

**IN THE HIGH COURT OF ANDHRA PRADESH**

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**CIVIL MISCELLANEOUS APPEAL No.182 of 2022**

**Between:**

A.L.P.Ranga Rao & two others. .... Appellants

**AND**

P.Srinivasu & 3 others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 23.12.2022

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE A.V. SESA SAI  
&  
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be  
marked to Law Reporters /Journals? Yes / No
3. Whether His Lordship wish to  
see the fair copy of the Judgment? Yes / No

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**A.V. SESA SAI, J**

\_\_\_\_\_  
**DUPPALA VENKATA RAMANA,J**

**\* THE HON'BLE SRI JUSTICE A.V. SSHA SAI**  
**&**  
**\*THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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**! Counsel for Appellants** : M/s M.Devi Prasad

**^ Counsel for Respondents** : Sri B.Srinivasa Rao

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) 2017 (5) ALT 47 (DB)
- 2) (2003) 6 SCC 503.
- 3) (2011) 5 SCC 532
- 4) (2020) 3 SCC 169

**THE HON'BLE SRI JUSTICE A.V. SESA SAI**  
**&**  
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**CIVIL MISCELLANEOUS APPEAL No.182 OF 2022**

**JUDGMENT:** *(per Hon'ble Sri A.V. Sesa Sai, J)*

Defendants 1 to 3 in O.S.No.83 of 2021 on the file of the Court of the learned III Additional District Judge, Tirupathi are the appellants in the present Civil Miscellaneous Appeal, preferred under Order XLIII Rule 1 CPC.

2. This appeal is directed against the order, dated 21.03.2022, passed by the said Court in I.A.No.704 of 2021 in the said suit. Respondents 1 and 2 instituted the said suit against the appellants and respondents 3 to 5 herein for the following reliefs:

*“To pass a decree and judgment in favour of the plaintiffs and against the defendants.*

*a) Cancelling the fraudulent registered Second Supplementary Deed to development agreement-cum-GPA document No.3927/2021, dated 13.09.2021.*

*b) Directing the defendants to pay the costs of the suit and*

c) *Pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.*

In the said suit, the defendants 1 to 3, who are the appellants herein, filed I.A.No.704 of 2021 under Section 8 of the Arbitration and Conciliation Act, 1996 (for brevity, 'the Act') r/w Section 151 of CPC, praying the trial Court to refer the plaintiffs and defendants 1 to 3 in the suit to Arbitration. Plaintiffs-respondents 1 and 2 filed a counter, resisting the said application. The learned III Additional District Judge, Tirupathi *vide* order, dated 21.03.2022, dismissed the said I.A.No.704 of 2022. Challenging the validity and the legal sustainability of the said order, the present appeal came to be preferred.

3. Heard Sri N.Subba Rao, learned counsel for the appellants, and Sri B.Srinivasa Rao, learned counsel for the respondents 1 and 2, apart from perusing the entire material available on record.

4. Submissions/contentions of the learned counsel for the appellants:

- 1) *The order impugned in the present appeal is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Section 8 of the Arbitration and Conciliation Act, 1996.*
- 2) *The learned District Judge failed to consider as to whether Ex.B21-partnership deed, dated 07.08.2012, and the Clauses therein are binding on the partners.*
- 3) *The learned District Judge failed to consider as to whether the suit can be proceeded, ignoring the Arbitration Clause in Ex.B21-partnership deed dated 07.08.2012.*
- 4) *The learned District Judge ought to have seen that the terms of Ex.B21-partnership deed, dated 07.08.2012, are binding on all the partners.*

In support of his submissions and contentions, learned counsel for the appellants places reliance on the following judgments:

- 5) 2017 (5) ALT 47 (DB)
- 6) (2003) 6 SCC 503.

