

APHC010073932016



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3508]

FRIDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CIVIL MISCELLANEOUS APPEAL NO: 620/2016

Between:

Lakshmi Agencies, Rjy, E.g.dist & 2 Others and Others **...APPELLANT(S)**

AND

Aryapuram Coop Urban Bank Ltd Rjy and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1.MALLAVOLU NIKITHA

Counsel for the Respondent(S):

1.T V S PRABHAKARA RAO

The Court made the following Judgment:

(Per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Ms. M. Nikitha, learned counsel appearing for the appellant and Sri T.V.S. Prabhakar Rao, learned Standing Counsel appearing for the 1st respondent-bank.

2. The 1st appellant had obtained financial assistance from the 1st respondent-bank. The 2nd appellant and the 3rd appellant, who is the husband

of the 1st appellant, had stood as guarantors for the said loan. As the debt was not being paid, the 1st respondent-bank initiated proceedings against appellants 1 and 2. As the husband of the 2nd appellant, had passed away, by then, the son of the 2nd appellant, who is arrayed as the 3rd appellant herein, was also made a party to the recovery proceedings. These proceedings were initiated under the provisions of the A.P. Cooperative Societies Act, 1964 (for short 'the APCS Act, 1964') resulting in an award being passed against the appellants, under Section 62 of the Act. Aggrieved by this award, the appellants had initially filed an appeal before the A.P. Cooperative Tribunal. However, the said appeal was withdrawn and a writ petition came to be filed before this Court. After some time, this writ petition was also withdrawn and a petition under Section 34 of the Arbitration and Conciliation Act, 1996, (for short 'the Arbitration Act') came to be filed before the District Judge, Rajahmundry, for setting aside the award, dated 15.06.2015, in A.C.No.19/15-16. This petition was numbered as A.O.P.No.56 of 2015. The 1st respondent filed I.A.No.2458 of 2015 in A.O.P.No.56 of 2015, challenging the maintainability of A.O.P.No.56 of 2015. The Principal District Judge, Rajahmundry, by order dated 20.11.2015, had held that the main petition was not maintainable and allowed the interlocutory application. Consequently, the main petition stood dismissed, by way of a separate order, of the same date.

3. Aggrieved by this order of the Principal District Judge, Rajahmundry, the appellants have moved the present civil miscellaneous appeal before this Court.

4. Smt. M.V. Ramana Kumari, learned counsel appearing on behalf of Ms. M. Nikitha, learned counsel for the appellant, contends that the 3rd appellant had passed away on 27.03.2014, while the award was passed on 15.06.2015. She would contend that an award passed against a dead person is non-est and would have to be set aside. She relies upon the judgment of the Hon'ble High Court of Kerala in W.P.(c).No.15939 of 2016 (N); as well as the judgment of the Hon'ble Supreme Court in Civil Appeal No.7247 of 2024.

5. A learned Single Judge of the High Court of Kerala, had held that an award passed against a person, who had died even before the application had been filed before the arbitrator, cannot be sustained under law. The Hon'ble Supreme Court of India in Civil Appeal No. 7247 of 2024 had held that in exceptional cases, a case could be remanded under Section 37 of the Arbitration Act.

6. The learned counsel for the appellants would contend that the facts of the present case are similar to the facts before the Hon'ble High Court of Kerala and the award requires to be set aside on this short ground and the matter to be remanded back to the arbitrator.

7. Sri V. Venkata Narayana, learned counsel appearing on behalf of Sri T.V.S. Prabhakar Rao, learned Standing Counsel for the 1st respondent,

contends that the petition before the Principal District Judge, Rajahmundry, under Section 34 of the Arbitration Act, as well as the present appeal are not maintainable.

8. The learned Standing Counsel would submit that Section 76 of the APCS Act, 1964 provides for an appeal against any order passed under Section 62 of the APCS Act, 1964. In the present case, the award came to be passed under Section 62 of the APCS Act, 1964. In such circumstances, the only remedy, available to the appellants, was to move the A.P. Cooperative Tribunal, under Section 76 of the APCS Act, 1964. The appellants being aware of this fact, had moved an appeal before the A.P. Cooperative Tribunal. However, the appellants, for reasons best known to them, had chosen to withdraw the appeal without seeking any relief. The learned Standing Counsel would submit that the appellants having chosen to withdraw the appeal had allowed the award to become final.

