

Case No. 66

2002 (1) ALT 357

IN THE HIGH COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD

B. PRAKASH RAO,J

C.R.P.Nos 5580 and 5581 of 1998 Decided on 2-11-2001

Lakshmi General Finance Ltd.

Vs

Anantha Raja Rao

Section 16 of the Arbitration and Conciliation Act, 1996 - Arbitrator can rule on his own jurisdiction - Disputes regarding the very validity and existence of the arbitration agreement - arbitrator can decide the matter.

CASES REFERRED:

1. Renusagar Power Co. Ltd. v. General Electric Company: AIR 1985 SC 1156.
2. Chander Nath Ojha v Suresh Jhalani (1999) 8scc 628.
3. Nimet Resources Inc. v. Essar Steels Ltd.: AIR 2000 SC 3107.
4. Olympus Super Structures Pvt. Ltd. V.Meen Vijay Khetan: 1999) 5SCC 651
5. Wellington Associates Ltd. v. Kiril Mehta (2000) 4SCC 272

Mr. Prabhakar Sripada, Advocate for the Petitioner.

Mr. S.Srinivasavarma, Advocate for the Respondent.

JUDGMENT

1.The Petitioner in these two revisions is the defendant, who is aggrieved against the orders in I.A.No. 1180 of 1998 dated 13-10-1998 and I.A.No 1101of 1998 dated 27-10-1998 in O.S.No.316 of 1998 on the file of the III Additional Senior Civil Judge at Vijayawada.

2. The respondent- Plaintiff filed the suit for declaration that he is the absolute owner of the vehicle, a lorry No. AP 16U 8328 and for furnishing the accounts, to refund the amount of Rs.79,000/- paid excess, to deliver the vehicle and to pay damages.

3. According to the plaintiff, on his approaching the defendant for finance for purchase of two lorries, the defendant advanced Rs, 5,00,000/- for two vehicles and obtained various signatures on blank printed and stamp papers. The amount is repayable in 35 instalments, which was reduced to 23 instalments. The case of the plaintiff is that he has paid all the instalments and there is excess payment of Rs. 79,000/-. Hence the suit.

4. In I.A.No. 1180 of 1998 filed under Section 8 of the Arbitration and Conciliation Act, 1996, the petitioner- defendant sought reference of the dispute to arbitration as per the arbitration clause contained in the agreement dated 30-7-1997. The case of the petitioner is that as per the request, the plaintiff was given finance and hire purchase agreement dated 22-7-1995 was entered into, as O.V.4256 for Rs. 7,49,000/- repayable in 35 monthly instalments for the vehicle No. AP 16U 8328. Later on his own request, a supplementary agreement dated 20-10-1995 was entered into reducing the monthly instalments from 35 to 24. Yet, he committed default in repayment of instalments. Again at his instance, agreeing for refinance another agreement dated 30.7.1997 was entered into viz. R.V.1275 for Rs. 5,49,000/-. This was assigned in favour of M/s Express Roadways Pvt Ltd., on the request of the plaintiff as per assignment agreement dated 29.8.1997. Except making payment for one instalment, the plaintiff committed default. The plaintiff suppressed all these transactions and in view of default he cannot claim ownership of vehicle till all the payments are made. The petitioner defendant has already repossessed the vehicle on 30.06.1998. The plaintiff is due a sum of Rs. 5,25,095/- As per the arbitration clause No. 15 in the agreement, the dispute has to be referred to arbitration and the suit as filed, is not maintainable.

5. In the other application I.A.1101 of 1998 filed under Order 39 Rules 6 and 7 Order 26 Rules 9 and 10 C.P.C, the plaintiff sought for appointment of an Advocate-Commissioner to seize the said vehicle A.P.16U 8328 on the ground that the defendant has illegally and unauthorisedly taken away the vehicle from Itchapuram and now it is in its custody at Visakhapatnam.

6. Opposing the application of the defendant and in support of his own application, the case of the plaintiff is that the allegation as to refinancing and later agreements including assignment to M/S Express Roadways Pvt. Ltd. are false and further that the defendant obtained his signatures on several blank papers and printed forms. As there is no due execution the arbitration clause is not binding on him Further, no default is committed by him and the defendant has no right to take possession of the

vehicle.

7. On a consideration of the rival submissions, the Court below while dismissing both the applications observed in I.A.No 1101 of 1998 that the defendant shall keep the vehicle in safe custody without causing any damage till the disposal of the suit. The Court below sought to proceed mainly on the ground that the plaintiff is not admitting the execution of the agreements and, therefore, the very existence of the agreements is in dispute between the parties and it may not be possible for the arbitrator to give a finding with regard to the fabrication of the documents and the alleged fraud pleaded by the respondent- plaintiff

8. Sri Prabhakar Sripada, the learned Counsel appearing for the petitioner contends that in view of the arbitration clause in the agreement, the matter has to be referred to the arbitrator, who according to Section 16 of the said Act, has the power to go into all the questions including the existence or validity of the agreement. The respondent plaintiff having suppressed all the facts cannot seek the indulgence of the Court.

