

**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.6118 of 2017

Date:30.08.2018

Between:

M/s.Chandramouli Machine Shop LLP,
Rep.by Mr.K.Karunakara Rao, Managing Partner,
Thummalapenta Village, Kolimigundla Mandal,
Kurnool District, Andhra Pradesh.

... Petitioner

v.

M/s.Ultra Tech Cement Ltd.,
Rep. by Mr.Suhas K. Shah,
Asst. Vice President (Materials),
Bhogasamudram Village, Anantapur District and another.

.. Respondents

For Petitioner : Unnam Muralidhar Rao

For Respondents : Harish Kumar Rasineni

Gist :

Head Note :

Cases Referred :

C/15

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

CIVIL REVISION PETITION No.6118 of 2017

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

Aggrieved by an order passed by the III-Additional District Judge, Kurnool at Nandyal, returning an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), to be presented to the appropriate Court having territorial jurisdiction, the Contractor has come up with the above revision.

2. Heard Mr. Unnam Muralidhar Rao, learned counsel for the petitioner and Mr. Harish Kumar Rasineni, learned counsel for the respondents.

3. The relationship of employer and contractor between the respondents and the petitioner dates back to the year 1999 when a work order dated 30.09.1999 was entrusted by the respondents to the petitioner, for a period of six years. After the completion of the work order, subsequent work orders were given on fresh terms. The last of such work order was given on 22.07.2016, with the validity period from 01.04.2016 to 31.03.2017. The last of the work order contained certain general terms and conditions, Clause - 6 of which reads as follows:

"6) Arbitration: In the event of any question, dispute or difference arising between owner and the contractor regarding the due observance of terms and conditions laid down in this contract or any other matter touching the rights, duties and liabilities of the parties, the decision of APCW management shall be treated as final and binding on both parties."

4. The petitioner herein filed an application before the Principal District Judge, Kurnool, under Section 9 of the Act seeking an injunction restraining the respondents from terminating the works contract. By an endorsement dated 21.04.2017, the Principal District Court, Kurnool, returned the application. The endorsement reads as follows:

“The cause of action arosed at Thummalapenta village of Kolimigundla Mandal, Kurnool District, hence this OP is returned as not maintainable to file in proper court.”

5. In view of the above endorsement, the petitioner directly filed the application under Section 9 of the Act, before the III-Additional District Judge, Kurnool at Nandyal. After notice and after hearing, the III-Additional District Judge passed a very cryptic order, which reads as follows:

“02) R1 filed counter and R2 filed a memo adopting the counter of R1.

03) Perused the material on record. As per Clause (k) of the Annexure to Work Order of the L & T Ltd., this court has no territorial jurisdiction to entertain the petition

04) Hence, the petition is returned to present the same before the proper court.”

6. Aggrieved by the aforesaid order, the petitioner is before this Court.

7. It is stated by the learned counsel for the petitioner that the Court below was lead to believe that the Courts in Anantapur District alone had jurisdiction, on the basis of Clause (k) of the work order dated 30.03.1999, without realizing that the said work order already expired in the year 2005. According to the petitioner, the latest work order did not contain such a stipulation similar to clause (k) of the work order, dated 30.03.1999. On the contrary, there is a clause in the latest work order, dated 22.07.2016, which we have already extracted earlier. In the light

of such a clause, the case of the petitioner is that an application under Section 9 of the Act was maintainable before the Principal Court of original jurisdiction in Kurnool District and that when the petitioner presented such an application, it was returned by the Principal District Judge, after holding that the cause of action arose in Thummalapenta Village of Kolimigundla Mandal, Kurnool District. Therefore, the petitioner was compelled to file the application before the III-Additional District Judge. But carried away by the contention raised by the respondents on the basis of Clause (k) of the work order dated 30.03.1999, the Court below returned the application. In other words, the grievance of the petitioner is that they have been thrown out from Court to Court without any clue.

8. The learned counsel for the respondents has a fundamental objection to the very initiation of the proceedings under Section 9 of the Act. According to the learned counsel for the respondents, Clause - 6 of the general terms and conditions contained in the work order dated 22.07.2016, does not even speak about arbitration by a sole arbitrator or by a panel of arbitrators and that except the heading "Arbitration", there is no mention about arbitration at all. But, the response of the learned counsel for the petitioner is that in any case, the petitioner is a Small Scale Industry, covered by Micro, Small and Medium Enterprise Development Act, 2006 (MSME Act), and that therefore, even in the absence of an arbitration clause contained in the work order, the petitioner is entitled to invoke the arbitration under the Statutory prescription.

9. The contention of the learned counsel for the petitioner is well founded. In fact we need not go into the question of interpretation of Clause - 6 of the general terms and conditions contained in the work order dated 22.07.2016. If the petitioner is in fact a Medium or Small Scale Industry, it is entitled to invoke the provisions of the special enactment. If the petitioner is covered by the MSME Act, the Arbitration proceedings under the Act are covered by 1996 Act, irrespective of whether there is a clause for arbitration in the contract or not.

10. But, the above finding does not really go to the rescue of the petitioner in this case. Section 2(1)(e) of the Arbitration and Conciliation Act, defines the word “Court” to mean the Principal Civil Court of original jurisdiction in a district, in the case of arbitrations other than international commercial arbitrations. The Principal Civil Court of original jurisdiction of a District is actually the Principal District Judge. Therefore, return of the petitioner’s application by the Principal District Judge on 21.04.2017 was clearly wrong.

11. But, one wrong committed by the Court cannot be off set by another wrong committed by another Court. Fortunately, for the petitioner, the III-Additional District Judge, to whom the application under Section 9 was directly presented, has chosen merely to return the application, however, with an observation as though the Court has no territorial jurisdiction. The III-Additional District Judge had no jurisdiction whether territorial or otherwise. Therefore, he had no jurisdiction even to say that that Court did not just have territorial jurisdiction. He should have returned it on the basis of the definition of

the word 'Court' appearing in Section 2 (1) (e) of the Act. It is upto the Principal District Judge to decide whether he has territorial jurisdiction in the light of the nature of the dispute raised, the cause of action that arose and in the light of the clauses contained in the work order between the parties.

12. In the light of the above, the Civil Revision Petition is partly allowed setting aside paragraph-3 of the order of the III-Additional District Judge, but sustaining the return of O.P. for presentation to the appropriate Court. The petitioner shall now represent the O.P. before the Principal District Judge who shall entertain the application, issue notices to the respondents, hear the parties on all issues including the question of jurisdiction with reference to the clauses contained to the work order and with reference to the provisions of MSME Act and decide the application within a period of three (3) months from the date of receipt of a copy of this order.

13. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

August 30, 2018
KTL