

A.P. Transco Vs. Sarathy Engineering Corporation and ors.

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Court : Andhra Pradesh

Decided On : Sep-06-2007

Reported in : 2008(3)ALD121; 2008(3)ALT456

Judge : B. Prakash Rao and ;G. Bhavani Prasad, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 2, 14(2), 30, 31, 31(1), 31(2), 31(3), 31(4) and 33; Andhra Pradesh Civil Courts Act, 1972; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : CRP No. 1782 of 2007

Appellant : A.P. Transco

Respondent : Sarathy Engineering Corporation and ors.

Advocate for Def. : V. Venkataramana, Adv. for Respondent No. 1

Advocate for Pet/Ap. : N. Subba Reddy, Adv.

Disposition : Petition dismissed

Judgement :

B. Prakash Rao, J.

1. The petitioner herein, which is also petitioner before the Court below, files this revision under Section 115 of the Code of Civil Procedure, 1908, seeking to assail

the order passed on a Memo filed by itself in Memo S.R. No. 274 of 2007 in O.P. No. 43 of 2002, dated 8.2.2007, on the file of the VIII-Additional Senior Civil Judge (Fast Track Court), City Civil Court, Hyderabad, rejecting its request to return the original petition filed by it to be presented before proper Court.

2. Heard Sri N. Subba Reddy, the learned Standing Counsel appearing on behalf of the petitioner and Sri Vedula Venkata Ramana, the learned Counsel appearing on behalf of the respondent.

3. Briefly stated, the facts which are not in dispute are to the effect that having regard to certain disputes arose between the petitioner and respondent, at the instance of the respondent, an Arbitrator was appointed as per the orders, dated 29.8.1997, in O.P. No. 162 of 1990, on the file of the FV-Additional Senior Civil Judge, City Civil Court, Hyderabad, to go into the same and pass award. The said order was challenged in appeal before this Court in C.M.A. No. 2412 of 1997. However, the same was dismissed confirming appointment of Arbitrator, but, with addition of providing assistance of one Purushothama, a retired Engineer as technical expert. Subsequently, after entering into arbitration, the said Arbitrator passed an award on 26.5.2001, awarding a sum of Rs. 1,49,25,494/- (Rupees one crore forty nine lakhs twenty five thousand four hundred and ninety four only) in favour of the respondent. The said award was challenged by the petitioner by filing a petition in O.P. No. 43 of 2002, in the Court below, under Sections 30 and 33 of the [Arbitration Act, 1940](#) (for short 'the Act'), on various grounds of which it is not necessary to delve into, at this stage. Later on, the petitioner itself filed the present Memo stating that having regard to the amount, which is involved in the above order, which go more than Rupees one crore and the pecuniary jurisdiction of the Court below, which is Senior Civil Judge, being limited to only Rs. 10,00,000/- (Rupees ten lakhs only) as per the provisions of the A.P. Civil Courts Act, 1972 (for short 'Civil Courts Act'), and sought return of the said original petition, O.P. No. 43 of 2002, for presenting it before the proper Court in terms of the pecuniary jurisdiction. Opposing the said move, the respondent pointed out that the provisions of the Civil Courts Act have no application to the proceedings as arose under the Act and even otherwise, the amendment enhancing the pecuniary jurisdiction of the Senior Civil Judge under the Civil Courts Act being only

prospective, and the present proceedings having been initiated much earlier, necessarily the said objection is not sustainable. Further, it is also pointed out that since the Arbitrator was appointed by the above said Court and the award was filed in that Court, any challenge has to be necessarily initiated only in that Court, but not otherwise and, therefore, the said objection is unsustainable. After hearing the Counsel on either side and taking into consideration the objection at the instance of the petitioner, the Court below did not accept the same following the principles laid down by a Larger Bench of this Court in Vallabhaneni Laxmana Swamy and Ors. v. Valluru Basavaiah and Ors. : 2004(5)ALD807 , where this Court held that the amended provisions of the Civil Courts Act would not have any retrospective operation, but only prospective, and therefore, it would not apply to the proceedings or orders or decrees passed earlier to the said amendments. Hence, the revision.

