

(2022) 08 TEL CK 0043

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Revision Petition No. 293 Of 2022

M/S. Janset Labs Pvt.
Ltd.

APPELLANT

Vs

M/S. Sudha Analyticals

RESPONDENT

Date of Decision: Aug. 3, 2022**Acts Referred:**

- Code Of Civil Procedure, 1908 - Section 151, Order 27 Rule 8A, Order 7 Rule 11
- Arbitration and Conciliation Act, 1996 - Section 9, 18, 21, 34, 36

Hon'ble Judges: P.Naveen Rao, J; Dr. G.Radha Rani, J**Bench:** Division Bench**Advocate:** Sharad Sanghi, Sriram Polali**Final Decision:** Dismissed**Judgement**

1. Petitioner is proprietary concern engaged in the business of leasing imported hi-tech/advance technology machineries to various enterprises for

their activities. The petitioner has approached the respondent to import "SCIEX QTRAP4500 SYSTEM" an enhanced high performance

hybrid triple quadrupole/linear ion trap LC-MS/MS Spectrometer to be installed in their premises to meet their commercial demands for their

business activities. Based on the said request respondent imported said machine from Singapore vide invoice dated 28.9.2020 and installed the

same in the premises of the petitioner. In terms of the agreement, petitioner is liable to pay Rs.13,74,740/- each month as lease amount excluding

GST/other statutory taxes and on remittance of 12 months lease amount, the ownership rights get transferred to the petitioner company. While so,

disputes arose on the issue of remittance of monthly lease amount. As on 25.10.2021 respondent claimed Rs.1,19,17,928/-from the petitioner.

Contending that in spite of repeated requests, the amount is not remitted, respondent sought to invoke Arbitration clause incorporated in the lease

agreement and in the process to protect his interests in the interregnum period, he filed C.O.P No. 20 of 2021 in the Special Court for Trial and

Disposal of Commercial Disputes, Ranga Reddy District at L B Nagar. In the said C.O.P., petitioner filed I A No. 2 of 2022 taking recourse to

Order VII Rule 11 read with Section 151 of CPC praying the Court to reject the main petition as barred under law.

2. It was contended that specified value of the dispute involved is less than Rs.1 crore, therefore, Commercial Court has no jurisdiction to deal

with the application filed under Section 9 of the Arbitration and Conciliation Act, 1996. According to petitioner, he has paid Rs.87,15,720/- and

balance amount to be paid is Rs.97,39,243/-, therefore, the amount involved is less than Rs.1 crore and Commercial Court has no jurisdiction.

The Court below, rejected the said application by order dated 10.2.2022. Hence, this Revision.

3. Heard learned counsel for petitioner Sri Sharad Sanghi and learned counsel for respondent Sri Sriram Polali.

4. Learned counsel for petitioner contended that petitioner is liable to pay Rs.97,39,243/- thus, the specified value of dispute is less than Rs.1

crore and Commercial Court has no jurisdiction to deal with application filed under Section 9 of Act, 1996 and party has to go before the civil

Court. In support of his contention, learned counsel referred to the statement of accounts shown in tabulated form in I.A. No. 2 of 2022.

According to learned counsel, the total amount required to be paid is Rs.1,19,17,928/- out of which petitioner paid an amount of Rs.97,39,243,

leaving the balance amount required to be paid as Rs.97,33,158/- and this is the amount which is required to be considered for the purpose of

assessment of specified value. Unless specified value of dispute is more than Rs.1 crore, the Commercial Court has no jurisdiction to deal with

application filed under Section 9 of Act, 1996 application.

5. Learned counsel referred to Section 21 of the Act, 1996 to contend that arbitral proceedings must commence for a person to have a grievance

and to seek interlocutory protection under Section 9 of the Act, 1996, whereas, arbitral proceedings did not commence by the time application

was filed by the respondent and even now no proceedings have commenced, therefore, the entire process is vitiated on that ground alone.

6. He further contended that as per lease agreement disputes have to be resolved within the territorial limits of Hyderabad District, whereas, the

application under Section 9 of the Act, 1996 was filed in the Commercial Court at Ranga Reddy, therefore, the application is not maintainable.

