



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3397]

**TUESDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX**

PRESENT

**THE HONOURABLE SRI JUSTICE VENUTHURUMALLI GOPALA
KRISHNA RAO**

**SECOND APPEAL NO: 218/2021
&
CROSS OBJECTIONS No.9 of 2021**

Between:

Voona Sarveswara Rao,

...APPELLANT

AND

Talasu Eswar Rao

...RESPONDENT

Counsel for the Appellant:

1. RAYAPROLU SRIKANTH

Counsel for the Respondent:

1. SAI RAMA SHARMA V

The Court made the following:

THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

SECOND APPEAL No.218 of 2021
&
CROSS OBJECTIONS No.9 of 2021

This second appeal under Section 100 of the Code of Civil Procedure ("C.P.C." for short) is filed aggrieved against the Judgment and decree, dated 22.01.2020 in A.S.No.43 of 2019, on the file of the Principal District Judge, Srikakulam, ("First Appellate Court" for short) modifying the decree, dated 28.03.2018 in O.S.No.02 of 2011, on the file of the Principal Senior Civil Judge, Srikakulam ("Trial Court" for short). Cross Objections are filed by the defendant in the suit proceedings.

2. The appellant herein is the plaintiff and the respondent herein is the defendant in O.S.No.02 of 2011.

3. The plaintiff initiated action in O.S.No.02 of 2011, on the file of the Principal Senior Civil Judge, Srikakulam, with a prayer for grant of permanent injunction, restraining the defendant and any other person claiming under the defendant, from ever claiming or enforcing the defendant's share of profit and loss in the firm M/s. Ajantha Real Estates, Srikakulam and for other reliefs.

4. The defendant/petitioner filed a petition *vide* I.A.No.373 of 2017 in O.S.No.2 of 2011, on the file of the Principal Senior Civil Judge, Srikakulam, under Order 7 Rule 11 R/w Section 151 of the Code of Civil Procedure, R/w

Section 8 of the Arbitration and Conciliation Act with a prayer to reject the plaint.

5. The learned trial Judge allowed the petition *vide* I.A.No.373 of 2017 in O.S.No.2 of 2011 without costs and rejected the suit filed by the plaintiff. Felt aggrieved of the same, the unsuccessful plaintiff in the above interlocutory application filed appeal suit before the First Appellate Court. The learned First Appellate Judge partly allowed the appeal by modifying the order dated 28.03.2018, passed by the learned Principal Senior Civil Judge, Srikakulam in I.A.No.373 of 2017 in O.S.No.02 of 2011 by directing the Court of the Principal Senior Civil Judge, Srikakulam, to refer the parties to the Arbitrator as per Section 8 of the Arbitration and Conciliation Act. Aggrieved thereby, the unsuccessful plaintiff in I.A.No.373 of 2017 in O.S.No.02 of 2011 approached this Court by way of second appeal.

6. For the sake of convenience, both parties in the appeal will be referred to as they are arrayed in the original suit.

7. The case of the defendant/petitioner, in brief, as set out in the petition averments in I.A.No.373 of 2017 in O.S.No.02 of 2011, is as follows:

The defendant, plaintiff, and some others are partners of M/s. Ajantha Real Estates, Srikakulam. The said firm is registered, and the plaintiff, defendant, and others entered into a partnership deed, wherein there is a clause that “*all the matters of disputes among the partners shall be settled through arbitration only, subject to the provisions of the Arbitration Act.*” The

petitioner/defendant pleaded that the original document of the partnership deed is with the plaintiff, and the plaintiff, by suppressing the above facts, filed the suit in O.S.No.02 of 2011 for an equitable relief of injunction to harass the defendant. The petitioner/defendant further pleaded that when there is an arbitration clause in the partnership deed, the plaintiff has no right to file a civil suit in a civil court, and further, there is no option left to the judicial authority under law but to refer the parties to arbitration. As such, the petitioner/defendant pleaded that there is no cause of action to pursue the case in the civil court, and the plaintiff is not entitled to any relief.

8. The case of the plaintiff/respondent, in brief, as per the averments in counter affidavit filed by the plaintiff/ respondent in I.A.No.373 of 2017 in O.S.No.02 of 2011, is as follows:

The respondent pleaded that the suit in O.S. No. 02 of 2011 was filed while the arbitration proceedings were in progress and during the evidence of the other respondents, including the petitioner/defendant, was being recorded. The respondent/plaintiff pleaded that it was brought to the notice of the arbitral tribunal that, in view of the specific plea taken by the defendant/petitioner and other respondents before the arbitrator that the plaintiff/respondent had fabricated and created the documents which are filed in the suit, the examination of the suit documents with reference to the cause between the parties to these documents is beyond the scope of arbitration, and the arbitrator is not empowered to go or travel beyond the scope of the partnership deed.

