

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**MONDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CIVIL REVISION PETITION NO: 3706 OF 2024

Petition filed under Article 227 of Constitution of India, aggrieved by the Order and decree dated 14.08.2024 passed in I.A.No. 933 of 2023 in O.S.No. 7 of 2023 on the file of the Court of the I Additional District Judge, Nizamabad.

Between:

M/s. Laxmi Transmissions, Rep. by its Managing Partner V.Venugopal Reddy
S/o V. Veera Reddy Age. 52 yrs, Occ. Business Registered office at Road
No.6 New NGO's Colony, Subashnagar colony Nizamabad, Telangana-
503002.

...Revision Petitioner

AND

1. M/s Stelmec Ltd., Rep. by its Managing Director Hamza Arsiwala s/o Ismail Arsiwala Age. 64 yrs, Occ. Business, Corporate Office. 506/507, 55 Corporate Avenue Sakhivihar Road, Andheri East, Mumbai-500072.
2. Hamza Harsiwala, s/o Ismail Arsiwala Age. 64 yrs, Occ. Business, Corporate Office. 506/507, 55 Corporate Avenue, Sakhivihar Road, Andheri East, Mumbai-500072.
3. Vijay Kadhu, s/o not known Age. Major, Occ.Business O/o. Stelmec Ltd, Maheshwari Chambers 4th Floor, 406 & 407, Somajiguda, Hyderabad.

...Respondents

IA NO: 1 OF 2024

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the order dated 14-8-2024 in I.A.No.933/2023 in O.S.No.7/2023 dated 14-8-2024 on the file of I Additional District Judge, Nizamabad pending disposal of CMA in the interest of justice.

Counsel for the Petitioner : Sri Venugopal Julakanti

Counsel for Respondents : Sri S.K. Shabbeer Ahmed

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE K.SURENDER

CIVIL REVISION PETITION No.3706 of 2024

ORDER:

1. This Civil Revision Petition is filed by the petitioner/respondent/defendant No.3 against the orders in I.A.No.933 of 2023 in O.S.No.7 of 2023 dated 14.08.2024 passed by the I Additional District Judge, Nizamabad, wherein the petition filed under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') r/w Section 151 CPC seeking to refer the suit matter to Arbitrator was allowed.

2. Briefly, the facts of the case are that summary suit was filed for recovery of an amount of Rs.1,34,77,261/- along with interest. The plaintiff's company was doing business in electrical installation and transmission lines. The plaintiff was providing technical and financial assistance to the defendant company in installation and transmission of lines.

3. The 2nd respondent/Defendant No.2 had approached the revision petitioner/plaintiff on behalf of the 1st respondent company/defendant No.1 to file tender works at Orissa Power Transmission Power Corporation Ltd (OPTCL) and requested the 1st

defendant in filing bid for tenders at Orissa for technical and financial documents for the purpose of qualifying the tender. In the said process, the 1st defendant took assistance from plaintiff company and entered into memorandum of understanding with defendant No.1 company. As per the said MoU, the 1st defendant company has to pay Rs.2,80,00,000/- inclusive of taxes and GST to the Revision Petitioner as royalty. At the time of securing tender, the 1st defendant company issued post dated cheque vide cheque No.002619 drawn on Bank of Baroda, Bandra Branch for an amount of Rs.2,56,27,119/-. The 1st defendant company paid some of the amount in installments and an amount of Rs.65,42,360/- was due out of Rs.2,80,00,000/-. The 1st defendant company issued several post dated cheques and finally on 30.09.2022 issued a cheque vide No.002981 drawn on Bank of Baroda, Bandra Branch for an amount of Rs.65,45,360/- and the said cheque got dishonoured as per the instructions of respondents "payment Stopped by the Drawer". The revision petitioner filed a criminal case against dishonor of cheque vide STC NI No.7114/2022 on the file of VI Metropolitan Magistrate, Hyderabad.

