

APHC010157272024



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

[3488]

THURSDAY, THE FOURTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE HARINATH.N

CIVIL REVISION PETITION NO: 740/2024

Between:

U.v. Satyanarayana, and Others

...PETITIONER(S)

AND

M/s Shriram City Union Finance Ltd

...RESPONDENT

Counsel for the Petitioner(S):

1.ARRABOLU SAI NAVEEN

Counsel for the Respondent:

1.MAHESWARA RAO KUNCHEAM

The Court made the following order: *(per Hon'ble Sri Justice R. Raghunandan Rao)*

The learned Arbitrator appointed for resolution of the disputes between the petitioners and the sole respondent had passed an award in favour of the sole respondent for a sum of Rs.32,99,625/- along with interest @ 10% p.a. with costs to the sole respondent in Arbitration Case No.309 of 2014. The sole respondent sought execution of the said award by moving Arbitration Execution Petition No.151 of 2017 before the Learned Principal District Judge, East Godavari District.

2. The petitioners herein objected to the proceedings before the Learned Principal District Judge, East Godavari District on the ground that the execution petition had been filed to realize an amount of Rs.46,46,965/- and the same could not have been filed before the Learned Principal District Judge as it is only the Commercial Court at Visakhapatnam which would have jurisdiction under the Commercial Courts Act, 2015.

3. The learned Principal District Judge, East Godavari District, by an order dated 31.01.2024 had held that the objection raised in relation to the jurisdiction is not maintainable as the limit for such jurisdiction to be conferred on the Commercial Court was Rs.1,00,00,000/-, while the amount which is sought to be recovered was only Rs.46,46,965/-.

4. Aggrieved by the said order of the Learned Principal District Judge, East Godavari District, the petitioners have moved this Court by way of the present Civil Revision Petition.

5. Heard Sri A. Sai Naveen, learned counsel for the petitioners and Sri Maheswara Rao Kunchem, learned counsel for the sole respondent.

6. Sri A. Sai Naveen, the learned counsel for the petitioners relies upon a Division Bench Judgment of this Court dated 12.09.2023 in C.R.P.No.2183 of 2022 & batch. The Division Bench considered the question of whether the execution petitions for recovery of amounts above the pecuniary limit set out under the Commercial Courts Act, 2015 can be filed

and maintained only before the Commercial Court or the Learned Principal District Judge. The Division Bench, after considering various judgments, was pleased to hold in the following manner:

“53) Therefore, the following conclusions are reached by ironing out the creases:

a) The Commercial Court alone is competent to execute decrees, which are above the specified value. The regular Civil Court will not have the jurisdiction to entertain such Execution Petitions with effect from 16.05.2019 in the State of Andhra Pradesh.

b) It is only the Commercial Court, Vijayawada or the Commercial Court at Visakhapatnam which can entertain the Execution Petitions if they are above the specified value in view of the G.O.Ms.No.78.

c) All orders passed after 16.05.2019 are orders passed by a coram non-judice. They suffer from an inherent lack of jurisdiction and they are held to be per se bad in law.

d) The pending E.P.No.13 of 2016 shall be transferred to the Commercial Court, Vijayawada, and both the parties are given liberty to start the proceedings afresh from the said date i.e., 16.05.2019.”

7. Sri A. Sai Naveen, the learned counsel for the petitioners would submit that the Commercial Courts Act, 2015 was amended in the year 2018 and pecuniary jurisdiction set out in Clause-2(1)(i) had been reduced from Rs.1,00,00,000/- to Rs.3,00,000/- by Ordinance No.3 of 2018 which was subsequently replaced by Central Act No.28 of 2018 with effect from 03.05.2018. He would submit that in such circumstances, it is only the Commercial Court which would have jurisdiction over the matter and the proceedings pending before the Learned Principal District Judge, East Godavari District at Rajamundry would have to be set aside.

8. Sri Maheswara Rao Kunchem, the learned counsel for the sole respondent would submit that the proceedings in the execution petition have come to the stage of auction of the property of the petitioners and the only step left was finalization of the terms of the auction. He would further submit that the Arbitration Conciliation Act, 1996 [for short "the Arbitration Act"] stipulates that it is only the Learned Principal District Judge of the District who can be treated as the Civil Court for purposes of jurisdiction in relation to any matters arising out of the Arbitration Act, including Execution Petitions. He would submit that in such circumstances, the Judgment of the Division Bench requires further consideration as this aspect had not been placed before the Division Bench. He would also point out that the Judgment relied upon by the petitioners is the subject matter of an appeal before the Hon'ble Supreme Court of India in S.L.P.No.23322-23325 of 2023. He would also submit that the Hon'ble Supreme Court of India had stayed the transfer of the execution proceedings and consequently, the order of the Division Bench cannot be relied upon.

9. Section 2(1)(e) of the Arbitration Act defines Court to mean the Principal Civil Court of original jurisdiction in the District. Section 36 of the Arbitration Act stipulates that enforcement of an arbitral award is to be done in accordance with the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. This would mean that execution petitions would have to be filed before the Principal Civil Court of

original jurisdiction in the District in as much as the Court has been defined under Section 2 (1)(e) to mean Principal Civil Court.

10. However, Section 10(3) of the Commercial Courts Act, 2015 reads as follows:-

“Section-10: Jurisdiction in respect of arbitration matters - Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and-

(1)

(2)

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

11. In view of this provision, the Principal Civil Court of original jurisdiction would have to be treated to be the Commercial Court having territorial jurisdiction over the said area. It may also be noted that Section 21 states that the Commercial Courts Act, 2015, save as otherwise provided will have effect over every other law which is in force for the time being.

12. This would clearly denude the power of the Learned Principal District Judge, East Godavari to deal with E.P.No.151 of 2017 unless it is shown that the specified value is more than the amount being claimed in the execution petition.

13. Section 2(i) of the Commercial Courts Act, 2015 had fixed the specified value to mean a value in respect of a suit which shall not be less than Rs.1,00,00,000/-. However, this value was reduced to Rs.3,00,000/- by

an Ordinance No.3 of 2018, which was subsequently replaced by the Central Act No.28 of 2018, with effect from 03.05.2018.

14. In such circumstances, this matter would have to be placed before the Commercial Court at Visakhapatnam as the Commercial Court at Visakhapatnam has territorial jurisdiction over East Godavari District.

15. Sri Maheswara Rao Kunchem, learned counsel for the respondent had also raised the issue that the Judgment relied upon by the petitioners, passed by the Division Bench of this Court, had been stayed by the Hon'ble Supreme Court of India and as such, the principles enunciated in the said Judgment cannot be applied to the present case. It is now settled law that it is only the suspension of a Judgment that will stop the operation of the principles or interpretation of law set out in the said Judgment. In the case of a stay, it is only the parties to the Judgment that are affected and the principle laid down in the said Judgment would continue to hold the field and could be relied upon.

16. This Civil Revision Petition is allowed, setting aside all the proceedings in E.P.No.151 of 2017 before the Learned Principal District Judge, East Godavari District, with a leave to the sole-respondent to either move for transfer of the said execution petition to the Commercial Court at Visakhapatnam or in the alternative to withdraw the execution petition before the Learned Principal District Judge, East Godavari District and move a fresh

execution petition before the Commercial Court. There shall be no order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

R. RAGHUNANDAN RAO, J.

HARINATH.N, J.

MJA/BSM

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

AND

HONOURABLE SRI JUSTICE HARINATH.N

CIVIL REVISION PETITION No.740 of 2024

04-07-2024

MJA/BSM