4. The learned Counsel appearing for the petitioner, Sri N. Subba Reddy, supporting the said objection submitted that having regard to the limited pecuniary jurisdiction, in spite of enhancement under the amendment to the Civil Courts Act, the total amount involved goes far beyond and therefore, the Court below viz., the Senior Civil Judge's Court, would lose the pecuniary jurisdiction and necessarily, it has to return the original petition for presenting before the proper Court. In support of the plea, the learned Counsel for the petitioner placed reliance on Satish Kumar Pahwa v. Suraj Parkash Pahwa and Ors. 1988 (1) Arb.LR 252. These submissions were sought to be repelled by Sri Vedula Venkata Ramana, the learned Counsel appearing for the respondent stating that as rightly observed by the Court below the said amended provisions have no application and even otherwise, it was contended that, having regard to the self-contained mode under the very provisions of the Act, it does not require the matter to go out of its purview. In support, reliance was placed by him on Guru Nanak Foundation v. Rattan Singh and Sons : [1982]1SCR842 and Union of India v. Surjeet Singh Atwal : [1970]1SCR351 .

5. From the aforesaid submissions as made across the Bar and on perusal of the material, the question which arises for consideration in this revision is as to whether in the facts and circumstances, the Court below viz., Senior Civil Judge's

Court would lose jurisdiction having regard to the limited value of Rs. 10,00,000/- (Rupees ten lakhs only) and the amount involved going far beyond

6. At the outset, it is to be stated, without going into the merits, that the dispute which arose between the parties has resulted in appointment of an Arbitrator as per the Court Order, dated 29.8.1987, in O.P. No. 162 of 1990, as stated above. The same was confirmed by this Court in an appeal in C.M.A. No. 2412 of 1997, except modification of providing a technical assistant. Later, the award was passed on 26.5.2001 for a sum of Rs. 1,49,25,494/-. Thereafter, challenging the same, the petitioner itself had invoked the provisions of Sections 30 and 33 of the Act and filed the present petition in O.P. No. 43 of 2002 which is being contested by the respondent. Having filed the said petition, the petitioner itself wants the said original petition to be returned so that the same can be presented before the proper Court having the pecuniary jurisdiction. The main stress which is laid on behalf of the petitioner is to the effect that as per the provisions of the Civil Courts Act, the pecuniary jurisdiction of the Senior Civil Judge's Court is limited to Rs. 10,00,000/- (Rupees ten lakhs only) and since the amount involved in the present case goes beyond Rs. 10,00,000/-, the petitioners had to approach proper forum on the basis of pecuniary value.

7. At this juncture, it is to be taken note that subsequent to the amendment which has been brought forward to the provisions of the Civil Courts Act, having regard to certain doubts arising, the matter was referred to a Larger Bench and this Court in Vallabani Laxmana Swamy's case (supra), held that those amendments would not have application to the proceedings where the orders or decrees have already passed prior to the amendment i.e., it will not have any prospective operation. On this count itself, it can safely be seen that the present proceedings also virtually arose by initiation of the proceedings for appointment of Arbitrator even prior to the date of enforcement of the said amendment i.e., 1.12.1989, though this itself is not sufficient enough to dispose of the question involved.

8. In addition and in particular, it is the provision of the Act which needs to be taken into consideration for the purpose of deciding as to the Court which will have jurisdiction to entertain the applications of the nature, which are filed under

Sections 30 and 33 of the Act. There is no dispute of the fact that as far as these proceedings are concerned, it is the provisions of the Act which are applicable. Chapter 5 of the Act contemplates the procedure, after appointment of an Arbitrator and filing of the award, for the steps to be taken subsequent to passing of award and also initiates the ground for setting aside the award. On the aspect of jurisdiction, the relevant provision which is applicable is Section 31 of the Act, which reads as follows:

Jurisdiction.-Subject to the provisions of the Act, an award may be filed in any Court having jurisdiction in the matter to which the reference relates.

