HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

CIVIL REVISION PETITION No.6530 OF 2018

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

Aggrieved by an order of the Commercial Court dismissing an application filed by the defendant in a suit, for the return of the plaint to a normal Civil Court, the defendant to the suit has come up with the above Civil Revision Petition.

2. Heard Mr. Raja Gopallavan Tayi, learned counsel for the petitioner and Mrs. Manjiri S Ganu, learned counsel for the respondent.

3. The respondent herein filed a suit in O.S. No.250 of 2014 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad, for recovery of a sum of Rs.4,91,35,905/- with interest. The basis of claim of the respondent/plaintiff in his suit was that believing the representations made by the petitioner/defendant, the plaintiff invested a huge sum of money during the period 2009-10, in a joint venture promised to be promoted and that when the joint venture did not take-off, the defendant agreed to return the money, by executing a promissory note dated 16.03.2011. According to the respondent/plaintiff, the defendant returned a sum of \$ 222,200/- out of a total amount of \$ 612,650/-, during the period from 21.05.2010 to 08.07.2013 and that since the balance remained unpaid, the plaintiff was compelled to file the suit.

4. The petitioner/defendant filed a written statement admitting in paragraph No.3 that the plaintiff invested some amount in a joint venture with the defendant and that after sustaining loses, the plaintiff opted to go out of the joint venture and sought return of his investment. Nevertheless the petitioner/defendant claimed that the suit claim ought to have been far less than what was claimed in the plaint and that interest as claimed by the plaintiff was not in accordance with law.

5. After the petitioner/defendant filed a written statement, the suit got transferred to the file of the Commercial Court, in the year 2017 and numbered as COS No.31 of 2017. After the suit got transferred to the Commercial Court and after contesting a few interlocutory applications in the suit, the petitioner/defendant filed an application in I.A.(SR) No.3352 of 2018 seeking return of the suit bundle to the ordinary Civil Court, where it was originally filed. This application was filed on the ground that the dispute was merely one of a loan transaction and that therefore it does not fall under the category of commercial transaction.

6. This application was rejected by the Court below, without even assigning the application a number. Aggrieved by such a summary dismissal of the application for the return of the plaint, the defendant has come up with the above revision.

7. It may be true that the Commercial Court ought to have at least numbered the application and decided the same. But, we do not

think that numbering of the application and its disposal thereafter would have made any difference.

8. The short question that the petitioner/defendant raised in his application was as to whether the suit transaction was a commercial transaction within the definition of the expression "Commercial Dispute" under Section 2 (c) of the Commercial Courts Act, 2015. A close look at Section 2 (c) of the Commercial Courts Act, 2015 would show that ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents, is a commercial dispute in terms of Sub-clause (i) of Clause (c) of Section 2. In any case, joint venture agreements fall under Sub-clause (ii) of Clause (c) of Section 2.

9. If the dispute between the petitioner and the respondent arose out of a loan transaction between a borrower and a financier, the same may fall under Section 2 (c) (i). Even the question whether the transaction was that of a financier and the question whether the agreement is capable of interpretation in such a manner, will fall under Section 2 (c) (i). In any case disputes arising out of joint venture agreements clearly fall under Section 2 (c) (ii).

10. In this case, the respondent/plaintiff pleaded in paragraph No.2 of the plaint that on the assurance made by the defendant of handsome returns on investments, the plaintiff envisaged investing amounts in the joint venture with the defendant. But, according to the

plaintiff, the joint venture did not take-off, leading to an agreement where the money paid for the purpose of investment was agreed to be refunded.

11. The petitioner/defendant filed a written statement stating in paragraph no.3 as follows:

> "3. This defendant submits that the Plaintiff has invested some amount in a joint venture with the Defendant. After sustaining loses, the Plaintiff has opted to go out of the said venture and requested for return of his investment. This is against the principles of business. However, the defendant by way of good will gesture offered to repay the investment made by the plaintiff. After settlement of accounts the Defendant offered to repay a sum of $ 6,00,000 USD to the Plaintiff."

12. Therefore, it is clear that the original cause of action for the plaintiff was, the promise to rope in the plaintiff into a joint venture business. Hence, the dispute between the parties is clearly a commercial dispute within the meaning of Section 2 (c).

13. In any case, it appears that a few interlocutory applications were contested by the petitioner before the Commercial Court thereby submitting himself to the jurisdiction of the Court. Therefore, we do not think that the Commercial Court committed any error of jurisdiction warranting interference under Article 227.

14. Hence, the Civil Revision Petition is dismissed. However, in the circumstances, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the revision, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

April 09, 2019
Mgr