9. On the basis of above pleadings, the learned trial Judge framed the following point for consideration:

I. Whether the petition can be allowed?

10. The learned trial Judge after conclusion of trial, on hearing the arguments of both sides on record, allowed the petition *vide* I.A.No.373 of 2017 in O.S.No.2 of 2011 without costs and rejected the suit filed by the plaintiff. Felt aggrieved thereby, the unsuccessful plaintiff filed the appeal suit in A.S.No.43 of 2019, on the file of the Principal District Judge, Srikakulam, wherein, the following point came up for consideration:

I. Whether the Order and Decree dated 28.03.2018 in I.A.No.373 of 2017 in O.S.No.02 of 2011, passed by the learned Principal Senior Civil Judge, Srikakulam is sustainable under law or warrants interference?

11. The learned First Appellate Judge after hearing the arguments, answered the point, as above, partly allowed the appeal by modifying the order dated 28.03.2018, passed by the learned Principal Senior Civil Judge, Srikakulam in I.A.No.373 of 2017 in O.S.No.02 of 2011 by directing the Court of the Principal Senior Civil Judge, Srikakulam, to refer the parties to the Arbitrator as per Section 8 of the Arbitration and Conciliation Act. Felt aggrieved of the same, the unsuccessful plaintiff in O.S.No.02 of 2011 filed the present second appeal before this Court and Cross objections are filed by the defendant.

12. On hearing both sides counsel at the time of admission of the appeal, on 14.06.2021, this Court framed the following substantial questions of law:

- I. Whether the Courts below grossly erred in not understanding Section 8(1) of the Arbitration and Conciliation Act, 1996, which clearly states that a petition for referring the matter to Arbitration shall be applied not later than the date of submitting the 1st statement on the substance of the dispute?
- II. Whether the Courts below grossly erred in not at-least observing that the application under Section 8 of the Arbitration and Conciliation Act, 1996 shall not be entertained unless it is accomplished by the original arbitration agreement or a duly certified copy thereof, subject to the proviso?
- III. Whether the First Appellate Court grossly erred in directing the trial Court to refer the matter to Arbitrator as per Section 8 of the Arbitration and Conciliation Act, 1996, more so when the so-called Partnership Deed which contains the Arbitration clause is not filed before the Court?

13. Heard Sri Rayaprolu Srikanth, learned counsel for the appellant and heard Sri V.S.R.Anjaneyulu, learned Senior Counsel appearing on behalf of Sri V.Sai Rama Sharma, learned counsel for the respondent.

14. The law is well settled that under Section 100 of CPC, the High Court cannot interfere with the findings of fact arrived at by the First Appellate Court which is the final Court of facts except in such cases where such findings were

erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence. In a case of **Bhagwan Sharma v. Bani Ghosh**¹, the Apex Court held as follows:

“The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the First Appellate Court which was the final Court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature.”

In a case of **Kondira Dagadu Kadam vs. Savitribai Sopan Gujar**², the Apex Court held as follows:

“The High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

15. Learned counsel for the appellant would contend that a petition for referring the matter to arbitration shall be filed not later than the date of submitting the first statement on the subsistence of the dispute, and he would further contend that after the filing of the written statement by the defendant, the defendant filed the present application to reject the plaint and that the petition filed by the defendant is not at all maintainable.

16. Learned counsel for the appellant placed a case law in **Atul Singh and Ors. Vs. Sunil Kumar Singh and Ors.**,³ wherein the Apex Court held as follows:

¹ AIR 1993 SC 398

² AIR 1999 SC 471

“10. Sub-section (2) of Section 8 of the 1996 Act says that the application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. As already stated in the earlier part of the judgment, defendant no.3 had moved an application on 25.11.2004 under Section 34 of the Arbitration Act, 1940 for staying the proceedings of the title suit and for referring the matter to arbitration. He filed a supplementary petition to the aforesaid application on 16.12.2004. Herein also reference was made to Section 34 of Arbitration Act, 1940. Thereafter, he filed an application on 28.2.2005 praying that as the Arbitration Act, 1940 had been repealed and the suit is of 1998, to avoid any confusion, his earlier petitions may be treated to have been filed under Section 8 of the Arbitration Act, 1996. None of these petitions were accompanied by the original arbitration agreement dated 17.2.1992 or a duly certified copy thereof”.