(2) Notwithstanding anything contained in any other law for the time being in force and save as otherwise provided in this Act all questions regarding the validity, effect or existence of an award or an arbitration agreement between the parties to the agreement or persons claiming under them shall be decided by the Court in which the award under the agreement has been, or may be, filed, and by no other Court.

(3) All applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been, or may be, filed, and to no other Court.

(4) Notwithstanding anything contained elsewhere in this Act or in any law for the time being in force, where in any reference any application under this Act has been made in a Court competent to entertain it, that Court alone shall have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that reference and the arbitration proceedings shall be made in that Court and in no other Court.

9. As per Sub-section (2), it is amply clear that all such questions shall have to be decided by the Court in which the award under the agreement has been filed and by no other Court. In this case, the said award has been filed in the Court below itself by the Arbitrator. Further, Sub-section (4) makes it clear that it is only that Court where reference has been made in it, alone shall have the entire jurisdiction over the arbitration proceedings and also all subsequent proceedings arising out of

the said reference and the same shall have to be considered by only that Court and no other Court. Having regard to such categorical pointer in specifying the Court which has to deal with the proceedings at different stages, it is no longer open to say that any other Court would have any jurisdiction, especially, where such specific bar is enacted. Therefore, on the face of it, irrespective of the pecuniary jurisdiction as may be fixed, varied or modified, at any point of time or during any such proceedings, on the pecuniary jurisdiction of the Court in hierarchy, the basic and fundamental principle which has to be borne in mind is that it is that Court where the proceedings gets initiated at the inception or commencement of the proceedings by appointing Arbitrator, which takes in and engulfs into it all the jurisdiction to take in, entertain and dispose of the matters at any later point, irrespective of any change in the law, either in the aspect of pecuniary jurisdiction or even otherwise. With such categorical assertion, restricting the entire proceedings from its commencement till end in one Court, it only follows that the provisions of the Act, which is a specific and substantial legislation conferring the substantive rights on the parties concerned, would have an overriding effect on the procedural laws which also includes the Civil Courts Act. There cannot be any dispute. There is no argument on either side to effect the Civil Court Act is not a procedural one, but it is otherwise. Therefore, it necessarily follows that it is only that Court where reference was made, in which award was filed, alone will have jurisdiction to entertain any application either to set aside the award or even to make the rule of the Court.

10. Though on behalf of the petitioner reliance was placed on a decision of the Delhi High Court in Satish Kumar Pahwa's case (supra), wherein the learned Single Judge of that Court, no doubt, taken the aspect of pecuniary value for the purpose of deciding the jurisdiction to entertain the challenge as against an award, however, in view of the decisions which are referred to later, the conclusions and the reasons given therein does not reflect the correct position of law. In Surjeet Singh Atwal's case (supra), considering the very same provisions of Section 31(4) of the Act it has laid down as under:

The conditions must be fulfilled in order to give a Court exclusive jurisdiction under Section 31(4) of the Act. In the first place an application under the Arbitration Act

must be made to the Court competent to entertain it. In the second place, the application must be made 'in any reference'. It was contended on behalf of the respondent that an application for stay of suit under Section 34 of the Act was an application made 'in a reference' within the meaning of Section 31(4) of the Act. In support of this proposition reference was made to the decision of this Court in *Kumbha Mawji v. Union of India* : [1953]4SCR878 , in which it was held that the phrase 'in any reference' in Section 31(4) of the Act was comprehensive enough to cover an application first made after the arbitration is completed and a final award made and the sub-section is not confined to applications made during the pendency of the arbitration' proceeding. It was pointed out that the Sub-section

(1) of Section 31 determines the jurisdiction of the Court in which an award can be filed and that Sub-sections (2),

(3) and

(4) of Section 31 were intended to make that jurisdiction effective in three different ways

(1) by vesting in one Court the authority to deal with all questions regarding the validity, effect or existence of an award or an arbitration agreement,

(2) by casting on the persons concerned the obligation to file all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings in one Court, and

(3) by vesting exclusive jurisdiction in the Court in which the first application relating to the matter was filed. The context, therefore, of Sub-section

(4) would seem to indicate that the sub-section was not meant to be confined to applications made during the pendency of an arbitration. The necessity for clothing a single Court with effective and exclusive jurisdiction, and to bring about by the combined operation of these three provisions the avoidance of conflict and scramble is equally essential whether the question arises during the pendency of the arbitration or after the arbitration is completed or before the arbitration is commenced....

