

Sp.C.S. No. 08 / 2021

- : ORDER BELOW APPLICATION AT EXHIBIT - 11 : -

1. The present application is filed under the provisions of Order 7 Rule 11 of the C. P. Code praying for rejection of the plaint on the ground of the suit being barred by the law. The defendants in the application has submitted that as per the Dispute Resolution in clause 5, sub-clause vi of the General Terms and Conditions with respect to the agreement done with the defendant regarding job, it is clearly mentioned that "In the event of any dispute or difference amongst or between the parties hereto either during the subsistence of this Agreement or afterwards arising from or relating to or in any way connected with this Agreement, the same shall be referred to the Arbitration of a Single Arbitrator to be nominated by the management of the Company whose decision shall be final and binding on the Parties. The provisions of the Indian Arbitration and Conciliation Act or any statutory modifications or re-enactment thereof for the time being in force shall be applicable."

The defendant submitted that as per the above mentioned clause 5 sub-clause vi of the agreement, the plaintiff has not done any proceedings as per arbitration or conciliation. It is also submitted that as per Section 8 of the Arbitration Act, if there is any agreement which is made as per the provisions of Arbitration Act, then the said suit is not maintainable and process of arbitration needs to be done and hence, the plaintiff

does not has a right to file suit suit as well as the Hon'ble Court does not has the jurisdiction to try such suit. It has also been submitted that if issues are decided in the first instance as mentioned above then the precious time of Hon'ble Court will not be wasted and the whole suit can be decided and hence, prayed for deciding the above mentioned contentions in issue or as preliminary issues and, therefore, the present application is filed for the same. The defendant in reliefs has prayed that the plaintiff as per the clause 5 sub-clause VI of the agreement has not done procedures of arbitration which has been not decided in the first instance and hence, the suit of the plaintiff is not maintainable which shall be declared and any other order or relief which the Hon'ble Court deems proper be granted as well as cost of the application.

2. with respect to the present application vide Exh.-11, the plaintiff has filed reply vide Exh.-15 wherein the plaintiff submitted that the application of defendant is of without pure intellect, false, illegal and does not has base and shall be rejected in the first instance with costs. It is also submitted that the no cause of action arises before defendant to file the present application as per civil procedure code, Arbitration & Conciliation Act, 1996 or any other law currently prevailing and hence the present application be rejected and the application of the defendant devoids of prima facie reason as well as the format of the application is also not maintainable. The plaintiff has further submitted that he has no

objection to the facts of para-1 of the application of defendant vide Exh.-11 but to the contrary he submitted that the facts such as due to that reason the suit is not maintainable and triable are not maintainable. In addition to it, the plaintiff submitted that as per Section 8 of the Arbitration and Conciliation Act, if a party is willing to file an application, the party has to file an application for arbitration by presenting the dispute regarding arbitration before filing the written statement in the first instance in the cognizant Court, whereas in this case the defendant has not made any application to sent his written statement to the parties before the arbitration and even though the present application has been made at the belated stage and hence, the application is not maintainable. The plaintiff further submitted that the defendant has filed the present application just to prolong the proceedings of the present matter and waste the precious time of Court and hence, the application of the defendant be rejected with costs.

3. In the course of the hearing of the present application both the learned advocate for the respective parties have argued vehemently as per their pleadings.
4. As per the present application which is filed for rejection of plaint it is well settled that while deciding such an application, the plaint and the documents attached with the plaint are only to be looked into by the Courts. Therefore, for the effective

adjudication of the present application, it is necessary to note in brief the case with which the plaintiff has come before this Court. It is alleged that the plaintiff has filed the present suit for recovery of Rs.36,22,645/- along with interest @15% per annum. It is alleged that the plaintiff company is well-reputed company worldwide and the defendant had applied in the plaintiff organisation for post of General Manager-Production (Polymer) and the plaintiff company through appointment letter dated 03.01.2017 had offered the post to defendant on total compensation package of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) and performance linked variable pay upto Rs.5,00,000/ (Rupees Five Lakhs Only) with certain conditions mentioned in the offer letter/appointment letter which was accepted by defendant.

5. As the defendant has filed the present application under Order 7 Rule 11 of C. P. Code, it is necessary to quote its text which reads as under ;

Rule 11 : Rejection of Plaint.

The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action ;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so ;*
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;*

(d) where the suit appears from the statement in the plaint to be barred by any law ;

[(e) where it is not filed in duplicate ;]

[(f) where the plaintiff fails to comply with the provisions of rule-9 :]

6. Now looking to the present application of defendant, the defendant in the title of this application has mentioned about Order 7 Rule 11 however, nowhere it is mentioned about how the suit of the plaintiff shall be dismissed and which sub-rule is applicable to the suit of the plaintiff, instead of provisions of the Order 7 Rule 11, the defendant in his application has mentioned about Section 8 of the Arbitration and Conciliation Act and prayed for framing it as preliminary issue. Now, looking to the submission of defendant in his application about Section-8 Arbitration and Conciliation Act, it is pertinent to mention it which is as under ;

Section-8 : 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, shall, ***if a party so applies not later than when submitting his first statement on the substance of the dispute***, refer the parties to arbitration.

(2) The application referred to in sub-section (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 arbitrat award made.