In the case at hand, in the counter filed by the plaintiff, the appellant/plaintiff pleaded that *“it is needless to mention that the suit is filed by him, while the arbitration proceedings were in progress and during the evidence of other respondents, including the defendant/petitioner, was being recorded”*. It is the specific case of the appellant that there was no arbitration clause in the agreement between both the parties; moreover, the respondent, who is the defendant in the suit proceedings, filed a copy of the acknowledgment of registration of the firm along with Form No. 5, under the Indian Partnership Act, before this Court, in which the plaintiff is the Managing Partner of the firm and the plaintiff has 41½% share and the defendant had 8½% share.

17. The case of the appellant as well as respondent is that while the arbitration proceedings were pending before the arbitrator between both the parties, and those were in progress before the arbitrator, the suit was

instituted by the appellant/plaintiff. Therefore, there is no need to file a copy of the arbitration agreement or a duly certified copy under Section 34 of the Arbitration Act, 1940. Moreover, it is the specific case of the defendant that the original partnership deed is with the plaintiff, and the same was undisputed by the plaintiff.

18. Learned counsel for the appellant place a case law in **Booz Allen & Hamilton Inc. Vs. SBI Home Finance Limited and Others**,⁴ wherein the Apex Court held as follows:

“Generally and traditionally all disputes relating to rights in personam are considered to be amenable to arbitration; and all disputes relating to rights in rem are required to be adjudicated by courts and public tribunals, being unsuited for private arbitration. This is not however a rigid or inflexible rule. Disputes relating to subordinate rights in personam arising from rights in rem have always been considered to be arbitrable. The 1996 Act does not specifically exclude any category of disputes as being not arbitrable. Sections 34(2)(b) and 48(2) of the Act however make it clear that an arbitral award will be set aside if the court finds that “the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force.”

19. Learned counsel for the appellant place a case law in **Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia**,⁵ wherein the Apex Court held as follows:

*“21. In a case of **Booz Allen & Hamilton Inc., (2011) 5 SCC 532**, this Court (two Judge Bench) speaking through **R.V.Raveendran J.** laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable:*

⁴ (2011) 5 SCC 532

⁵ (2017) 10 Supreme Court Cases 706

“36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.”

20. As stated supra, the very case of the plaintiff is that there was an arbitration clause in the partnership deed and the arbitrator was already appointed and the proceedings before the arbitrator were in progress. It is not the case of the plaintiff that there is no arbitration clause in the partnership deed, as he, being the Managing Partner of the firm, has got knowledge about the same, but did not produce the original partnership deed. The dispute raised by the plaintiff in the main suit itself is that to grant a permanent injunction, to restrain the defendant and any other person claiming under the defendant, from ever claiming or enforcing the defendant's share of profit and loss (8.5%) in the firm M/s. Ajantha Real Estates, Srikakulam. Therefore, the dispute raised by the plaintiff is not a non-arbitral dispute.

21. Learned counsel for the appellant place a case law in ***Bharat Sanchar Nigam Ltd. and Anr. Vs. M/s. Nortel Networks India pvt. Ltd.***⁶ wherein the Apex Court held as follows:

“40.

⁶ AIR 2021 SUPREME COURT 2849

(i) The period of limitation for filing an application under Section 11 would be governed by Article 137 of the First Schedule of the Limitation Act, 1963. The period of limitation will begin to run from the date when there is failure to appoint the arbitrator;

It has been suggested that the Parliament may consider amending Section 11 of the 1996 Act to provide a period of limitation for filing an application under this provision, which is in consonance with the object of expeditious disposal of arbitration proceedings;

(ii) In rare and exceptional cases, where the claims are ex facie time-barred, and it is manifest that there is no subsisting dispute, the Court may refuse to make the reference.”

22. In the written statement itself, the defendant narrated that the matter is pending before the arbitrator since the year 2007 and that the present suit is not maintainable. The pending proceedings before the arbitrator since 2007 are undisputed by the plaintiff, and the plaintiff also clinchingly supported the same. Moreover, the period of limitation runs from the date when there is a failure to appoint an arbitrator. Here, the arbitrator was already appointed in the year 2007 itself, while the arbitration proceedings were pending before the arbitrator and the same was in progress, the plaintiff approached the civil Court in the year 2011 by instituting a suit for permanent injunction to restrain the defendant and any other person claiming under the defendant, from ever claiming or enforcing the defendant's share of profit and loss. Moreover, the alleged question of limitation has not been raised by the appellant either before the trial Court or before the First Appellate Court.