11. Similarly in Guru Nanak Foundation's case (supra), once again considering the said provisions elaborately, it was held that:

Section 31 of the Act provides the forum in which an award may be filed. Sub-section

(1) of Section 31 provides that an award may be filed in any Court having jurisdiction in the matter to which the reference relates. Incorporating the definition of the expression 'Court' as set out in Section 2(c) in Sub-section

(1) of Section 31 would mean that the award will have to be filed in that Court in which the suit in respect of the dispute involved in the award would have been required to be filed. This is quite consistent with the provision contained in Sub-section

(2) of Section

14. So far there is no difficulty. The scheme disclosed in sub-sections (2),

(3) and

(4) of Section 31 clearly indicates that to the exclusion of all other Courts only one Court will have jurisdiction to deal with the proceedings incidental to the reference and the arbitration. Sub-section

(3) clearly points in this direction when it provides that all applications regarding the conduct of arbitration proceedings or otherwise arising out of such proceedings shall be made to the Court where the award has been or may be filed and to no other Court. Then comes Sub-section (4). It opens with a non-obstante clause and is comprehensive in character. The non-obstante clause excludes anything anywhere contained in the whole Act or in any other law for the time being in force if it is contrary to or inconsistent with the substantive provision contained in Sub-section (4). To that extent it carves out an exception to the general question of jurisdiction of the Court in which award may be filed elsewhere provided in the Act in respect of the proceedings referred to in Sub-section (4). The provision contained in Sub-section

(4) will have an overriding effect in relation to the filing of the award if the conditions therein prescribed are satisfied. If those conditions are satisfied the Court other than the one envisaged in Section 14(2) or Section 31(1) will be the Court in which award will have to be filed. That is the effect of the non-obstante clause in Sub-section

(4) of Section

31. Sub-section

(4) thus invests exclusive jurisdiction in the Court, to which an application has been made in any reference and which that Court is competent to entertain as the Court having jurisdiction over the arbitration proceedings and all subsequent applications arising out of reference and the arbitration proceedings shall have to be made in that Court and in no other Court. Thus Sub-section

(4) not only confers exclusive jurisdiction on the Court to which an application is made in any reference but simultaneously ousts the jurisdiction of any other Court which may as well have jurisdiction in this behalf. To illustrate the point, if an award was required to be filed under Section 14(2) read with Section 31(1) in any particular Court as being the Court in which a suit touching the subject-matter of award would have been required to be filed, but if any application in the reference under the Act has been filed in some other Court which was competent to entertain that application, then to the exclusion of the first mentioned Court the latter Court alone, in view of the overriding effect of the provision contained in Section 31(4), will have jurisdiction to entertain the award and the award will have to be filed in that Court alone and no other Court will have jurisdiction to entertain the same.

12. In view of the principles as enunciated in the above referred latter decisions of the Apex Court, the view taken by the learned Single Judge of Delhi High Court is not correct. Having regard to the reasons which are already given above, to the effect that the provisions of the Act being a substantive law, would prevail over the provisions of the Civil Courts Act and, the Arbitration Act being itself a self-contained code providing specific powers and jurisdiction as contemplated under

the aforesaid provisions, we hold that it is that Court alone which made the reference and where the award has been filed, will have jurisdiction to entertain any applications, at later stage, either for setting aside or for making the rule of the Court, irrespective of the pecuniary value for the purpose of jurisdiction or any variation in regard thereto. In view of the same, the Court below, though on a different note, did not accept the petitioner's objection, but, we, on varied reasons, also do not find any merit in the contention urged on behalf of the petitioner. Hence, there are no merits in the above revision.

13. The civil revision petition is accordingly dismissed. No costs.

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