

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

FRIDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CIVIL REVISION PETITION NO: 1641 OF 2023

Petition Under section Article 227 constitution of India aggrieved by the Order dated 28.02.2023 in I.A No. 147 / 2021 in C.O.S No. 3 / 2018 on the file of the Court of the Special Judge For Trial and Disposal of Commercial Disputes, R.R District at L.B Nagar.

Between:

1. M/s Gubba Cold Storage Ltd.,, Plot No. 25, P and T Colony, Trimulgherry, Secunderabad, rep by M.D Gubba Nagender Rao.
2. Gubba Nagender Rao, S/o Late Gubba Kashinath, Aged. 65 Yrs, Occ. Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad.
3. Gubba Kiran, S/o G. Nagender Rao, Aged. 45 Yrs, Occ. Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad.
4. Gubba Prashanth, S/o G. Nagender Rao, Aged 40 Yrs, Occ Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad

...PETITIONERS

AND

M/s Samyukta Cold Storage and Trading, Company (p) Ltd., Regd Office at A-9, IDA Nacharan, Hyderabad, rep by its M.D L.V Maheshwar Reddy Sfa L.S Reddy.

...RESPONDENT

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings in C.O.S. No.3 of 2018 on the file of the Special Judge for Trial and Disposal of commercial Disputes, Ranga Reddy District, at L.B. Nagar, pending disposal of the subject C.R.P.

IA NO: 2 OF 2023

Between:

M/s Samyukta Cold Storage and Trading, Company (p) Ltd., Regd Office at A-9,
IDA Nacharan, Hyderabad, rep by its M.D L.V Maheshwar Reddy Sfa L.S Reddy.

...PETITIONER/RESPONDENT/RESPONDENT

AND

1. M/s Gubba Cold Storage Ltd., Rep. by its Managing Director, Gubba Nagender Rao, Plot No. 25, P and T Colony, Trimulgherry, Secunderabad.
2. Gubba Nagender Rao, S/o Late Gubba Kashinath, Aged. 65 Yrs, Occ. Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad.
3. Gubba Kiran, S/o G. Nagender Rao, Aged. 45 Yrs, Occ. Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad.
4. Gubba Prashanth, S/o G. Nagender Rao, Aged 40 Yrs, Occ Business, R/o Plot No. 25, Lane Opp.S.B.I, PandT Colony, Trimulgherry, Secunderabad

...RESPONDENTS/PETITIONERS/PETITIONERS

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the Interim Order, dt. 26/6/2023 passed in I.A.No.1/2023 in C.R.P.No.1641/2023 in the interest of justice.

Counsel for the Petitioners : Sri. Rakesh Sanghi

**Counsel for the Respondents : Mr. G. Ramachandra Reddy appears for
Mr. Karri Muralikrishna**

The Court made the following: ORDER

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

CIVIL REVISION PETITION No.1641 of 2023

ORDER: (per the Hon'ble the Chief Justice Alok Aradhe)

Mr. Rakesh Sanghi, learned counsel appears for the petitioners.

Mr. G. Ramachandra Reddy, learned counsel appears for Mr. Karri Muralikrishna, learned counsel for the respondent.

2. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the validity of the order dated 28.02.2023 passed by the Court of Special Judge for Trial and Disposal of Commercial Disputes, Ranga Reddy District at L.B. Nagar (hereinafter referred to as 'the Commercial Court') by which I.A.No.147 of 2021 in COS.No.3 of 2018 seeking permission to file additional written statement and counter claim has been rejected.

3. Facts giving rise to filing of this Civil Revision Petition briefly stated are that the respondent is the owner of subject land and had constructed a cold storage on it. The

petitioners/defendants approached the respondent and were granted a lease. Accordingly, lease deed was executed on 15.06.2011 and supplementary agreement was executed on 16.06.2011. The respondent filed O.S.No.1215 of 2014 seeking recovery of the amount from the petitioners who are the lessees in respect of the subject property. The petitioners filed the written statement.

4. The Commercial Court, on the basis of pleadings of the parties, framed the issues and thereafter, the evidence has not been recorded. The petitioners sometime in the year 2018 filed an application seeking permission to file additional written statement as well as counter claim. The aforesaid application has been rejected by the Commercial Court by an order dated 28.02.2023 *inter alia* on the ground that the petitioners had filed O.S.No.1045 of 2014. It was further held that the application seeking permission to file additional written statement and for filing the counter claim is delayed. Accordingly, the application was rejected. In the aforesaid factual background, this Civil Revision Petition has been filed.

