

basically objects to the jurisdiction of the Civil Court to proceed in the matter and therefore notwithstanding the nomenclature of the statement, the same does not constitute first statement on the substance of the dispute as contemplated by Section 8 of the said Act. In support, Mr. Rajeshirke placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Rashtriya Ispat Nigam Ltd. & Anr. Vs. Verma Transport Company*¹ and the decision of the Full Bench of this Court in the case of *Conros Steels Pvt. Ltd., Mumbai V/s. Lu Qin (Hong Kong) Company Ltd., Hong Kong, and others*².

3. In my judgment, there is no scope to interfere with the impugned order. This is clearly a case where the Petitioner had submitted to the jurisdiction of the Civil Court, *inter alia*, by way of submitting its first statement on the substance of the dispute. It is only at a highly belated stage that the Petitioner has applied under Section 8 of the said Act, in order to secure reference to arbitration.

4. The suit in the present case, was instituted on 12/09/2003. On 06/01/2005, the Petitioner filed its Written statement. Contrary to the submission of Mr. Rajeshirke, the Written Statement is not merely restricted to raising objection to the jurisdiction of the Court. The Written Statement purports to deny the contents of the plaint and also urge defences in response to the contents of the plaint. On 19/01/2007, issues were cast, again without any demur from the Petitioner. On 30/07/2007, the Plaintiff

1 AIR 2006 Supreme Court 2800

2 2015 (1) Mh. L. J. 434

filed affidavit in lieu of examination-in-chief. On 11/09/2007, the Petitioner took out the application under Section 8 of the said Act. It was dismissed by the impugned order dated 25/07/2008. Incidentally, on 11/09/2007, since the Petitioner refused to proceed with the cross-examination, an order of 'No Cross' was also passed against the Petitioner which has not been challenged by the Petitioner till date.

5. In the case of ***Rashtriya Ispat Nigam Ltd. & Anr. Vs. Verma Transport Company*** (*supra*), the Hon'ble Supreme Court has held that the expression '*first statement on the substance of the dispute*' contained in Section 8(1) of the said Act must be contra-distinguished with the expression '*written statement*'. It implies submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court. What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not. If not, his application under Section 8 of the said Act may not be held wholly unmaintainable.

6. In the aforesaid case, the Hon'ble Supreme Court was faced with the situation where the party concerned had filed a reply opposing the motion for interim relief. Pointing out that there is

difference between the main proceeding and the supplemental and incidental proceeding, the Hon'ble Apex Court ruled that reply in the supplemental or incidental proceeding can never be regarded as his statement on the substance of the dispute. Further, in para 40, the Hon'ble Supreme Court has held that waiver of a right on the part of the defendant to the lis must be gathered from the fact situation in each case.

7. In the facts and circumstances of the present case, it is not even the case of the Petitioner that the Written Statement filed on 06/01/2005 was only concerning incidental or supplemental proceeding. Even otherwise, the records make it clear that the Petitioner did file Written Statement in the main proceeding by styling the same as '*Written Statement*'. In para 1 of such Written Statement, the Petitioner vaguely averred that the suit is not legal and valid and the same is not maintainable in law. In para 2 of the Written Statement, the Petitioner generally denied the contents of the plaint except those which have been specifically admitted. In para 3, there is reference to arbitration clause and therefore the contents of this para are dealt with separately. In para 4, the Petitioner went on to deny the contents of paras 3 and 4 of the plaint and further pleaded a specific defence involving some other party in the dispute. It was also stated that the said party is a necessary party and the suit is required to be dismissed for non-joinder of such necessary party. Specific defences were raised, including, *inter alia*, defence to the claim for interest. In para 6, defence was raised alleging non-compliance with

provision of Section 69(2) of the Partnership Act and finally in para 7 of the Written Statement, it was urged that the suit be dismissed with compensatory costs of Rs.50,000/-. From this, it is quite clear that the Written Statement filed on 06/01/2005 constitutes the first statement on the substance of dispute. This, together with attendant circumstances, establishes that there was waiver of right on the part of the Petitioner to seek arbitration. Rather, this was a case where Petitioner submitted to the jurisdiction of the Civil Court in the matter of resolution of dispute by the Civil Court.