23. Learned counsel for the appellant place a case law in **Young Achievers Vs. IMS Learning Resources Private Limited**⁷.

In the case at hand, it is the specific case of both the parties that, while the matter is pending before the arbitrator since 2007, the plaintiff approached the civil Court in the year 2011. It is not the case of either of the parties that the plea for referring the dispute to the arbitrator is rejected by the Court or the agreement in question contained an arbitration clause superseded by the new agreement, which did not have an arbitration clause. Therefore, the facts and circumstances in the aforesaid case law are different from the instant case.

24. The contention of the appellant is that the suit is filed while the Arbitration proceedings were in progress and during the evidence of other respondents including the petitioner/defendant was also recorded.

Learned counsel for the appellant place a case law in **United India Insurance Co. Ltd., Vs. Antique Art Exports Pvt. Ltd.**,⁸ wherein the Apex Court held as follows:

“In the facts and circumstances, this Court took note of subsection (6A) introduced by Amendment Act, 2015 to Section 11 of the Act and in that context observed that the preliminary disputes are to be examined by the arbitrator and are not for the Court to be examined within the limited scope available for appointment of arbitrator under Section 11(6) of the Act. Suffice it to say that appointment of an arbitrator is a judicial power and is not a mere administrative function leaving some degree of judicial intervention when it comes to the question to examine the existence of a prima facie arbitration agreement, it is always necessary to ensure that the dispute resolution process does not become unnecessarily protracted.”

⁷ (2013) 10 Supreme Court Cases 535

⁸ AIR 2019 SUPREME COURT 3137

25. In a case of ***K.Mangayarkarasi and another Vs. N.J.Sundaresan and another***,⁹ wherein the Apex Court held as follows:

“15. The law is well settled that allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the arbitral tribunal to resolve a dispute arising out of a civil or contractual relationship on the basis of the jurisdiction conferred by the arbitration agreement.”

26. Admittedly, in the case at hand, it is the case of both the parties that there is an arbitration clause in the partnership deed between both the parties and the matter is pending before the arbitrator since 2007, much prior to the institution of the suit itself. It is admitted by the plaintiff as well as the defendant that the dispute between both the parties was pending before the arbitrator since 2007. The very object with which the Arbitration and Conciliation Act, 1996 has been enacted, and the provisions thereof contained under Section 16, confirm the power of the arbitral Tribunal to rule on its own jurisdiction, including ruling on any objection with respect to existence or validity of the arbitration agreement. Therefore, the civil Court cannot have jurisdiction to go into that question. As stated *supra*, the law is well settled that allegations of fraud or criminal wrongdoing would not detract the jurisdiction of the arbitral Tribunal to resolve a dispute arising out of civil or contractual relationships on the basis of jurisdiction conferred by the arbitral agreement.

27. In a case of ***K.Mangayarkarasi and another Vs. N.J.Sundaresan and another***, as stated *supra*, the Apex Court further held as follows:

⁹ 2025 (4) ALD 137 (SC)

“There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law — *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.”

28. In a case of ***Sundaram Finance Limited and Another Vs. T.Thankam***,¹⁰ wherein the Apex Court held as follows:

*“8. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by the Court in **P.Anand Gajapathi Raju V. P.V.G.Raju.**”*

29. Admittedly, in the case at hand, the dispute between both the parties is pending before the arbitrator prior to the institution of the suit. While the matter is pending before the arbitrator, that too at the stage of further evidence of the respondent, the appellant herein approached the civil Court in the year 2011 to restrain the defendant and his men from ever claiming or enforcing the defendant's share of profit and loss in the firm M/s. Ajantha Real Estates, Srikakulam. Therefore, **“such bifurcation of the suit in two parts, one to be**

¹⁰ (2015) 14 Supreme Court Cases 444

decided by the arbitral Tribunal and the other to be decided by the civil Court would inevitably delay the proceedings.” It would also increase the cost of litigation and harassment to the parties and **“on occasions, there is a possibility of conflicting judgment and orders by two different forums.”**

30. It is well settled that once the *lis* between the parties is referred to arbitration *vide* Order under Section 8 of the Act, there is nothing left to be adjudicated upon in the suit. The Order under Section 8 of the Act has the effect of disposing the suit and the remedies for contesting the parties are governed by the Arbitration and Conciliation Act, 1996. The trial Court could not have proceeded with further proceedings as there is no suit in effect.