However, learned counsel fairly admits that this contention was not urged before the Commercial Court.

7. Learned counsel by referring to judgment of Supreme Court in Kiran Singh and others Vs Chaman Paswan and others (1955) 1 SCR 117 and

judgments of this Court in East India Udyog Limited Vs Maytas Infra Limited 2015 (5) ALD 446 (FB), K Srimannarayana Murthy and others Vs.

V Agastya Sagar and others MANU/TL0020/2022 also contended that the arbitral proceedings are erroneously initiated and filed before the

Commercial Court when the value of the dispute is less than Rs.1 crore.

8. Per contra, learned counsel for respondent contend that above said contention is stated to be rejected for the following reasons. Firstly, this plea

was not raised in I.A.No.2 of 2022 filed by the petitioner wherein petitioner sought for amendment by filing I.A.No.62 of 2022 seeking to raise the

plea of territorial jurisdiction and the said I.A.No.62 of 2022 was dismissed and said order has become final as no appeal was filed against

dismissal of I.A.No.62 of 2022 and it is no more open to the petitioner to raise same plea before this Court in a revision petition arising against an

order passed dismissing interlocutory application filed under Order VII Rule 11 of CPC. Further, if a plea is not raised before the trial Court, it is

not permissible to raise the same plea before the appellate Court. Further, Order VII Rule 11 does not envisage raising objection on territorial

jurisdiction. Further, the objection of territorial jurisdiction cannot be raised for the first time at the appellate stage.

9. Since we have noticed that petitioner has raised issue of territorial jurisdiction before the Court below by filing I.A.No.62 of 2022 and said

application was dismissed by Court below and same was not challenged and has become final, we are not expressing any opinion on the plea of

territorial jurisdiction of Commercial Court at Ranga Reddy district in this case.

10. The submissions are based on the premise that whole gamut of Civil Procedure Code is applicable to arbitral proceedings including to an

application filed under Section 9 of the Act. This issue was considered on more than one occasion by Hon'ble Supreme Court.

10.1. In Pam Developments Private Limited vs. State of West Bengal (2019) 8 SCC 112, opposing application filed under Section 36 of the Act

to enforce arbitral award and order of attachment it was urged for the State of West Bengal that application under Section 34 is pending and in

view of provision in Order XXVII Rule 8-A of CPC the State need not be compelled to pre-deposit as a condition precedent to avail the remedy

of appeal/application and, therefore, order of attachment was illegal. To answer the said plea, the Hon'ble Supreme Court considered the

issue of applicability of CPC to proceedings arising out of Act, 1996.

10.2. Hon'ble Supreme Court held as under:

“20. In our view, in the present context, the phrase used is “having regard to the provisions of CPC and not “in accordance with the

provisions of CPC. In the latter case, it would have been mandatory, but in the form as mentioned in Rule 36(3) of the Arbitration Act, it would

only be directory or as a guiding factor. Mere reference to CPC in the said Section 36 cannot be construed in such a manner that it takes away the

power conferred in the main statute (i.e. the Arbitration Act) itself. It is to be taken as a general guideline, which will not make the main provision

of the Arbitration Act inapplicable. The provisions of CPC are to be followed as a guidance, whereas the provisions of the Arbitration

Act are essentially to be first applied. Since, the Arbitration Act is a self-contained Act, the provisions of CPC will apply only

insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act.

xxxx

26. Arbitration proceedings are essentially alternate dispute redressal system meant for early/quick resolution of disputes and in case a money

decree "award as passed by the arbitrator against the Government is allowed to be automatically stayed, the very purpose of quick resolution

of dispute through arbitration would be defeated as the decree-holder would be fully deprived of the fruits of the award on mere filing of objection

under Section 34 of the Arbitration Act. The Arbitration Act is a special Act which provides for quick resolution of disputes between the parties

and Section 18 of the Act makes it clear that the parties shall be treated with equality. Once the Act mandates so, there cannot be any special

treatment given to the Government as a party. As such, under the scheme of the Arbitration Act, no distinction is made nor any differential

treatment is to be given to the Government, while considering an application for grant of stay of a money decree in proceedings under Section 34

of the Arbitration Act. As we have already mentioned above, the reference to CPC in Section 36 of the Arbitration Act is only to guide the court

as to what conditions can be imposed, and the same have to be consistent with the provisions of the Arbitration Act. (Emphasis supplied)

11. From the above extracts, it is seen that Hon'ble Supreme Court held that "the provisions of CPC are to be followed as a guidance,

and that "CPC will apply only insofar as the same are not inconsistent with the spirit and provisions of the Arbitration Act" (paragraph-20).