5. Per contra, learned counsel for the plaintiffs-respondents 1 and 2 contends that there is no error nor there exists any infirmity in the impugned order, as such, the same is not amenable for any correction by this Court under Order XLIII Rule 1 CPC; that behind the back of the plaintiffs-respondents 1 and 2, appellants/defendants 1 to 3 and defendants 4 and 5 entered into Ex.B1-Second Supplementary Deed to Development agreement-cum-GPA document No.3937/2021, dated 13.09.2021, cancelling the earlier Arbitration Clause in Ex.B.21-partnership deed, dated 07.08.2012; that the fraudulent nature of Ex.B1-document, dated 13.09.2021, would be crystal clear from the fact that as per the said document, the land owners-respondents 3 and 4 will own 19 flats whereas the Developer will own two flats; that the appellants and the respondents 3 and 4 have colluded to defeat the rights of the respondents 1 and 2, which prompted respondents 1 and 2 to institute the present suit for cancellation of Ex.B1-document, dated 13.09.2021; that in the said document, dated 13.09.2021, there is no Arbitration Clause; that the entire attempt of the appellants is to delay

the suit proceedings. In support of his submissions and contentions, learned counsel for the respondents 1 and 2 places reliance on the following judgments:

1) (2011) 5 SCC 532

2) (2020) 3 SCC 169

6. In the above background, now the issue that emerges for consideration of this Court in the present appeal is:

*“Whether the order passed by the learned trial Judge is sustainable and tenable and whether the same warrants any interference of this Court under Order XLIII Rule 1 CPC?”.*

7. There is absolutely no dispute as regards the execution and registration of Ex.B.21-partnership deed, dated 07.08.2012, with the plaintiffs and defendants 1 to 3 as partners. Respondents 1 and 2 instituted the suit-O.S.No.83 of 2021, pleading *inter alia* that the defendants 4 and 5, without the knowledge and consent of the plaintiffs and in collusion with the defendants 1 to 3, brought into existence Ex.B1-document, dated 13.09.2021, styled as “Second Supplementary Deed to Registered Development Agreement-cum-GPA” bearing document No.3927/2021, by

excluding the plaintiffs. It is also pleaded that in all the previous registered documents, plaintiff No.1 represented the partnership firm along with the defendant No.1 and the second respondent and that the plaintiffs, being the partners of the partnership firm and Developer invested amounts also for construction of apartments in the plaint schedule property with a hope that they would get equal share in the constructed flats as per the Development Agreement. It is further pleaded that as the land owners i.e., defendants 4 and 5 caused hurdle in completion of project, the plaintiffs, on behalf of the Developer firm, have initiated legal action against the land owners-defendants 4 and 5 and issued legal notices and that the defendants 4 and 5 colluded with the defendants 1 to 3 and created/brought into existence Ex.B1-document, dated 13.09.2021, and that the said document is a void one and not binding on the plaintiffs. It is also pleaded in the plaint that, by excluding the plaintiffs, defendants 1 to 3 have no right to represent the partnership firm-M/s Srivari Constructions and to execute the suit agreement and that the partnership firm never authorised to that effect.

8. In the suit, defendants 1 to 3 filed the present I.A.No.704 of 2021 on 15.11.2021 under Section 8 of the Act r/w Section 151 CPC with a prayer to refer the plaintiffs and the defendants 1 to 3 to the Arbitration in terms of Clause 13 of Ex.B21-partnership deed, dated 07.08.2012. Resisting the said application, plaintiffs filed counter. The learned Trial Judge dismissed the said application, principally on the ground that Ex.B1-document, dated 13.09.2021, does not contain the Arbitration Clause and, as per Clause (L), filing of suit at Tirupathi cannot be faulted.

9. Copy of Ex.B21-partnership deed, dated 07.08.2012, is filed along with the Appeal as a material paper, according to which plaintiffs and defendants 1 to 3 constituted a partnership on 07.08.2012 and plaintiff No.2 and second defendant are shown as working partners. Clause 13 of the said document, which envisages Arbitration, reads as follows:

*“All the matters in dispute in  
relationship the partnership business*

*either during the subsistence of the partnership or after its dissolution shall be referred to Arbitration according to provision the Arbitration Act as amended from time to time”.*

10. Obviously, the entire case of the defendants 1 to 3 rests on the above mentioned Clause 13 of Ex.B21-partnership deed, dated 07.08.2012. The document, which prompted the respondents 1 and 2-plaintiffs, being Ex.B1-document, dated 13.09.2021. A copy of the said document is available on record. Admittedly, defendants 1 to 3, representing the Firm-M/s Srivari Constructions and the land owners-D4 and D5, are the parties to the said document. Clause K(2) stipulates that “All the developmental rights vested with the Developer/Builder through all the earlier documents stands cancelled and Ex.B1 shall be in force from the date of the said document”.

