

HIGH COURT OF TRIPURA

AGARTALA

RFA 11 of 2022

Sri Siddhartha Nag

S/O Late Subinoy Nag, resident of Jirania Bazar,
P.O.-Birendranagar, PS Jirania, District-West Tripura.

...Appellant-Plaintiff(s)

Versus

1. Sri Arijit Bhattacharjee

S/o Late Dinesh Bhattacharjee, Resident of Jirania,
P.S.-Jirania, District-West Tripura.

..Respondent-Defendant(s)

2. Tripura Housing & Construction Board,

Agartala, West Tripura,
Represented by its Commissioner.

3. Executive Engineer,

Tripura Housing & Construction Board,
Agartala, West Tripura.

4. Deputy Executive Engineer(Works-II),

Tripura Housing & Construction Board,
Agartala, West Tripura.

5. Head Master,

Birendranagar H.S. School,
Jirania, West Tripura.

6. Branch Manager,

United Bank of India, Jirania Branch, West Tripura.

7. Branch Manager,

United Bank of India, Kaman Chowmuhani Branch,
Agartala, West Tripura.

---Pro-forma Respondents(s)

For Appellant(s) : Mr. D. Bhattacharjee, Sr. Advocate
Mr. Samar Das, Advocate
Mr. S. Saha, Advocate

For Respondent(s) : Mr. DC Roy, Advocate
Mr. S. Bhattacharjee, Advocate

Date of hearing and

Delivery of Judgment & Order : 04.04.2024

Whether fit for reporting : No

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

Judgment and Order (Oral)

This is a regular first appeal filed under Section 96 of the Code of Civil Procedure, 1908 challenging the judgment dated 17.12.2020 passed by

learned Civil Judge, Senior Division, West Tripura Agartala in connection with case No. M.S.40 of 2017.

2. Briefly stated, the plaintiff had instituted a suit for recovery of Rs.1,27,07,727/- along with interest @18% per annum from the defendant no.1 out of some contract works as stated in the plaint. After completion of works, it is alleged in the plaint that the defendant no.1 did not pay the required dues to the plaintiff. The plaintiff had approached the defendant no.1 on repeated occasions, but he refused to pay any amount which compelled the plaintiff to institute the present suit.

2.1 On receipt of summons and the copy of the plaint, both the defendant nos.1 and 2 have filed their respective written statement denying the averments made in the plaint. On the basis of the pleading, learned Trial Judge had framed issues. Thereafter, evidences were adduced by both the parties. After hearing the argument, learned trial Judge had found that there is a clear arbitration clause in the Partnership Deed entered into between the plaintiff and the defendant no.1 and held that since there is an Arbitration Clause in the Partnership Deed, it is the obligation of the parties to exhaust the remedy mentioned in the said agreement.

3. We have gone through the judgment passed by learned Civil Judge, Senior Division and also have considered the submissions of learned counsel appearing for the parties. Learned Civil Judge in her findings has held thus:-

“Section 5 of the Arbitration Act 1996 states that notwithstanding anything contained in any other law for the time being in force , in matters governed by this Part , no judicial authority shall intervene except where so provided in this part.

In the case of Hindustan Petroleum Corpn Ltd v. Pinkcity Midway Petroleums (2003) 6 SCC 503, there was a petroleum dealership agreement between the appellant Corporation ad the respondent outlet. Disputes having arisen between the parties, the appellant Corporation discontinued supplies to the respondent. The respondent filed a civil suit challenging the action of the appellant. An application under Section 8 of the Arbitration and Conciliation Act,

1996 read with Section 5 thereof was filed by the appellant for reference of the disputes to an Arbitrator pursuant to an arbitration clause in the agreement. The Civil Court dismissed the said application of the appellant. An appeal filed therefrom was dismissed by the High Court. On an appeal having being preferred to the Supreme Court, the Supreme Court held that the Courts below had erred in dismissing the application of the appellant and that the Civil Court had no jurisdiction to entertain the suit in view of Section 16 of the Act which empowers the Arbitral Tribunal to rule on its own jurisdiction, including rule on any objection with respect to the existence or validity of the arbitration agreement.

Similar view was taken by the Hon'ble Supreme Court in *Shree Subhalaxmi Fabrics Pvt. Ltd. Vrs Chand Mal Baradia and others* reported in JT 2005 (11) SC 155. In this case the Hon'ble Supreme Court Opined that Section 5 of Act under discussion clearly indicates the legislative intent to minimise the role of Courts & upheld the order of Civil Court at Calcutta declaring that it has no jurisdiction to try the suit in presence of an Arbitral clause.