In this context, when we look at Section 9 of the Act, 1996, it only envisages that the Court shall have the same power for making orders as it

has for the purpose of, and in relation to, any proceeding before it. It has not mandated application of entire gamut of CPC.

12. From Rule 12 of the Rules, 2000, it is apparent that whole gamut of CPC is not extended to arbitral proceedings, but only selective provisions

are made applicable. One of the provisions conspicuously excluded is Order VII.

13. Reading of Rule 12(2) of the Rules makes the scheme very clear. It vests complete discretion in the Court to suitably modify the requirements

of provisions of CPC adopted by Sub-Rule (1) or to ignore them and proceed otherwise. Only requirement to proceed otherwise is Court must

assign reasons. Further, the party complaining of lack of notice and opportunity and that procedural formalities were not observed by the opposite

party/by the lower Court, must satisfy the Court how prejudice is caused to him. It is not automatic to set aside an order made under Section 9 of

the Act only on the ground that documents were not supplied unless the petitioner shows prejudice caused to him. Thus, the scheme of the Act and

the Rules make it apparent that the Act is self-contained Code; that they comprehensively deal with all aspects of arbitration; that the Act and the

Rules do not envisage application of whole gamut of CPC; that CPC is applicable only to a limited extent as provided in Rule 12 of the Rules; and

that CPC can only guide the Court in dealing with Section 9 applications with complete discretion to adopt its own procedure.

14. Remedy under Section 9, perforce is interlocutory in nature pending initiation of arbitral proceedings, during the arbitral proceedings and after,

subject to determination of rights and liabilities in arbitral proceedings and their enforcement. What is prescribed under Section 9 of the Act is only

an application to grant interlocutory measures to the applicant. The claims are made before the arbitral Tribunal once arbitral proceedings are set in

motion. Very scheme of the Act could not have envisaged rejection of such petition on the grounds mentioned in Order VII Rule 11 of CPC.

Further, on a close reading of Order VII Rule 11 of CPC, it is apparent that what is envisaged therein is rejection of plaint in a suit and not a

petition/ application in a suit. It is based on sound public policy to remove the suits which are on the face of it not maintainable and no useful

purpose would be served by entertaining them and keeping them pending and conducting trial. The same yardstick can not be applied to an

application filed under Section 9 of the Act. Further, order VII Rule 11 is not one of the provisions mentioned in Rule 12 of the 2000 Rules.

15. Thus, submissions urged by the learned counsel for petitioner are liable to be rejected on the sole ground that Order VII Rule 11 has no

application to the applications filed under Section 9 of the Act.

16. Even otherwise, the specified value is required to be seen based on the claim made by the applicant who filed application under Section 9 of

Act 1996. Before the Commercial Court in C.O.P.No.20 of 2021, applicant claimed an amount of Rs.1,19,17,928/- as due from the respondent,

which alone is required to be considered. At the stage of consideration of application Under Section 9, the Court cannot go into the aspect as to

whether respondent has paid certain amounts and is required to pay lesser amount than what is claimed by the petitioner, for the Court to hold that

what is required to be paid by the respondent is less than Rs.1 crore and to hold that the Commercial Court jurisdiction is ousted. The issue of

what is the amount claimed, amount due and payable are matters for consideration in Section 9 application only to a limited extent of considering to

grant interlocutory measures pending commencement of arbitral proceedings. All the aspects of inter se disputes have to be gone into in the arbitral

proceedings. The trial Court cannot go into those aspects in the application filed under Order VII Rule 11 of CPC.

17. For the aforesaid reasons, we see no error in the decision of the Court below warranting our interference. Civil Revision Petition is dismissed.

Pending miscellaneous applications, if any, stand closed.