11. Clause (L) of Ex.B1-document, dated 13.09.2021, which is the suit document, which deals with the aspect of jurisdiction, reads as follows:

*“All disputes between the Developer, the partners, the other partners and the land owners shall be subject to the jurisdiction of the Courts at Tirupathi and the Arbitration agreement between the land owners and Developer as contained in the schedule ‘C’ Instruments hereby stands rescinded”.*

12. Admittedly, for Ex.B1-document, dated 13.09.2021, which is in supersession of all the developmental rights, as mentioned above, the plaintiffs are not the parties. In the suit, plaintiffs are seeking to set aside the said document, dated 13.09.2021. In this context, it would be appropriate to refer to Section 8 of the Act, which reads as follows:

*“Power to refer parties to arbitration where there is an arbitration agreement.—*

*(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree, or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

*(2) The application referred to in subsection (1) shall not be entertained unless it is accompanied by the original*

*arbitration agreement or a duly certified copy thereof.*

*(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made”.*

13. It is very much evident from a reading of the above provision of law that a judicial authority is empowered to refer the matter to Arbitration on an application made by a party, provided the action brought before the Court is the subject-matter of the Arbitration. Admittedly, the action, which is the subject-matter of the suit, is Ex.B1-document, dated 13.09.2021, and the reality remains that the said document does not contain Arbitration Clause and, on the other hand, according to Clause (L) of Ex.B1-document, dated 13.09.2021, jurisdiction is with Tirupathi Court.

14. In this context, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Booz-Allen & Hamilton inc. v SBI Home Finance Ltd. &**

**Others<sup>1</sup>**, wherein, the Hon'ble Apex Court, at paragraph No.19, held as follows:

*“Where a suit is filed by one of the parties to an arbitration agreement against the other parties to the arbitration agreement, and if the defendants file an application under Section 8 stating that the parties should be referred to arbitration, the court (judicial authority) will have to decide (i) whether there is an arbitration agreement among the parties; (ii) whether all parties to the suit are parties to the arbitration agreement; (iii) whether the disputes which are the subject matter of the suit fall within the scope of arbitration agreement; (iv) whether the defendant had applied under Section 8 of the Act before submitting his first statement on the substance of the dispute; and (v) whether the reliefs sought in the suit are those that can be adjudicated and granted in an arbitration”.*

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<sup>1</sup> (2011) 5 SCC 532

15. In the case of **Wapcos Ltd. v. Salma Dam Joint Venture and another**<sup>2</sup>, the Hon'ble Supreme Court, at paragraph No.34, held as follows:

*“It is not unknown in commercial world that the parties amend original contract and even give up their claims under the subsisting agreement. The case on hand is one such case where the parties consciously and with full understanding executed AoA whereby the contractor gave up all his claims and consented to the new arrangement specified in AoA including that there will be no arbitration for the settlement of any claims by the contractor in future. Having chosen to adopt that path, it is not open to the contractor to now take recourse to arbitration process or to resurrect the claim which has been resolved in terms of the amended agreement, after availing of steep revision of rates being condition precedent”.*

16. It is beyond the pale of controversy that for Ex.B1-document, dated 13.09.2021, plaintiffs-respondents 1 and 2 herein are not the parties and there is no Clause of Arbitration in the said document.

17. A reading of the order passed by the trial Court shows that the learned trial Judge, after taking into consideration

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<sup>2</sup> (2020) 3 SCC 169

the judgment of this Court in C.R.P.No.530-640 of 2021 and the judgments of the Hon'ble Supreme Court, referred to supra, dismissed the application, filed by the appellants herein. The learned District Judge also considered the impact of Clause (L) of Ex.B1-document, dated 13.09.2021, and assigned valid and convincing reasons for arriving at the conclusions and this Court does not find any error in the order passed by the learned District Judge.

18. Having regard to the law laid down by the Hon'ble Apex Court, in the above mentioned judgments, and having regard to the reasons assigned by the learned Judge in the impugned order, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this case, shall stand closed.

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**A.V. SESA SAI, J**

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**DUPPALA VENKATA RAMANA,J**

23<sup>rd</sup> December, 2022

**Note:**

*LR copy to be marked.*

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