

(2002) 12 AP CK 0045
Andhra Pradesh High Court
Case No: CRP No. 5267 of 2002

Ankati Satyamaiah

APPELLANT

Vs

Sallangula Lalaiah and Another

RESPONDENT

Date of Decision: Dec. 13, 2002

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 2
- Civil Procedure Code, 1908 (CPC) - Section 2
- General Clauses Act, 1897 - Section 3, 3(17)

Citation: (2003) 2 ALD 818 : (2003) 3 ALT 193 : (2003) 2 ARBLR 431 : (2003) 45 SCL 381

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: D. Venkaiah Goud, for the Appellant; M. Rajamalla Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.

The revision petitioner assails the order dated 30.10.2002 passed by the learned Senior Civil Judge, Miryalaguda, in E.P. No. 60 of 2002.

2. The revision petitioner sought to file the said Execution Petition before the Court of the Senior Civil Judge, Miryalaguda, as against the respondents herein who are the Judgment Debtors. The factual matrix reveals that the petitioner and the respondents by means of an arbitral agreement referred the matter to the Arbitrators for resolution of the dispute, who eventually passed an award. It appears that having been felt aggrieved, the first respondent herein filed an application to set aside the award, which is now pending adjudication before the District Court at Nalgonda. In the meanwhile the Decree Holder as stated hereinabove sought to execute the award as if it were a decree of the Civil Court by filing E.P. No. 60 of 2002

u/s 36 of the Arbitration and Conciliation Act, 1996 ("the Act" for brevity) before the Senior Civil Judge at Miryalaguda. Under the impugned order, the learned Judge returned the Execution Petition for being presented before an appropriate Court on the premise that, that Court has no jurisdiction to entertain the Execution Petition inasmuch as neither the Judgment Debtor resides within the jurisdictional limits of that Court nor the award has been passed within the jurisdiction of that Court nor does the cause of action arise within the jurisdictional limits of that Court. The Decree Holder having been of the view that the Court of Senior Civil Judge at Miryalaguda alone has the jurisdiction assails that order in this revision petition.

3. The learned Counsel appearing for the revision petitioner seeks to contend that inasmuch the subject matter of arbitration is laying of road work at Miryalaguda, a part of cause of action has arisen within the territorial jurisdiction of the Court of Senior Civil Judge at Miryalaguda; and that having regard to the Section 20 of the CPC (for brevity "C.P.C."), that Court has jurisdiction to entertain the execution petition.

4. The learned Counsel appearing for the first respondent, on the other hand, contends that the expression "the Principal Civil Court of original jurisdiction" means only the District Court and nothing else.

5. Having regard to the rival contentions, the short point that falls for my determination in this Revision Petition is as to which is the appropriate Court to enforce the award passed by the Arbitrators?

6. The factual matrix discloses that the revision petitioner is the Decree Holder in whose favour the award, which is now sought to be executed, was passed qua the respondents 1 and 2 herein-the Judgment Debtors. The dispute inter se between the parties is in respect of laying of a road at Miryalaguda, which is within the territorial jurisdiction of the Court of Senior Civil Judge at Miryalaguda. By means of an arbitral agreement, both the parties referred the dispute to the Arbitrators who are the residents of Hyderabad. The revision petitioner is a resident of Miryalaguda whereas the respondents 1 and 2 herein are residents of Hyderabad and Nalgonda respectively. The Arbitrators eventually passed the award on 18.9.2001 at Hyderabad. With these available facts, the question of jurisdiction to enforce the award has to be decided. It is appropriate here in the context to look into certain of the provisions of the Arbitration and Conciliation Act, 1996 for brevity and better understanding of the matter. Section 36 of the Act is the provision, which enables the parties to enforce the award and it reads as under:

"36. Enforcement :-Where the time for making an application to set aside the arbitral award u/s 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court." [Emphasis is mine]

7. A perusal of the said section shows that the arbitral award can be enforced as if it were a decree of the Court, which award has become final. Section 2 of the Act is another provision which shall have to be considered in the context and it reads as under

"2(e) "Court" means the Principal Civil Court of original jurisdiction in a District, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such Principal Civil Court, or any Court of Small Causes." [Emphasis is mine]

8. A perusal of the said provision shows that the Principal Civil Court of original jurisdiction in the District which has jurisdiction to decide the question pertaining to the subject-matter of arbitration, if a suit were to be filed in regard thereto, is the appropriate Court and it shall not be a Court of a grade inferior to such Court or any Small Causes Court.