9. Learned Standing Counsel would also submit that the appellants, after withdrawing the appeal before the Cooperative Tribunal, had chosen to file a writ petition before the erstwhile High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, and had withdrawn the said writ petition also. Thereafter, the appellants had moved the Principal District Judge, Rajahmundry, under Section 34 of the Arbitration Act.

10. Learned Standing Counsel would contend that there is no proof for challenging the award of an arbitrator under the provisions of the APCS

Act, 1964, by way of an application under Section 34 of the Arbitration Act. He would submit that the only appeal available against the award passed under Section 62 of the APCS Act, 1964, is before the A.P. Cooperative Tribunal under Section 76 of the APCS Act, 1964.

11. Apart from the above, the learned Standing Counsel for the 1st respondent would also submit that the order passed by the Principal District Judge, Rajahmundry, is an interlocutory order, against which a civil miscellaneous appeal is not maintainable.

12. Learned Standing Counsel would also submit that the actual order of dismissal was the order in I.A.No.2458 of 2015. This order has not been challenged in the appeal. In the absence of a challenge to the underlying order, the appellants could not have filed a Civil Miscellaneous Appeal challenging the consequential order, dated 20.11.2015.

13. Section 62 of the APCS Act, 1964 reads as follows:

62. Action to be taken by the Registrar on such reference:— [Rule 48,49,50]

(1) The Registrar may, on receipt of the reference of a dispute under Section 61,

(a) elect to decide the dispute himself ; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf ; or

(c) refer it for disposal to an arbitrator.

(2) Where the reference relates to any dispute involving immovable property, the Registrar or such person or arbitrator may order that any person be joined as a party

who has acquired an interest in such property subsequent to the acquisition of interest therein by a party to the reference and any decision that may be passed on the reference by the Registrar or the person or the arbitrator aforesaid, shall be binding on the party so joined as if he were an original party to the reference.

(3) The Registrar may, by order for reasons to be recorded therein, withdraw any reference transferred under Clause (b) of sub-section (1) or referred under Clause (c) of that sub-section and may elect to decide the dispute himself or transfer it to any other person under Clause (b) of sub-section (1) or refer it to any other arbitrator under Clause (c) of that sub-section.

(4) The Registrar, such person or arbitrator shall decide the dispute in accordance with the provisions of this Act and the rules and bye-laws and such decision shall, subject to the provisions of Section 76, be final. Pending final decision on the dispute, the Registrar, such person or arbitrator, as the case may be, may make such interlocutory orders as he may deem necessary in the interest of justice.

14. Under this provision, the Registrar, upon reference of any dispute under Section 61, has three options. Under the first option, he may decide the dispute himself; under the second option, he may transfer it for disposal by any other person, who has been invested by the Government to decide such disputes; or under the third option, he can refer it to an arbitrator for disposal.

15. In the present case, the Assistant Registrar had decided the dispute by passing an award. As pointed out by the Principal District Judge,

Rajahmundry, in her order dated 20.11.2015, the mere fact that the Assistant Registrar was described as Assistant Registrar or Arbitrator and the decision of was titled “award” cannot mean that the proceedings were arbitration proceedings initiated under the provisions of the APCS Act, 1964. This would also mean that the provisions of the Arbitration Act, including Section 34 of the Arbitration Act would not be applicable.

16. The fact that Section 76 of the APCS Act, 1964 itself provides a remedy of appeal, against the order under Section 62 of the APCS Act, 1964, would make it amply clear that the order passed by the Assistant Registrar cannot be treated to be an award in an arbitration proceedings. The judgment of the Hon’ble Supreme Court, in the case of **Greater Bombay Cooperative Bank Ltd., vs. M/s. United Yarn Tex. Pvt. Ltd., and Ors.**,¹ also strengthens this view of the matter. Once it is held that the proceedings of the Assistant Registrar are not arbitration proceedings, no provision of the Arbitration and Conciliation Act, 1996 including Section 34 would be applicable, and consequently, a petition under Section 34 would not be maintainable.

17. In view of the fact that Section 34 of the Arbitration Act was not applicable, further appeal under Section 37 of the Arbitration Act would not be maintainable before this Court also. As this court is disposing this appeal on this issue, the remaining issues are not being dealt with by this court.

¹AIR 2007 SC 1584 (B)

18. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.

R.RAGHUNANDAN RAO, J

MAHESWARA RAO KUNCHEAM, J

Js.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

And

HON'BLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

C.M.A.No.620 of 2016

21st March, 2025

Js.