

# RAJASTHAN HIGH COURT

Rajasthan State Road Transport Corpn.

Vs.

NandLalSaraswat

S. B. Civil Revn. Petn. No. 654 of 2003

(Dinesh Maheshwari, J.)

10.11.2004

## ORDER

**Dinesh Maheshwari, J.**

1. This revision petition directed against the order dated 10th February, 2003 passed by the learned trial Court has been submitted by the defendant -petitioners with the submissions, inter alia, that the plaintiff-non-petitioner has put his Bus bearing registration No. RJ 19 P 2634 with the petitioners for a period of one year under a contract executed between the parties. The plaintiff-non-petitioner has filed the suit for recovery of an amount of Rs. 17,000/- in the civil Court against the petitioners. The petitioners filed an application before the learned trial Court to the effect that as the contract executed between the parties contains an arbitration clause, therefore, the suit was not maintainable and a prayer for appointment of arbitrator was made. The plaintiff non petitioner did not file reply to the said application but agreed for reference of the dispute to the arbitrator, however, with the prayer that till the adjudication of the dispute by the arbitrator the proceedings in the suit may be stayed. The learned Additional Civil Judge has rejected this application by the impugned order dated 10th February, 2003 on the sole ground that the Court was not having jurisdiction to appoint an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act of 1996'). The petitioners have challenged this order in the present revision petition.

2. Nobody has put in appearance for the plaintiff non petitioner despite service.

3. Having heard the learned counsel for the petitioners and having perused the impugned order, this Court is satisfied that the learned trial Court has acted illegally in exercise of its jurisdiction while dealing with the application before it and has also

refused to exercise the jurisdiction vested in it by law.

4. It appears that the learned trial Court has not looked into the law applicable to the case and has proceeded on a misplaced reliance on Section 11 of the Act of 1996. The provisions of Section 11 of the Act deal with the procedure for appointment of arbitrators and making of request to the Chief Justice or his designate to take necessary measures for appointment of the arbitrator. The Hon'ble Apex Court has laid down and explained the nature and scope of proceedings under Section 11 of the Act of 1996 and that the order of the Chief Justice or his designate under Section 11 is neither judicial nor quasi judicial and it is purely administrative (vide *Konkan Railway Corporation v. Mehul Construction Company*,<sup>1</sup> and *Konkan Railway Corporation v. Rani Construction*<sup>2</sup>) The proceedings under Section 11 of the Act of 1996 of making and dealing with such request are entirely different and do not deal with the matter at hands.

5. The application of the nature made by the present petitioners-defendants in the suit is referable to Section 8 of the Act of 1996 which mandates a judicial authority before whom an action is brought in a matter which is subject of arbitration agreement to refer the parties to the arbitration on fulfillment of the conditions mentioned therein i.e. the party is required to apply not later than when submitting first statement on the substance of the dispute and for the purpose of entertaining the application it is required to be accompanied by the original arbitration agreement or duly certified copy thereof. However, by virtue of sub-section (3) of Section 8, even when such application is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award could be made.

6. It is also required to be seen that by virtue of Section 89 of the Civil Procedure Code inserted by the Civil Procedure Code (Amendment) Act, 1999 with effect from 1st July, 2002, it is moreover imperative for the Court to consider that where there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and after receiving observations of the parties, the Court may reformulate the terms of possible settlement and refer the same for arbitration, conciliation, judicial settlement including LokAdalat or mediation, as the case may be. When the dispute is referred for arbitration or conciliation the provisions of the Act of 1996 apply as if the proceedings were referred for settlement under the said provisions. The attention of the learned trial Court is also required to be drawn to the provisions of Order 10 Rule 1A to 1C, C. P. C. inserted by the Amendment Act of 1999 which are consequential to insertion of Section 89.

7. It is apparent that opting for any mode of alternative dispute resolution is accepted as an integral part of the procedure prescribed by law for dealing with civil litigation. When the parties have an arbitration agreement existing and are themselves willing to go to the alternative dispute redressal forum of arbitration, the Court ought not to deny the same. On the contrary the mandate of law as seen from Section 89 and order 10 Rule 1A, Civil Procedure Code, the duty of the Court is to refer the parties to such alternative dispute resolution forum.

8. In the present case what appears from the impugned order is that before the learned trial Court it was specifically given out by the plaintiff himself that he was agreeable for decision by the arbitrator as stated in the application. In such circumstances, the learned trial Court was required to refer the parties to arbitration and the refusal to do so with reference to the provisions of Section 11 of the Act of 1996 has resulted in an illegality. When both the parties were agreeable to have the matter referred to the arbitrator the application could not have been rejected.

9. In the aforesaid view of the matter, this Court would have disposed of the suit here itself and referred the parties to arbitration but in view of the fact that the impugned order does not state the nature of dispute and the record of the trial Court has not been called and the arbitration agreement is not before this Court, it is considered appropriate to remit the matter back to the learned trial Court.

10. In the result, this revision petition is allowed, the impugned order is set aside and the matter is remitted back to the trial Court with a direction to dispose of the suit by referring the parties to arbitration.

11. The parties shall appear before the trial Court on the date which has been or shall be fixed by it.

No order as to costs.

Petition allowed.

Cases Referred.

1. 2000(7) SCC 201: (AIR 2000 SC 2821)
2. 2002 (2) SCC 388: (AIR 2002 SC 778)