31. In a case of ***A.Ayyasamy Vs. A.Paramasivam and Others***,¹¹ wherein the Apex Court held as follows:

“23.However, where there are allegations of fraud simplicitor and such allegations are merely alleged, we are of the opinion it may not be necessary to nullify the effect of the arbitration agreement between the parties as such issues can be determined by the Arbitral Tribunal.”

32. In a case of ***Ameet Lalchand Shah and Others Vs. Rishabh Enterprises and Another***,¹² wherein the Apex Court held as follows:

“37. It is only where serious questions of fraud are involved, the arbitration can be refused. In this case, as contended by the appellants there were no serious allegations of fraud; the allegations levelled against Astonfield is that appellant no.1 - Ameet Lalchand Shah misrepresented by inducing the respondents to pay higher price for the purchase of the equipments. There is, of course, a criminal case registered against the appellants in FIR No.30 of 2015 dated 05.03.2015 before the Economic

¹¹ (2016) 10 Supreme Court Cases 386

¹² (2018) 15 Supreme Court Cases 678

Offences Wing, Delhi. The appellant no.1 – Ameet Lalchand Shah has filed Criminal Writ Petition No.619 of 2016 before the High Court of Delhi for quashing the said FIR. The said writ petition is stated to be pending and therefore, we do not propose to express any views in this regard, lest, it would prejudice the parties. Suffice to say that the allegations cannot be said to be so serious to refuse to refer the parties to arbitration. In any event, the Arbitrator appointed can very well examine the allegations regarding fraud.”

In the case at hand, the learned First Appellate Judge, by giving reasons, rightly held that *“the Arbitrator is entitled to resolve the disputes between both the parties to the suit, and the grounds mentioned in the plaint are not at all applicable to the provisions as contemplated under Order VII Rule 11 of the Code of Civil Procedure, 1908, and that the plaint cannot be rejected, at best, the plaint has to be returned to refer the matter to arbitration.”*

33. As stated *supra*, ***“the allegations of fraud or criminal wrongdoing or of statutory violation would not detract from the jurisdiction of the Arbitral Tribunal to resolve the dispute arising out of a Civil or Contractual relationship on the basis of jurisdiction conferred by the Arbitration Agreement.”*** Admittedly, as per the case of both the parties, by the date of institution of the suit, the dispute between both the parties is pending before the Arbitrator and the same is also in progress. While the matter is pending before the Arbitrator, that too at the stage of respondent further evidence, the plaintiff approached the Civil Court for seeking the relief of permanent injunction to restrain the defendant and his men from ever

claiming or enforcing the defendant's share of profit and loss in the firm M/s. Ajantha Real Estates, Srikakulam.

34. As stated *supra*, bifurcation of the suit in two parts, one to be decided by the Arbitral Tribunal and the other to be decided by the Civil Court would inevitably delay the proceedings. It would also increase the cost of litigation and harassment to the parties, and on occasions, there is a possibility of conflicting judgment and orders by two different forums. The main objective of the Arbitration Act is to make a provision for an Arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration, and to minimize the supervisory role of the Court in the Arbitral process and to permit an Arbitral Tribunal to use mediation, conciliation or other proceedings during the Arbitral proceedings in the settlement of disputes, etc. The Civil Court ordinarily will not be obliged to bypass the provisions of the Arbitration and Conciliation Act, 1996.

35. In the case at hand, on appreciation of the entire evidence on record, the learned First Appellate Judge has rightly partly allowed the appeal filed by the plaintiff and modified the findings given by the learned trial Judge. In the light of the material on record and upon earnest consideration now, it is manifest that the substantial questions of law raised in the course of hearing in the second appeal on behalf of the appellant did not arise or remain for consideration. This Court is satisfied that this second appeal did not involve any substantial question of law for determination. There are no merits in the Cross objections filed by the defendant.

36. In the result, the second appeal and cross objections are dismissed, confirming the judgment and decree passed by the first appellate Court. Pending applications, if any, shall stand closed. Each party do bear their own costs in the second appeal.

JUSTICE V. GOPALA KRISHNA RAO

Date: 27.01.2026

SRT