9. Elsewhere in the Act certain other provisions are also there which are germane to be considered for better understanding of the expression "the Principal Civil Court of original jurisdiction". Section 8 of the Act enables the judicial authority to refer the arbitration, where there is an arbitral agreement, to an Arbitrator for adjudication. Section 9 contemplates interim orders to be passed by a Court either before or during or after the culmination of the arbitral proceedings by the Court. Section 37 confers right of appeal as against the orders passed by the Court. Section 34, on the other hand, envisages an application for setting aside arbitral award. The right of appeal is given to the parties to approach that Court, which has the power to entertain the appeal as against the original decree of the Court passing the order. A careful consideration of these provisions would leave no room for any doubt that the word used in these provisions except in Section 8 is "Court". Therefore it requires to be considered what is the meaning of the word "Court" which word has been used in various provisions in the Act.

10. Turning to Clause (e) of Section 2 of the Act again, it is obvious that the Court envisaged under the Act means "the Principal Civil Court of original jurisdiction in a District". The expression "the Principal Civil Court of original jurisdiction in a District" has not been defined under the Act. It is, therefore, appropriate to fall back upon the definition of the "district" as enjoined u/s 2, Clause (4) of the CPC and the definition of the "District Judge" as envisaged in Section 3, Clause (17) of the General Clauses Act, 1897. Section 2, Clause (4) reads as under:

"2(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court."

Although the above excerpted provision seeks to define the expression "district" but a perusal of the said provision makes it obvious that the Principal Civil Court of original jurisdiction is the District Court in a District and it is also included in the local limits of the original civil jurisdiction of a High Court. It is to the common knowledge that in every District there is a District Court, which is the fountainhead of the District judiciary in the hierarchy of the judicial system.

11. Section 3, Clause (17) of the General Clauses Act, which is apt to be considered, reads as under: -

"3(17) "District Judge" shall mean the Judge of a Principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;"

12. A plain reading of the above provision shows that the Principal Civil Court of original jurisdiction means the District Court inasmuch as the District Judge is the Presiding Officer of that Court. Both the Provisions as discussed hereinabove makes it manifest that a District Court in a District is the principal Civil Court of original jurisdiction. When we consider the expression "the Principal Civil Court of original jurisdiction in a District" appearing in the first part of Clause (e) of Section 2 of the Act the definition of the word "Court" in conjunction with the meaning given in Section 2, Clause (4) of the C.P.C. and Clause (17) of Section 3 of the General Clauses Act, it is obvious that it is the Court of District Judge, that is, the Principal Civil Court of original jurisdiction in a District. Not only that, the definition as given u/s 2(e) expressly excludes any other Civil Court of a grade inferior to such Principal Civil Court or any Court of Small Causes. Therefore, the last limb of Section 2(e) is more emphatic that it shall be only the Principal Civil Court of original jurisdiction in a District and no other Court. This, therefore, leaves no room for any doubt that the expression "Court" as envisaged u/s 2(e) means only the "Principal Civil Court of original jurisdiction" in a District which is obviously the District Court. I see no reason to construe the expression "the Principal Civil Court of original jurisdiction" as envisaged u/s 2(e) of the Act in a different sense than what has been envisaged by the two provisions under the CPC and the General Clauses Act referred to hereinabove.

13. It may further be exemplified having regard to the facts in this case thus. Here is a case where, according to the facts, the parties are residents of Miryalaguda, Hyderabad and Nalgonda, respectively. They referred the matter to the Arbitrators who are the residents of Hyderabad. It is not known whereat the arbitral agreement was entered into between the parties inter se. However, the Arbitrators ultimately after due deliberations passed the award on 18.9.2001 at Hyderabad. Having regard to the nature of the dispute between the parties, which pertains to execution of a contract work, when we look at the provisions of the C.P.C., the residuary provision of Section 20 is applicable for deciding the question of jurisdiction of the Court. Having regard to the above criterion, the jurisdiction is either with the Court at

Miryalaguda or the Courts at Hyderabad. Therefore, either of the parties, if need be, can approach the Courts at Hyderabad or at Miryalaguda in Nalgonda District, or at Nalgonda having due regard to the residence of the parties and the cause of action that has arisen, either in whole or in part. If a suit were to be filed, the suit shall have to be instituted before one of the Courts either at Nalgonda or at Miryalaguda or at Hyderabad. That Court, which has jurisdiction to entertain the suit between the parties, shall be the Principal Civil Court of original jurisdiction in a District and it shall not be inferior to such Principal Civil Court or any Court of Small Causes. Therefore the suit shall have to be filed before the Principal Civil Court of original jurisdiction either at Nalgonda, or at Hyderabad. Obviously the same Court can enforce the award as if it were a decree passed by that Court having regard to Section 36 of the Act.

14. Rightly or wrongly, the learned Senior Civil Judge, Miryalaguda, returned the Execution Petition for different reasons but here is a case where the Execution Petition should have been filed to execute the arbitral award before the District Court at Nalgonda but not before the Court of Senior Civil Judge, Nalgonda. Therefore, there is nothing to interfere with the impugned order passed by the learned Senior Civil Judge, Miryalaguda.

15. In the result, the Civil Revision Case fails and is dismissed.