9. Sri. Srinivasa varma, the learned Counsel appearing for the respondent plaintiff, contends that in view of the allegations made in the plaint against the agreements and obtaining signatures on blank papers, there is a serious dispute as to very execution and validity of the agreement and the said question cannot be gone into by the arbitrator. Therefore, the Court below has rightly rejected the application.

10. In view of the submissions made and on a perusal of the record, the question, which emerges for consideration in these revisions, is as to whether the arbitrator has powers to go into the question of the validity of the agreement and consequently the matter requires to be referred to arbitration?

11. The facts as mentioned above and not disputed are that the plaintiff did obtain financial assistance from the petitioner herein for the purpose of buying the vehicle in question. However, the only dispute as per the plaintiff is that the petitioner defendant had obtained his signatures on several blank paper and printed stamp papers and the same have been made use of for the purpose of creating the agreements in question and, therefore, the validity and existence of such agreements cannot be gone into by the arbitrator and necessarily the suit as has been filed and framed is competent and maintainable in a civil court rather than approaching the arbitrator. The Court below has also taken into consideration the said aspect and rejected the application proceeding on the assumption that the arbitrator cannot go

into such questions of validity or existence of the agreement.

12. Under the Arbitration Act, 1940, there is no specific provision indicating the powers and the scope of the arbitrator. And yet, the Courts did take the view that an arbitrator can go into all such questions as to the existence and validity of an agreement.

13. *In Renusagar Power Co. Ltd. v. General Electric Company*, the apex Court considering the question as to the jurisdiction of the arbitrator to decide the existence, validity and effect (scope) of the arbitration agreement and in view of the expressions " arising out of" or "in respect of" the contract, held that the same are of widest amplitude and content including even the question as to the existence, validity and effect (scope) of the arbitration agreement. Interpreting the arbitration clause as contained therein, it was held that the same is very widely worded so as to include within its scope to decide the question as to the existence, validity and effect of the agreement.

14. *In Chander Nath Ojha v. Suresh Jhalan* a case arising under the provisions of the Arbitration Act, 1940, the apex Court held that whether a particular person was a party to the agreement to sell which contains an arbitration agreement is an issue for the arbitrator to decide and the matter was referred to arbitration.

15. Under the provisions of the Arbitration and conciliation Act, 1996, Section 16 reads as follows.

"16. Competence of arbitral tribunal to rule on its jurisdiction: ((1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement..."

16. In view of such specific words, there cannot be any dispute now about the powers of the arbitrator to go into such question of existence or validity of the agreement.

17. *In Nimet Resources Inc.v. Essar Steels Ltd.* the apex Court held:

"Arbitration agreement -existence or non- existence - not clear from correspondence or exchange of documents between parties - it is proper for arbitrator to decide such question under Section 16...."

18. Similarly, in *Olympus Super Structures Pvt Ltd. v. Meen Vijay Khetan*, considering the scope of Section 16(1) of the new Act, the apex Court held that the arbitral tribunal is invested with the power to rule on its own jurisdiction including ruling on the objection with respect to the existence or validity of the arbitration agreement. Further, it was also held that for that purpose, the arbitration clause which forms part of the contract is to be treated as an agreement independent of the other terms of the contract. It is clear from Section 16(1) of the New Act that any decision by the tribunal that the contract is null and void and shall not entail *ipso jure* the validity of the arbitration clause.

19. In *Wellington Associates Ltd. V. Kirit Mehta* the apex Court held:

“ The language employed by Section 16 of the new Act shows that the said provision is only an enabling one which unlike Section 33 in the old Act of 1940, now permits the Arbitral Tribunal to decide a question relating to the “ existence” of the arbitration clause. This section corresponds to Article 16 of the Uncitral Model Law and Article 21 of the Uncitral Arbitration Rules. While Article 16 of the Model Law says that the Arbitral Tribunal may rule on its own jurisdiction, Article 21 of the Rules states that the Arbitral Tribunal shall have power to rule on these questions. Such power given to the Arbitral Tribunal is also referred to as “ Kompetenz”

20. In view of the aforesaid principles as laid down by the apex Court, more so in the face of the express language used under Section 16 of the new Act, they no longer deter this Court to hold that the arbitrator has got ample powers to go into all such questions including as to the existence and validity of the agreement and, therefore the Court below is not right in rejecting the application of the defendant to refer the dispute to the arbitrator.

21. Coming to the other revision in regard to the directions given by the Court below in the application filed by the respondent herein in I.A.No.1101 of 1998 to keep the vehicle without being damaged, it is needless to observe that in view of the aforesaid finding given referring the matter to arbitration, it is open for the parties to move the said arbitrator for any interim directions, if they so desire.

22. Accordingly, both the revisions are allowed. No costs.