5. Learned counsel for the petitioners at the outset submitted that the petitioners will withdraw O.S.No.1045 of 2014 instituted by them. It is further submitted that mere delay cannot be a ground to reject an application for amendment. It is further submitted that the counter claim filed by the petitioners is within limitation. However, the Commercial Court has not examined the issue whether or not the counter claim filed by the petitioners is within limitation and the aforesaid issue can be adjudicated by the Commercial Court. In support of aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Olympic industries v. Mulla Hussainy Bhai Mulla Akberally**¹.

6. On the other hand, learned counsel for the respondent submits that the counter claim filed by the petitioners is not maintainable and the learned Judge of the Commercial Court has rightly rejected the application filed by the petitioners by assigning valid and cogent reasons which do not fall for consideration in exercise of power under Article 227 of the

¹ (2009) 15 SCC 528

5. Learned counsel for the petitioners at the outset submitted that the petitioners will withdraw O.S.No.1045 of 2014 instituted by them. It is further submitted that mere delay cannot be a ground to reject an application for amendment. It is further submitted that the counter claim filed by the petitioners is within limitation. However, the Commercial Court has not examined the issue whether or not the counter claim filed by the petitioners is within limitation and the aforesaid issue can be adjudicated by the Commercial Court. In support of aforesaid submission, reliance has been placed on the decision of the Supreme Court in **Olympic industries v. Mulla Hussainy Bhai Mulla Akberally**¹.

6. On the other hand, learned counsel for the respondent submits that the counter claim filed by the petitioners is not maintainable and the learned Judge of the Commercial Court has rightly rejected the application filed by the petitioners by assigning valid and cogent reasons which do not fall for consideration in exercise of power under Article 227 of the

¹ (2009) 15 SCC 58

Constitution of India. Alternatively, it is submitted that the suit was instituted by the respondent in the year 2014 and is pending for the past about ten (10) years. Therefore, the Commercial Court be directed to decide the same in a time bound manner.

7. In response, learned counsel for the petitioners submitted that the petitioners shall cooperate with the early decision of the Commercial Court and shall not seek any adjournment.

8. We have considered the rival submissions made on both sides.

9. In **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another²**, the Supreme Court while dealing with the power of the trial Courts to deal with the prayer for amendment has held that the Court must be liberal in granting a prayer for adjournment if the Court is of the view that if such amendment is not allowed, the party who has prayed for such amendment shall suffer irreparable loss and injury. It has further been held that merely on the sole

² 2022(3) CCC 276(SC)

ground that an application for amendment is filed belatedly, the same cannot be rejected.

10. In view of aforesaid enunciation of law, undoubtedly, the civil suit was instituted by the respondent way back in the year 2014, yet, the fact remains that no progress has been made in the said civil suit and the evidence is yet to be recorded. Only the issues have been framed. Therefore, in the peculiar facts and circumstances of the case and with a view to avoid multiplicity of litigation and in view of undertaking furnished by the petitioners that they would withdraw O.S.No.1045 of 2014, the order dated 28.02.2023 passed by the Commercial Court is set aside and the Civil Revision Petition is disposed of with the following directions:

- i) I.A. No.147 of 2021 is allowed.
- ii) The petitioners shall withdraw O.S.No.1045 of 2014 within a period of fifteen (15) days from the date of receipt of a copy of the order.
- iii) The Commercial Court shall afford an opportunity to the respondent to file counter to the counter claim

which has been filed on behalf of the petitioners and thereafter, shall fix a date for recording the evidence.

iv) On the aforesaid date, the respondent/plaintiff shall adduce evidence and on the date which may be fixed by the Commercial Court for recording the evidence of the petitioners, the petitioners shall produce all their witnesses. Thereafter, the witnesses shall be cross-examined. The Commercial Court shall hear the arguments and deliver a judgment.

v) The aforesaid exercise shall be completed within a period of four (4) months from today.

11. Accordingly, the Civil Revision Petition is disposed of.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Sd/- N. CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Judge for Trial and Disposal of Commercial Disputes, R.R District at L.B Nagar.
2. One CC to Sri. Rakesh Sanghi, Advocate [OPUC]
3. One CC to Mr. Karri Muralikrishna, Advocate [OPUC]
4. Two CD Copies

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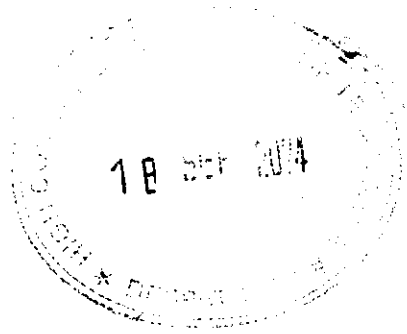
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HIGH COURT

DATED:21/06/2024

ORDER

CRP.No.1641 of 2023



C.R.P. IS DISPOSED OF

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