4. The revision petitioner is the plaintiff in the suit OS No.7 of 2023 on the file of I Additional District Judge, Nizamabad. The defendants 1 and 2 filed petition under Section 8 of the Arbitration and Conciliation Act r/w Section 151 CPC seeking to refer the suit matter to arbitrator and to dismiss the suit as not maintainable.
5. The said application under Section 8 of the Act was filed mainly on the ground that under Clause 34 of the Agreement dated 30.10.2017, it was specifically agreed that disputes shall be subject to arbitration.
6. Learned District Judge passed the impugned order mainly on the basis of the clause No.34 in the MoU dated 30.10.2017 and that the matter has to be referred to arbitration and not before the Civil Court.
7. Learned counsel appearing for the revision petitioner would submit that in view of clause 16, the plaintiff had liberty to file civil suit.
8. For the sake of convenience, clauses 16 and 34 are extracted hereunder:

"16. In the event SL fails to pay the Royalty Amount, Laxmi agrees that there shall be no criminal liability including u/s 138 r/w 14 of the Negotiable Instruments Act, 1881 to SL with reference to the Security Cheque but this shall not preclude the right of Laxmi to file a civil claim for the recovery of the Royalty Amount."

34. That in case of any dispute or difference arising between the Parties hereto or any claim or thing herein contained or the construction thereof or as to any matter in any way connected with or arising out of these presents or the operation thereof the rights, duties or liabilities of either Party thereof, then and in every such case the matter, differences and dispute shall be decided mutually and in case the same is not decided as such will be essentially referred to a sole arbitrator in Mumbai being appointed/nominated by SL in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, Rules there under and any other enactment or statutory modifications thereof for the time being in force. The language of the Arbitration shall be English and the place of arbitration shall be Mumbai. The decision of the arbitrator shall be final and binding upon both the Parties."

9. Learned counsel submits that though there is an arbitration clause, however, plaintiff is not precluded from filing a civil suit. She relied on the judgment of the Hon'ble Supreme Court in the case of **Venkataraman Krishnamurthy and another v. Lodha Crown Buildmart Private Limited**¹ and argued that once the parties have committed themselves to a written agreement/contract, it would be binding on them. Since two options are given, it is for the plaintiff to choose the option of filing a civil suit. The terms of contract in between the parties have to be

¹ (2024) 4 Supreme Court Cases 230

interpreted giving actual meaning and Court cannot come up with new contract terms, which are not mentioned in the clauses of agreement.

10. Learned counsel for the petitioner also relied on the judgment of the Hon'ble Supreme Court in the case of **Emaar India Limited v. Tarun Aggarwal Projects LLP and another**². The Hon'ble Supreme Court while dealing with a situation where there were two clauses one giving right to approach appropriate Court of law and the other arbitration clause, the Hon'ble Supreme Court held as follows:

"24. Applying the law laid down by this Court in the aforesaid decisions and considering Clauses 36 and 37 of the agreement and when a specific plea was taken that the dispute falls within Clause 36 and not under Clause 37 and therefore, the dispute is not arbitrable, the High Court was at least required to hold a primary inquiry/review and prima facie come to conclusion on whether the dispute falls under Clause 36 or not and whether the dispute is arbitrable or not. Without holding such primary inquiry and despite having observed that a party does have a right to seek enforcement of agreement before the court of law as per Clause 36, thereafter, has appointed the arbitrators by solely observing that the same does not bar settlement of disputes through the Arbitration and Conciliation Act, 1996. However, the High Court has not appreciated and considered the fact that in case of dispute as mentioned in Clauses 3, 6 and 9 for enforcement of the agreement, the dispute is not arbitrable at all. In that view of the matter, the impugned judgment and order passed by the High Court appointing the arbitrators is unsustainable and the same deserves to be quashed and set aside.

