

THE HONOURABLE SMT.JUSTICE P.SREE SUDHA

TRANSFER CIVIL MISCELLANEOUS PETITION NO.122 OF 2022

ORDER:-

1. M/s. "S.SQUARE INFRA" Company with Registration No.SI.No.4879/2017, filed this Transfer Civil Miscellaneous Petition for transfer of Arbitration O.P.No.2 of 2022 from the file of VII Additional District Judge, Sangareddy to Principal District Judge, City Civil Court at Hyderabad.

2. The Managing Partner of S.SQUARE INFRA filed an affidavit stating that Respondents 1 & 2 filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, vide Arbitration O.P.No.2 of 2022 before the Principal District Judge at Sangareddy and then it was made over to VII Additional District Judge, Sangareddy. As the said post fell vacant, it is allotted to V Additional District Judge-cum-SC/ST Court. Respondent Nos.1 & 2 filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, requesting the Court to grant injunction restraining the respondents 3 to 7 from transferring or alienating or creating any third party interest in the schedule properties to an extent of 16.66% share each belonging to the respondents 1 & 2 who are the partners of petitioner firm.

3. Learned counsel for the petitioner stated that he received a legal notice on 05.03.2021 issued by the Respondents nominating Sri V.V.Raghavan, Chief Judge (Retired), City Civil Court, Hyderabad, who is residing at Masab Tank, Hyderabad, as an Arbitrator on their behalf so that both of them can appoint the said Arbitrator for resolving the disputes between both the parties. As they nominated the Arbitrator residing at Hyderabad, they have agreed the seat of arbitration at Hyderabad. As such, they cannot change the jurisdiction once again and he also relied upon the citation reported in **INDUS MOBILE DISTRIBUTION PRIVATE LIMITED Vs. DATAWIND INNOVATIONS PRIVATE LIMITED & ORS.**¹ wherein, at para 20, it was held as follows:-

“20. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai Courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in Courts, a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Section 16 to 21 of the CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai Courts with exclusive jurisdiction for purposes of regulating arbitral

¹ 2017 Law Suit (SC) 421

proceedings arising out of the agreement between the parties.”

and requested this Court to transfer Arbitration O.P.No.2 of 2022 from the file of VII Additional District Judge, Sangareddy to Principal District Judge, City Civil Court at Hyderabad.

4. Learned counsel for the petitioner relied upon the notice issued by the respondents on 05.03.2021 in which they nominated Sri V.V.Raghavan, Chief Judge (Retired), City Civil Court, Hyderabad as Arbitrator on their behalf and requested the respondents 3 to 6 to appoint their Arbitrator so that both of them can appoint a Presiding Arbitrator for resolving the disputes between both the parties.

5. Learned counsel for the respondents filed reply to the notice given to them on 13.03.2021 in which they specifically stated that there is no dispute for appointing the Arbitrator and appointing of Arbitrator is not necessary and they rejected their claim for appointing the Arbitrator on their behalf. As such, the constitution of Arbitration Tribunal is not warranted.

6. The learned counsel for the respondents stated that they filed O.S.No.67 of 2021 before the VII Additional District Judge, Sanga Reddy, for relief of permanent injunction. Though the petitioner and respondents had appeared before the Court, they

did not take any objection regarding the territorial jurisdiction, but they filed petition under Section 8 of Arbitration Act seeking a direction to refer the matter to the Arbitrator in I.A.No.864 of 2021 and it was allowed and the matter was referred to arbitration. As the respondents first approached the Court of VII Additional District Judge, Sanga Reddy, he also filed Arbitration O.P.No.2 of 2022 before the same Court. As such, the Courts at Hyderabad have no jurisdiction at all. Though both the parties entered into partnership deed on 27.10.2018 and in Clause-23 of the partnership deed, it was specifically mentioned as follows:-

“23. In case of any dispute or disputes arising both the partners the same shall be referred to an Arbitrator or Arbitrators chosen by the partners and the award given by the Arbitrator or Arbitrators shall be final and binding on all the partners.”

In the said partnership deed, there was no mention about the place of arbitration or the seat of arbitration.

7. The learned counsel for the petitioner mainly contended that as the respondents nominated the Arbitrator residing at Hyderabad, only the Courts at Hyderabad are having jurisdiction but not the Courts at Sangareddy and thus, sought for transfer. Admittedly, the offer of the respondents was rejected by the petitioner herein and he specifically stated that

the constitution of Arbitration Tribunal is not warranted, as such, the respondents filed a suit. But again, the petitioner filed a petition under Section 8 of Arbitration Act and the Court referred the matter to Arbitration. As such, the respondent filed O.P.2 of 2022 before the same Court. Therefore, the argument of the learned counsel for the petitioner that merely because an Arbitrator of Hyderabad was nominated by the respondents, only the Courts at Hyderabad are having jurisdiction, is not tenable.

8. Learned counsel for the petitioner cited several citations requesting the Court to decide the seat or venue of Arbitration. Admittedly, it was not specifically mentioned by them in their partnership deed and they filed this transfer CMP only for transfer of Arbitration O.P.2 of 2022 from the file of VII Additional District Judge at Sanga Reddy to the Court of Principal District Judge, City Civil Court at Hyderabad. Since the scope of transfer CMP is limited, this Court need not decide the seat or venue of Arbitration.

9. The learned counsel for the respondent referred Section 42 of the Arbitration and Conciliation Act which reads as follows:-

*42. **Jurisdiction.**— Notwithstanding anything contained elsewhere in this Part or in any other law for*

the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

He stated that as he filed suit before the VII Additional District Judge, Sangareddy as per the directions of the Court, he filed Arbitration O.P.No.2 of 2022 also before the same Court in view of Section 42 of the Arbitration and Conciliation Act, 1996. Therefore, I do not find any merits in the transfer CMP and hence it is liable to be dismissed.

10. Accordingly, the transfer Civil Miscellaneous Petition is dismissed. There shall be no order as to costs.

11. Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE P.SREE SUDHA

Dt.21.06.2022

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