Looking to the above settled legal proposition, it is

evident that if a suit is filed which is subject matter of arbitration, then under those circumstances, for referring any matter before Arbitration, such an application should be filed before filing of the first statement praying that the said parties shall be directed to file such matter before Arbitration and Conciliation authority. Looking to the records of the present matter, it seems that the defendant had filed his written statement vide Exh.-10 on 11/02/2020 and thereafter filed the present application vide Exh.-11 on 11/02/2020, hence, it seems that the defendant has filed the present application after submitting his written statement but the present application should have been filed in the first instance before the written statement and, therefore, as per the Section 8 of the Arbitration and Conciliation Act, the present application of defendant does not seem maintainable. In addition to it, the above discussion gets support from the judgement of Hon'ble High Court of Rajasthan AIR 2006 Rajasthan 58 : [2006] 0 AIR(Raj) 56 "Mahesh Kumar vs. Rajasthan State Road Transport Corporation, Jodhpur." wherein the provisions of Section 8 of the Arbitration and Conciliation Act have been discussed in para 6 to 9 wherein it is held that ;

6. So far as requirement of Sub-section (1) of Section 8 is concerned, it clearly provides that to take benefit of arbitration clause, party to contract is required to apply for that relief and mere existence of arbitration agreement cannot oust the jurisdiction of the civil Court. And for the reference of dispute to arbitrator, party may apply within specific period and outer limit has been given in Sub-section (1) of Section 8 of the Act of 1996 itself , i.e., before objector submits his defence.

Thereafter, prayer to refer the matter to arbitrator can be made before filing written statement by the defendant. **Sub-section (2) of Section 8 of the Act makes it clear that party to suit is not only required to submit application under Sub-section (1) of Section 8, but prescribes procedure for filing application under Section 8(1) of the Act of 1996.**

7. Further the Sub-section (3) of Section 8 of the Act of 1996 though deals with other aspects of the matter, but says that when application has been made under Sec-section (1) and the issue is pending before the judicial authority, the arbitration may be commenced or continued and award can be passed. **In Sub-section (3) of Section 8 of the Act of 1996 there is reference of application.** The Honble Supreme Court also in the Judgment of Hindustan Petroleum Corporation Ltd. (Supra), also held that **“the jurisdiction of civil Court is barred after an application under Section 8 of the Act is made for arbitration.”** In view of the above, a separate application is required to be filed under Section 8(1) of the Act of 1996 and the plea cannot be taken in written statement.

8. The Judgment of Honble Supreme Court delivered in Hindustan Petroleum Corporation Ltd (Supra), also nowhere says that the civil Court shall not have jurisdiction to entertain the suit only because that there is contract for referring the dispute to arbitrator. It is not a case of total ouster of jurisdiction of the Court in the cases where the arbitration clause is there in the contract between the parties to the suit, but it depends upon compliance of the conditions by the persons seeking for referring the matter to the arbitration. In view of the above reason, the Judgment of the Honble Supreme Court sought to be interpreted to mean that once it is found that contract between the parties contains clause for arbitration, the jurisdiction of the civil Court stands ousted automatically, cannot be accepted nor the above Judgment of the Honble Supreme Court lays down so, as suggested by the learned Counsel for the petitioner.

9. Apart from above legal position, a bare perusal of the pleadings of the petitioner in the written statement makes it clear that the petitioner-defendant in his written statement submitted that the suit of the plaintiff is barred in view of the arbitration

agreement. The defendant only prayed that suit of the plaintiff be dismissed. It will be further worthwhile to mention here that petitioner also submitted a counter claim in the suit and prayed decree in his favour. Therefore, the defendant-petitioner himself not only submitted to the jurisdiction of the civil Court, but also has sought decree in his favour. He also without specifically applying for referring matter to the arbitration either by moving application or praying in written statement, submitted written statement containing the statement on the subsistence of dispute, therefore, the plea of learned Counsel for the petitioner that the written statement itself could have been read to mean that petitioner has applied for arbitration cannot be accepted nor the written statement can be treated to be an application for applying for arbitration.

Looking to the provisions of Section 8 of the Arbitration and Conciliation Act, 1996, above discussion and the ratio laid down by Hon'ble High Court, it is evident that the jurisdiction of Civil Court does not ends just because as agreement mentions about arbitration clause and as per the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 the party seeking benefit of arbitration clause should file the application separately within the limitation and the jurisdiction of the Civil Court does not ends only if a party has taken dispute in his reply. Hence, as per the above discussion and provisions of Section 8 of the Arbitration and Conciliation Act, 1996, the present application of the defendant does not seems to be granted and, therefore, the suit of the plaintiff cannot be rejected.

8. In view of the above reasoning, the present application of the defendant under Order 7 Rule for rejection of the suit of the plaintiff deserves to be rejected and,

therefore, I pass the following Final Order.

- : FINAL ORDER : -

1. The present application filed by the defendant under Order 7 Rule 11 for rejection of the plaint of the plaintiff is hereby Rejected.

2. No order as to costs.

Pronounced and signed in open court today on this 19th day of February, 2024.

Date :- 19/02/2024

(R. C. Sodhaparmar)

Place :- Vagra

Principal Senior Civil Judge

Vagra

UIC : GJ01158