Section 16 of the act empowers the Arbitral Tribunal to Rule its own jurisdiction.

Presence of Arbitral clause in any agreement makes it liable to be referred to arbitration in terms of Section 8 of the Act.

The discussion made above settles that presence of Arbitration clause limits the jurisdiction of Civil Court except as allowed in different Section of that part of the Act.

In the relevant part of the Act only cases falling within the purview of Section 14 (2), Section 34 or Section 37 (2) of the Act basically conferred power on the court to intervene in similar matters which contains arbitral clause.

Such view has been confirmed way back in 1999 by the Hon'ble Bombay High Court in *United India Insurance Co. Ltd. Vrs M/s Kumar Textures & another* reported in AIR 1999 Bombay 118.

In the present case in hand, there is no application made by the defendant for reference of the dispute to arbitration as per Section 8 of the Act , but at the same time this court is not oblivious that there is one arbitration clause in the agreement which is reproduced above. The court itself is to satisfy that the suit is not barred by any law.

Accordingly, in the light of above discussion , this court is of the opinion that the present suit is barred by law in terms of Section 5 of the Arbitration and the Conciliation Act 1996.

Coming to the last wing of discussion which is agitated by the pro-defendant, it is to be found out whether the suit is also barred in terms of Section 69 of the Partnership Act.

The pro-defendant drew the attention of the court to para 11 of the plaint whereby the plaintiff termed the agreement concerned as partnership agreement.

Section 69 of the partnership agreement bars jurisdiction of Civil Court in regard to any dispute arising from a contract conferred by that act.

However, at this point this Court is not going deep into the discussion as in opinion of this court the plaintiff could not establish that the agreement in between the parties was executed in terms of the Partnership Act.

In a nut shell this Court is of the opinion that this suit is liable to be rejected as it does not disclose cause of action and moreover it is not maintainable being barred by law.”

4. We have meticulously perused the findings arrived at by the learned Civil Judge.

5. Mr. D. Bhattacharjee, learned senior counsel assisted by Mr. Samar Das and Mr. S. Saha, learned counsel appearing for the appellant has submitted that the findings and the reasonings therein in the judgment passed by learned trial Court are not tenable in law for the reason that under Sub-section (2) of Section 8 of the Arbitration and Conciliation Act, 1996(for short, “A & C Act”), the defendant at the very first instance had to raise the issue that there was an Arbitration Clause in the agreement itself, which the defendant no.1 failed to raise. In view of this, the learned trial Court ought to have held that the suit instituted by the plaintiff was maintainable.

6. On the other hand, learned counsel appearing for the respondents have submitted that irrespective of filing any application under Sub-Section (2) of Section 8 of the A & C Act, it is the obligation of the parties to exhaust the remedy mentioned in the Partnership Deed and it is the object and spirit of the A & C Act.

7. After thoughtful consideration of the above submissions advanced by learned counsel appearing for the parties and having gone through the relevant provisions of the A & C Act, we are of the view that the plaintiff knowing fully well that there is an Arbitration Clause in the Partnership Deed, he filed the instant money suit. The plaintiff has violated the conditions stipulated in the Partnership Deed itself. The language of Section 8 of the A & C Act is very clear, and it casts upon an obligation upon the parties to the agreement to refer any of their disputes to the Arbitrator.

8. Accordingly, we do not find any infirmity in the judgment dated 17.12.2020 passed by learned Civil Judge, Senior Division, West Tripura Agartala holding that the money suit instituted by the parties is not maintainable.

9. Resultantly, we confirm and affirm the judgment passed by the learned Civil Judge, Senior Division, West Tripura Agartala since there is a clear admission that a Partnership Deed contains a specific clause for referring the disputes to the Arbitrator. We accordingly, direct the parties to exhaust the said clause in its letter and spirit.

10. Since learned counsel appearing for the parties have urged this Court to appoint an Arbitrator, we have considered this submission and we appoint Justice Satya Gopal Chattopadhyay, a retired Judge of this Court as Arbitrator.

11. The parties are directed to place all the issues before the learned Arbitrator as appointed by this Court.

12. The judgment and decree passed by learned trial court shall not create a bar with the parties to take the recourse of law as envisaged in A & C Act and Commercial Courts Act, 2015.

13. A copy of this judgment may be forwarded to Justice Chattopadhyay within a period of 7(seven) days from today. On receipt of the said copy of this judgment, Justice Chattopadhyay shall make his all endeavour to dispose of the matter within a period of 10(ten) weeks.

14. With the aforesaid discussions and directions, the instant regular first appeal stands disposed.

JUDGE

JUDGE

Rohit