

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: November 18, 2013*

+ **CM(M) No.655/2012 & CM No.9975/2012**

TECH BOOKS INTERNATIONAL & ORS Petitioners
Through Ms.Shantha Devi Raman, Adv.

versus

NITI SAXENA & ANR. Respondents
Through Mr.Nilava Banerjee, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The relationship between the two parties is that of Publisher (Tech books international) and author (Niti Saxena also acting on behalf of Prof. Satish Chandra, co-author). The dispute between them is regarding publication of the work "Alternative Therapies".
2. The respondents filed a suit for permanent injunction, damages, rendition of accounts against the infringement of copyright under Section 51 of the Copyright Act, 1957 and for recovery of royalty amount and editing commission and damages against mental harassment.
3. Thereafter the petitioners filed a written statement taking the plea that the suit of the respondent is not maintainable due to the existence of an arbitration clause in the agreement signed between the parties, as per which the parties mutually decided that in case of a dispute having arisen between them, it would be referred to arbitration for resolution.

4. The respondents in their reply to the written statement denied the execution of such an agreement and argued it to be forged.

5. Thereinafter the petitioners moved an application under Order 7 Rule 11 of C.P.C, stating that the jurisdiction of the civil court is barred due to the presence of the arbitration clause. Another ground taken in this petition is that the petitioners have sole and exclusive copyright on publishing and production of the said works and hence no question of infringement arises, and thus, there is no cause of action.

6. On the date as on which the suit was listed for arguments, the petitioner filed another application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act”) and since a copy of the same had already been supplied to the respondents, arguments as per this were heard and thereafter the learned Trial Court Judge vide order dated 1st February, 2012 dismissed the application and held that the petitioner has already filed the Written Statement and also an application under Order 7 Rule 11 CPC, therefore at this juncture this application is not maintainable and liable to be dismissed without notice to plaintiff. The Learned Judge perused the following points:

- i. As per Section 8 of the Act, the party who applies for arbitration has to do so not later than submitting the first statement/written statement for defense, whereas in the present case, not only was the written statement filed but also a Reply thereto, before the application under Section 8 of the Act was filed.
- ii. As per the ratio laid down in a leading judgment of *State of Uttar Pradesh vs. Janki Saran Kailash Chandra*, AIR 1973

SC 2071, mere existence of the Arbitration clause in the agreement did not itself operate as barred to the subject in the court. Section 8 says that the application is to be filed before submitting the written statement.

- iii. The scope of Section 8 is limited to refer the parties to arbitration, in case the application is filed within the stipulated time in existence of an arbitration clause in the agreement. However in the present case, in the application the applicant has requested for dismissal of the suit.

7. Aggrieved by the above-mentioned impugned order date 1st February, 2012, the petitioner filed the present petition under Article 227 of the Constitution, on the grounds that:

- i. The learned Trial Court did not appreciate the submissions of the petitioner that the plea pertaining to the existence of the arbitration clause was taken at the first instance in the written statement at the first available opportunity itself.
- ii. Thereafter the petitioner moved an application under Order 7 Rule 11 of the C.P.C on the same ground the learned Trial Court is barred by the presence of an arbitration clause in the agreement between the parties.
- iii. That the Order 7 Rule 11 of the CPC was passed under general provisions of law whereas application under Section 8 of the Arbitration & Conciliation Act was filed under special statute.
- iv. The learned Trial Court did not appreciate the submission of the petitioner that the objection taken by the petitioner in his

written statement, with respect to the presence of the Arbitration clause in the agreement, to be treated as an application under Section 8 of the Arbitration and Conciliation Act, 1996.

- v. It is submitted that the object and purpose of Section 8 must be considered and that it gets fulfilled by taking the objection as to the jurisdiction before surrendering to the jurisdiction before surrendering he jurisdiction of the specific court and the other party also gets the knowledge of the objection at the first instance.
- vi. The learned Trial Court vide the same order dismissed the application under Section 8 of the Arbitration & Conciliation Act, 1996, as well as the application under Order 7 Rule 11 of the CPC, which consequently became infructuous.

8. The main case of the respondents herein (plaintiffs in the suit) is that the agreement dated 24th February, 2005 relied upon by the petitioner herein has been disputed by the respondent from the very beginning. The respondent No.2 Dr. Satish Chandra has not signed the agreement because he is a resident of Sweden and was not present in India when the agreement is alleged to have been executed between the petitioner No.1 and respondent No.2. It was also alleged by the respondent herein that the written statement was filed by the petitioner on 9th November, 2011 and the application for reference of the dispute was filed on 1st February, 2012 which is after filing of the rejoinder to the suit by the respondent.

9. The argument of the respondent is that once the petitioners have allowed the civil proceedings to continue, they cannot subsequently rely upon the arbitration clause and seek reference to arbitration at a belated stage. The other argument of the respondent is that Section 8 stipulates that unless the party expresses a specific desire to refer the dispute to arbitration no reference to arbitration can be made and in the present case, the petitioners have merely made the averments in the written statement that since the trial court has no jurisdiction therefore the suit should be dismissed. There was no prayer for referring the matter to arbitration. It was also stated that the original agreement or certified copy of the agreement has not been filed.

10. I have heard the learned counsel for both the parties and have also gone through the pleadings in the matter. I am of the considered view that the submissions made by the respondent are not legally correct. As far as the validity of the agreement is concerned, it is the admitted position that the respondent No.1 has nowhere made the specific statement that the respondent No.2 Dr.Satish Chandra has not signed the agreement with the petitioner No.1. A mere statement was made that when the agreement is allegedly signed/executed, the respondent No.2 was not in India. In case there is an agreement between the parties then the validity about the agreement has to be considered by the Arbitral Tribunal as per the settled law on this aspect. As far as the other argument of the respondent that the application for making the reference is filed at a belated stage is concerned, the same has no force in view of the specific statement made by the petitioners in the written statement.

11. In paras 2 and 3 of the preliminary objections of the written statement, the petitioners have also filed the signed photocopy of the agreement which is available on record. In view of the specific statement made in para 3 of the preliminary objections of the written statement that there is an arbitration clause between the petitioner No.1 and respondent No.2 herein, the dispute, if any, has to be referred to the arbitration and the civil court does not have the jurisdiction to try and entertain the present suit. The statement was also made in para 3 that the suit filed by the respondents was not maintainable and was liable to be dismissed.

12. It is also a matter of fact that the plaintiff No.2/ respondent No.2 herein has not filed any affidavit either before the trial court or before this Court to the effect that he has not signed the agreement with the petitioner No.1 herein. As far as the next submission that the original/signed copy of the agreement has not been filed by the petitioner is concerned, I am of the view that since the agreement in question has been denied by the respondent and challenged the validity of the agreement, it would be appropriate that the petitioners should file either the original agreement or certified copy of the agreement before the learned trial Court.

13. Considering the overall facts and circumstances of the case, the impugned order is set aside. The application filed by the petitioners under Section 8 of the Act is remanded back to the learned trial Court to reconsider the same in view of the statement made in para 3 of the preliminary objections of the written statement as the written statement was filed in the year 2009 wherein a specific plea of arbitration clause was raised. Similarly, the petitioners are also granted liberty to file the certified copy/original or signed copy of the agreement in question within two weeks from today and

after considering the same, the application filed by the petitioners under Section 8 of the Act be decided as per its own merit. The petition and the pending applications are disposed of.

(MANMOHAN SINGH)
JUDGE

NOVEMBER 18, 2013