25. However, at the same time, as the High Court has not held any preliminary inquiry on whether the dispute is arbitrable or not and/or whether the dispute falls under Clause 36 or not, we deem it proper to

² 2022 SCC OnLine SC 1328

remit the matter to the High Court to hold a preliminary inquiry on the aforesaid in light of the observations made by this Court in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and in Indian Oil Corpn. [Indian Oil Corpn. Ltd. v. NCC Ltd., (2023) 2 SCC 539 : (2023) 1 SCC (Civ) 88] and the observations made hereinabove and thereafter, pass an appropriate order."

11. On the other hand, learned counsel appearing for the respondents/defendants in the suit argued that clauses 16 and 34 have to be read harmoniously. It is not specifically stated in Clause 16 that the parties can approach the civil Court.

12. Learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Sushma Shivkumar Daga v. Madhurkumar Ramkrishnaji Bajaj & others**³, wherein the Hon'ble Supreme Court while dealing with the situation where the trial Court and the High Court have referred the matter to arbitration held that the role of a 'Court' is now in any case, extremely limited in arbitration matters. The underlying principles of arbitration as contained in the Arbitration and Conciliation Act, 1996, was always to have as little interference as possible by a judicial authority. Further, the Hon'ble Supreme Court held that the basic purpose for bringing an amendment in Section 8 was to minimize the scope of

³ Civil Appeal No.1854 of 2023 dated 15.12.2023

judicial authority in matters of arbitration, except on the ground where *prima facie*, no valid arbitration agreement exists.

13. A reading of clause 16 would go to show that the defendant No.1 company referred to as 'SL', fails to pay the Royalty amount, it shall not preclude the right of plaintiff to file civil claim for the recovery of the royalty amount. Clause 16 confines to the payment of royalty amount and right to file civil claim for the recovery of the said amount. In the present case, the grievance of the plaintiff is that the defendants were due a sum of Rs.65,42,360/- towards royalty and after calculating interest, suit was filed for recovery of Rs.1,34,77,261/-(Rupees One Crore Thirty Four Lakhs Seventy Seven Thousand Two Hundred and Sixty One only) including interest and damages.

14. Clause 34 does not specifically refer to the royalty amount, but generally in case of any dispute that arises in between the parties, the parties have to approach an arbitrator.

15. Since the suit was specifically filed claiming the royalty amount covered under Clause 16, it cannot be said that the said

dispute would fall exclusively within Clause 34 only, to refer to an arbitrator and no separate suit can be filed. Under Clause 33, it was agreed that the Courts at Mumbai shall have the exclusive jurisdiction in all the matters of disputes arising out of the agreement dated 30.10.2017. Accordingly, though civil suit can be filed under Clause 16, however, the suit can only be filed in any of the Courts in Mumbai as per Clause 33.

16. To the extent of finding that a civil suit cannot be filed and it has to be referred only to the arbitrator is hereby set aside. However, in view of the above discussion, the suit can only be filed before the civil Court in Mumbai.

17. Accordingly, Civil Revision Petition is ordered. There shall be no order as to costs. Consequently, miscellaneous applications, if any, shall stand dismissed.

Sd/- A.V.S. PRASAD
ASSISTANT REGISTRAR

SECTION OFFICER

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To,

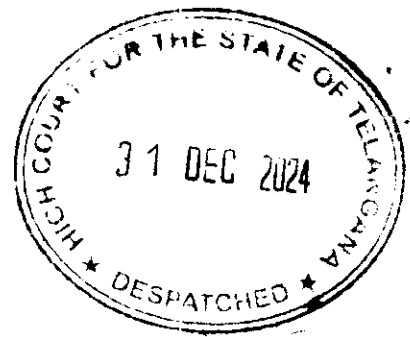
1. The I Additional District Judge, Nizamabad.
2. One CC to Sri Venugopal Julakanti, Advocate [OPUC]
3. One CC to Sri S.K. Shabber Ahmed, Advocate [OPUC]
4. Two CD Copies

Njb/gh



HIGH COURT

DATED:23/12/2024



ORDER

CRP.No.3706 of 2024

**ORDERING THE CRP
WITHOUT COSTS**

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[Signature]

31/12/2024