

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 SRI JUSTICE N. BALAYOGI

+ CIVIL REVISION PETITION Nos.7459 of 2017 and 73, 446 and 475 of
2018

%Date:11.06.2018

Between:

CRP No.7459 of 2017:

Garlapati Ramanaiah Naidu S/ o.Venkata Subbaiah,
Age 64 years, R/ o.Sanathnagar Colony, Hyderabad.

...Petitioner

Vs.

\$ M/ s.RAMK Projects, Kamalapuri Colony,
Hyderabad, Rep. by its Working Partner and another.

... Respondents

CRP No.73 of 2018:

Garlapati Ramanaiah Naidu S/ o.Venkata Subbaiah,
Age 64 years, R/ o.Sanathnagar Colony, Hyderabad.

...Petitioner

Vs.

M/ s.RAMK Projects, Kamalapuri Colony,
Hyderabad, Rep. by its Working Partner and another.

... Respondents

CRP No.446 of 2018:

Garlapati Ramanaiah Naidu S/ o.Venkata Subbaiah,
Age 64 years, R/ o.Sanathnagar Colony, Hyderabad.

...Petitioner

Vs.

M/ s.RAMK Projects, Kamalapuri Colony,
Hyderabad, Rep. by its Working Partner and others.

... Respondents

CRP No.475 of 2018:

Garlapati Ramanaiah Naidu S/ o.Venkata Subbaiah,
Age 64 years, R/ o.Sanathnagar Colony, Hyderabad.

...Petitioner

Vs.

M/ s.RAMK Projects, Kamalapuri Colony,
Hyderabad, Rep. by its Working Partner and another.

... Respondents

! For Petitioner : Mr.K.A. Narasimham

^ For Respondents : Mr.M. V. Hanumant ha Rao

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> Head Note :

? Cases Referred :

THE HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON' BLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION Nos.7459 of 2017 and 73, 446 and 475 of
2018

COMMON ORDER: (per V. Ramasubramanian, J)

Aggrieved by the orders passed by the III Additional Chief Judge, City Civil Court, Hyderabad, allowing the applications under Section 8 (1) of the Arbitration and Conciliation Act, 1996 (for short 'the Act'), in a batch of four different suits between the same parties, the plaintiff in all the suits have come up with these revision petitions.

2. heard Mr.K.A.Narasimham, learned counsel for the petitioner and Mr.M.V.Hanumantha Rao, learned counsel appearing for the respondents.

3. The petitioner herein filed four different suits, as against the respondents herein. In one suit where substantial reliefs were sought, the prayer was for dissolution of partnership, rendition of accounts and for payment of money. The reliefs sought in the other three suits were for recovery of money.

4. Immediately after service of summons in the suit, the defendants filed applications in all the four suits under Section 8(1) of the Act, seeking reference of the disputes to Arbitration in terms of Clause 24 of the Partnership Deed dated 06.03.2009. These applications were allowed by the trial Court, forcing the plaintiffs to come up with the above revisions.

5. Admittedly, the petitioner and the 2nd respondent constituted a partnership firm under the name and style of M/s.RAMK Projects, which is arrayed as the 1st respondent herein. The partnership firm was also registered with the Registrar of Firms on 17.07.2009.

6. Clause 24 of the Deed of Partnership contained a clause for reference of all the disputes between the parties, in relation to any matter touching upon the affairs of the partnership to a sole arbitrator for adjudication. Therefore, the defendants sought reference of the disputes under Section 8 of the Act.

7. But, the petitioner contested the applications under Section 8 of the Act on the ground that the 2nd respondent played a fraud, siphoned off funds of the partnership to the detriment of the firm and that even the cheques issued by the 2nd respondent dishonoured leading to the institution of criminal complaints under Section 138 of the Negotiable Instruments Act. In other words, the petitioner/plaintiff pleaded fraud to avoid the reference of the dispute to Arbitration.

8. Heavy reliance was placed by the learned counsel for the petitioner on the decision of the Supreme Court in *N.Radha Krishnan v. Maestro Engineers*¹, where the Supreme Court held that insofar as the matters of fraud are concerned, they lie within the ambit of the Civil Court to adjudicate. Therefore, it is contended by Mr.K.A.Narasimham, learned counsel for the petitioner that the Court below ought not to have allowed the applications under Section 8 of the Act especially in the light of the allegation of fraud.

9. But, at the outset, it is pointed out that there is a clear distinction between the language employed in Section 8 and the language employed in Section 45 of the Act. Under Section 8(1) of the Act, the role of Judicial Authority is extremely circumscribed. All that the Judicial Authority should see in an application under Section 8(1) of the Act is as to whether a valid arbitration agreement existed and as to whether the application for reference to Arbitration was made not later

¹ (2010)1 Supreme Court Cases 72

than the date of submission of the first statement on the substance of the dispute.

10. In contrast, in relation to International Commercial Arbitrations, Section 45 of the Act gives leverage to the Court to find out whether the Arbitration agreement is null and void, inoperative or incapable of being performed. The phrase “Agreement is null and void” appearing in Section 45 of the Act in relation to International Commercial Arbitration, takes within its purview, an enquiry into allegations of fraud. Such a leverage as available to a Court in an enquiry under Section 45 of the Act in relation to International Commercial Arbitration is not available in an application under Section 8 of the Act in relation to Domestic Arbitration.

11. In any case, even in respect of Section 45 of the Act, the fraud that would enable a Court to reject an application under Section 45 of the Act should relate to the fraud in the execution of the Arbitration agreement itself. The fraud perpetrated by a party to a commercial dispute, after the creation of the relationship between the parties is not a fraud that is contemplated under Section 45 of the Act. That is why Section 45 of the Act uses the expression “agreement is null and void”. The fraud that strikes at the root of the very creation of the agreement, is the fraud that can denude the Arbitrator of his power to adjudicate upon the dispute. Any dispute that arises out of a validly created agreement on the basis of fraud perpetrated in relation to the relationship between parties will not vitiate the very arbitration agreement itself.

12. To put it differently, unless and until the arbitration agreement itself is vitiated by fraud, the question of refusing to refer the dispute to an Arbitral Tribunal does not arise. This fine distinction is not referable to the decision of the Supreme Court in N.Radha Krishna's

case. As a matter of fact, the decision in N.Radha Krishna's case was subsequently diluted by the Supreme Court itself in A. Ayyasamy v. A. Paramasivam²

13. Therefore, we are of the considered view that the Court below was right in allowing the applications under Sections 8(1) of the Act. The only mistake probably committed by the Court below was to terminate the suits. But, generally, Section 8(1) of the Act does not talk about termination of the suit.

14. This aspect gains significance in the light of the fact that a party can even withdraw the suit, after reference under Section 8 or Section 45 of the Act, with a request to refund the Court fee. If a suit is terminated, the question of withdrawal would not arise. Therefore, to that extent, the orders of the Court below require fine tuning or modification.

15. Accordingly, the Revision Petitions are disposed of to the following effect:

- i) The orders of the trial Court allowing the applications under Section 8(1) of the Arbitration and Conciliation Act, are confirmed.
- ii) That portion of the orders of the trial Court terminating the suits alone, are set aside.
- iii) The petitioner may withdraw the suits and seek refund of the Court fee in terms of the provisions of the A.P. Court Fees and Suit Valuation Act, 1956. It is made clear that the petitioner will be entitled to refund under the appropriate provisions.

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

V. RAMASUBRAMANIAN, J

N. BALAYOGI, J

June 11, 2018
KTL

² 2016 (10) SCC 386