

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CIVIL MISCELLANEOUS APPEAL No.1056 of 2018

27.11.2018

Between:

Amara Rama Koteswara Rao and others

..Appellants

and

Dr.Mukkamala Sankara Reddy and another

..Respondents

Counsel for the appellants: Mr.V.Jagapathi

Counsel for the respondents: Mr.Mahmood Ali

The Court made the following:



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

This civil miscellaneous appeal is filed against order, dated 30.07.2018, in I.A.No.532 of 2018 in O.S.No.118 of 2005 on the file of learned I Additional Chief Judge, City Civil Court, Secunderabad, whereby the learned Judge, has dismissed the said I.A. mainly on the ground that the appellants did not file the original document containing the arbitration agreement.

2. Mr.V.Jagapathi, learned counsel for the appellants, has filed memo, dated 20.11.2018, along with original documents under which, the main share broker *viz.*, Maliram Makharia Finstock Pvt. Ltd., allotted shares and the said documents were addressed to appellant No.4, the sub-broker. He has further submitted that though the names of respondent Nos.1 and 2 do not appear in the said documents, the undisputed fact is that the shares mentioned therein were allotted in favour of the respondents and that thereby, they became constituents within the meaning of clause 249 (i)(a) printed on the back side of the original documents of allotment of shares.

3. Mr.Mahmood Ali, learned counsel for the respondents, while disputing the above submissions of the learned counsel for the appellants, has submitted that his clients are not parties to the arbitration agreement.

4. A perusal of the order under appeal shows that the Court below has dismissed I.A.No.532 of 2018 filed under Section 8 of the Arbitration and Conciliation Act, 1996, for reference of the dispute raised in the suit for arbitration on the ground that the original document containing arbitration agreement has not been filed. As the appellants have filed the original documents as noted above, we are of the opinion that in the interests of justice, the order under appeal is liable to be set aside and the I.A. to be remanded to the Court below for disposal afresh after receiving the original documents containing arbitration agreement and after hearing both the parties.

5. Accordingly, order, dated 30.07.2018, in I.A.No.532 of 2018 in O.S.No.118 of 2005 on the file of learned I Additional Chief Judge, City Civil Court, Secunderabad, is set aside. The appellants are permitted to take return of the

original documents filed along with the memo in this appeal by approaching the Registry and to file the same before the Court below in I.A.No.532 of 2018, which is restored to file. After receiving the said original documents, the Court below shall dispose of the aforementioned I.A., afresh, after allowing the respondents to file additional counter-affidavit, if any, and hearing both the parties. The Civil Miscellaneous Appeal is, accordingly, allowed.

6. As a sequel to allowing the C.M.A., I.A.No.1 of 2018 filed by the appellants for interim stay stands disposed of.



C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

27th November, 2018
GHN