

RAJASTHAN HIGH COURT

Mahesh Kumar

Vs.

Rajasthan State Road Transport Corpn.

C.R.P. No. 309 of 2005

(Prakash Tatia, J.)

29.07.2005

ORDER

Prakash Tatia, J.

1. Heard learned counsel for the petitioner.

Brief facts of the case are that a suit was filed by the Rajasthan State Transport Corporation against the petitioner for recovery of Rs. 73,554/-. The defendant petitioner instead of applying for the reference to the arbitration, submitted written statement and in the written statement took a plea that the suit of the plaintiff is barred by law as there is an arbitration clause in the contract on the basis of which the plaintiff is seeking the relief in the suit. The trial Court framed issues Nos. 3 and 4 as the pleas were taken by the defendant in the written statement about the maintainability of the suit. The trial Court decided two issues against the petitioner-defendant on the ground that no application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act of 1996) has been filed by the defendant and secondly the defendant has not produced the original copy of the arbitration agreement.

2. According to learned counsel for the petitioner, the Hon'ble Apex Court in the case of *Hindustan Petroleum Corporation Ltd. v. M/s. Pinkcity Midway Petroleum*, ¹ held that once it is found that agreement between the parties contains a clause for arbitration, the jurisdiction of the Civil Court in such matters is barred and Hon'ble Supreme Court in the same judgment held that if Civil Court dismisses an application under Sections 8 and 5 of the Arbitration Act for referring the dispute to the arbitration, revision under Section 151, Civil Procedure Code is maintainable. It is also submitted by learned counsel for the petitioner that original arbitration agreement was filed by the plaintiff himself and, therefore the Court below committed serious

error of law in holding that the agreement should have been filed by the defendant-petitioner.

3. I considered the submissions of learned counsel for the petitioner and perused the facts of the case and the reasons given by the Court below. It is clear from sub-section (1) of Section 8 of the Act of 1996 that it provides that if a party applies for referring the matter to the arbitration then and then only the Court can refer the matter to the arbitration. the core question is that whether the party can apply under Section 8 for referring the matter for arbitration only by moving an application under Section 8 of the Act of 1996 or can pray for such relief in the written statement.

4. To consider this controversy it will be worthwhile to quote the Section 8 of the Act of 1996, which reads as under:-

"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, arbitration may be commenced or continued and an arbitral award made."

5. 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 defense. 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.

6. 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 sub-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 Hon'ble 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.

7. The judgment of Hon'ble Supreme Court delivered in Hindustan Petroleum Corporation Ltd., (AIR 2003 Supreme Court 2881) (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 Hon'ble 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 Hon'ble Supreme Court lays down so, as suggested by the learned counsel for the petitioner.

8. 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 favor. Therefore, the defendant-petitioner himself not only submitted to the jurisdiction of the Civil Court, but also has sought decree in his favor. 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.

9. In view of the above facts of this case, I do not find any illegality in the order of the trial Court.

Hence, the revision petition of the petitioner is dismissed.

Petition dismissed.

Cases Referred.

1. 2003 SOL Case No. 387 : (AIR 2003 SC 2881)