act of 1996 and all subsequent applications in relation to the arbitral proceedings necessarily have to be made before the same Court. Institution of the execution proceedings by the Contractor in ignorance of the filing of this petition before the Principal District Court, Kadapa, would not vest the Principal District Court, Chittoor, with jurisdiction to entertain the same, owing to the mandate of Section 42 of the Act of 1996. In effect, the order

passed by the Principal District Court, Kadapa, holding that the petition needs to be presented before the Principal District Court, Chittoor, is erroneous on facts and in law.

C.R.P.No.2637 of 2017 filed by the authorities is accordingly allowed setting aside the order to the extent it holds to this effect. In consequence, as the Principal District Court, Kadapa, was competent to not only entertain the petition filed by the authorities under Section 34 of the Act of 1996 but also the condone delay application filed therein, the order under revision, to the extent it adjudicated this plea and condoned the delay, cannot be said to be without jurisdiction. C.R.P.No.787 of 2017 filed by the Contractor is therefore devoid of merit and is accordingly dismissed.

Interim order dated 17.02.2017 in C.R.P.No.787 of 2017 is vacated. Pending miscellaneous petitions in both revision petitions shall stand closed. No order as to costs.



SANJAY KUMAR, J

J. UMA DEVI, J

19th JANUARY, 2018

L/R copy to be marked - Yes
B/o PGS/Svv