

THE HON'BLE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.1183 of 2019

ORDER: *(Per Hon'ble Dr. Justice Shameem Akther)*

The defendants/petitioners herein filed this revision under Article 227 of the Constitution of India, aggrieved by the orders dated 03.04.2019 passed in I.A.No.97 of 2019 in O.S.No.366 of 2018, by the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri.

2. The petitioners herein are the defendants 2 to 7, 9 to 14 and 16 to 30. The respondents herein are the plaintiffs, who filed O.S.No.366 of 2018 before the Court below for partition and separate possession of suit schedule properties. In the said O.S.No.366 of 2018, the defendants/petitioners herein filed I.A.No.97 of 2019 under Order 7 Rule 11 (d) of the Code of Civil Procedure ('CPC') r/w Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') for rejection of the plaint filed by the plaintiffs/respondents herein as barred by law and that the dispute cannot be adjudicated as arbitrable under Section 34 of Specific Relief Act, 1963 and the dispute is to be resolved by way of arbitration.

3. The respondents/plaintiffs before the Court below opposed the application stating that the defendants/petitioners herein tried to introduce some facts which are not at all admitted and Section 8

of the Arbitration Act does not apply to the facts of the case and there cannot be any alternative relief other than the relief provided under Section 34 of the Specific Relief Act.

4. The learned Judge on the plea of the petitioners/defendants that there is a clause in the agreement for arbitration and the plaint is to be rejected, held that as per Section 8 of the Arbitration Act, only when an application is filed, the matter will be referred to Arbitration and if no such application is filed the suit will proceed. No provision in the Arbitration Act bars maintainability of the suit even if there is an arbitration clause in the agreement. The learned Judge further held that the averments made in the plaint have to be accepted as correct for the purpose of consideration of the application under Order 7 Rule 11 of CPC, and ultimately dismissed the application. Hence this revision.

5. Heard Sri Venu Gopal, learned Senior Counsel representing Sri R.Ramabrahmma, learned counsel for petitioners and Sri Bankatlal Mandhani, learned counsel for respondents and perused the record.

6. Learned Senior Counsel Sri Venu Gopal, appearing for the petitioners would submit that the Court below failed to look into the plaint pleadings at Paras 2 and 4 and consider the document No.14 filed by the petitioners since there is an arbitration clause in document No.14. Section 8 of the Arbitration Act is applicable and no suit is maintainable and relied on the decisions reported in P.Anand Gajapathi Raju and others vs. P.V.G. Raju (died)

and others¹, Hindustan Petroleum Corporation Ltd., vs. Pinkcity Midway Petroleums², Agri Gold Exims Ltd., vs. Sri Lakshmi Knits & Womens³ and Bhargavi Constructions vs. Kothakapu Muthyam Reddy⁴. The subject matter of the suit is covered by Development Agreement-cum-Irrevocable General Power of Attorney and ultimately prayed to set aside the impugned order and reject the plaint consequentially.

7. On the other hand, learned counsel for respondents supported the impugned order and ultimately prayed to dismiss the CRP with costs.

8. In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order dated 03.04.2019 in I.A.No.97 of 2019 in O.S.No.366 of 2018 passed by the XVI Additional District and Sessions Judge-cum-XVI Additional Metropolitan Sessions Judge, Ranga Reddy District at Malkajgiri, is liable to be set aside?”

9. POINT:

The impugned application is filed by the petitioners/defendants under Order 7 Rule 11(d) of CPC r/w Section 8 of Arbitration Act. The plaint has to be rejected only under the circumstances mentioned in clause (a) to (d) of Rule 11 of Order 7 CPC. It is settled legal position that the averments of the plaint alone are required to be examined to reach at a conclusion. The

¹ (2000) 4 SCC 539

² (2003) 6 SCC 503

³ (2007) 3 SCC 686

⁴ (2018) 13 SCC 480

defences setup by the petitioners/defendants cannot be gone into to reject the plaint under Order 7 Rule 11 CPC. It is pertinent to state that the suit is filed for partition and separate possession of suit schedule properties, wherein the entitlement and separate possession of the parties is required to be adjudicated. The Arbitrator cannot decide issues relating to title, possession and entitlement of the parties in a suit for partition and separate possession. The document No.14 is Development Agreement-cum-Irrevocable General Power of Attorney dated 13.07.2015 and it was entered into between plaintiff Nos.1 to 4 and defendant No.2, 29 and 30 for developing the suit land. The defendants 1, 3 to 28 are not parties to the said Agreement dated 13.07.2015. It demonstrates that all the parties to the litigation are not parties to the said Agreement. Furthermore, no application under Section 8 of Arbitration Act was filed by the petitioners herein, to refer the subject dispute to the Arbitration. It is relevant to state that questions of fact and law are involved to adjudicate the lis between the parties to the suit. Further, the relief sought by the plaintiffs, in the light of the said agreement dated 13.07.2015, the binding nature of the agreement dated 13.07.2015 and the contentions raised on behalf of the revision petitioners, can only be determined after trial of the subject suit.

10. Under these circumstances, the Court below is justified in concluding that in an application for rejection of plaint, it has to examine the circumstances falling under clause (a) to (d) of Rule 11 of Order 7 CPC. It cannot examine the merits and defence

setup by the defendants. The decisions referred by the learned counsel apply where there is an arbitration clause between all parties to the litigation. The contention of the respondents/plaintiffs is that their father late V.Mallaiah has got 1/6th share in the suit schedule property and they are entitled for 1/6th share in the suit schedule property and accordingly a final decree is required to be passed in favour of the respondents/plaintiffs allocating and delivering possession of 1/6th share in the suit schedule property by metes and bounds in favour of the respondents/plaintiffs. So, the conclusions reached in the afore-mentioned citations are not helpful to the petitioners/defendants. The finding recorded by the Court below is neither illegal nor there is any material irregularity has been committed. Therefore, there are no grounds to interfere with the impugned order. The revision petition is devoid of merit and it is liable to be dismissed.

11. Accordingly, the civil revision petition is dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, ACJ

SHAMEEM AKTHER, J

Date: 04.06.2019

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