8. Mr. Rajeshirke made particular reference to the averments in para 3 which read thus :-

“3. At the outset the Defendant says that no part of the cause of action has taken place at Pune and Defendant carrying on business at Chennai. The Defendant has no project at Pune and as such the suit filed is without jurisdiction and same is filed to harass the Defendant. It is abuse of process of law and Court and on this count alone the plaint is liable to be rejected. In addition to this, this defendant submits that the work order dated 5/10/1999 which is a part and parcel of the contract agreement dated 1/04/2000, provides an arbitration clause, the venue of which will be at Chennai. Thus the present suit filed by this plaintiff in this Hon'ble Court, has no jurisdiction. And

therefore this issue may kindly be taken as a preliminary issue.”

9. Mr. Rajeshirke submitted that in the aforesaid para, clearly an objection is raised to the jurisdiction of the Court on the basis of existence of arbitration clause. This submission cannot be accepted. The objection in para 3 of the Written Statement mainly relates to territorial jurisdiction. The contention in para 3 is that no part of the cause of action has taken place in Pune and further the defendant carries on business at Chennai. In this context, it is stated that the order dated 05/10/1999 which is a part and parcel of the contract agreement dated 01/04/2000, provides an arbitration clause, the venue of which will be at Chennai. Thereafter, it is stated that the Court at Pune will have no jurisdiction and that this issue be taken as preliminary issue. Objection was really to the territorial jurisdiction of the Court at Pune.

10. In the case of ***Conros Steels Pvt. Ltd., Mumbai V/s. Lu Qin (Hong Kong) Company Ltd., Hong Kong and others*** (*supra*), the Full Bench of this Court, by reference to the decisions in the case of ***Rashtriya Ispat Nigam Ltd. & Anr. Vs. Verma Transport Company*** (*supra*) and ***Ardy International (P) Ltd. vs. Inspiration Clothes and U³***, has held that the proceedings under Section 8 bringing to the notice of the Court the existence of of an arbitration agreement could be continued only within the parameters of Section 8. This decision,

³ (2006) 1 SCC 417

therefore, far assisting the Petitioner, in fact, goes against the Petitioner's contention. This is because parameters of Section 8 of the said Act are very clear, in that, a party is required to apply for reference to arbitration, not later than when submitting its first statement on the substance of dispute. In the present case, the Petitioner has submitted its Written Statement in the main proceeding. The Petitioner permitted the casting of issues and it is only when the matter reached at the stage of evidence, that the Petitioner chose to apply under Section 8 of the said Act. Such application was rightly rejected by the impugned order.

11. From the aforesaid circumstances, it is apparent that the Petitioner had waived its right to rely upon the arbitration clause. the Petitioner filed Written Statement raising not merely jurisdictional defences but also defences on facts. The Petitioner did not object to the casting of issues and it is only when the matter reached the stage of cross-examination of the Plaintiff's witnesses that application under Section 8 was made by the Petitioner. Incidentally, even after affidavit in lieu of examination-in-chief was filed by the Plaintiff, the Petitioner applied for time to cross-examine the witness. The impugned order records that the Petitioner was given last chance on 09/08/2007 in order to cross-examine the Plaintiff's witness. The returnable date was 01/09/2007. On this date also, the Petitioner's Counsel applied for adjournment citing want of instructions and therefore the matter was posted on 11/09/2007. It only on this date that the Petitioner applied for reference to arbitration under Section 8 of the said Act.

The impugned order records that the Petitioner has even denied being a party to the arbitration agreement and on that basis has observed that Petitioner is hardly entitled to seek reference to arbitration. There is no jurisdictional error or perversity of approach in making the impugned order.

12. The Petitioner, on the basis of the belated application under Section 8 of the said Act, which was clearly not maintainable, has derailed the trial in the suit from the year 2008 till date i.e. a period of almost 7 years. In para 7 of the impugned order, the learned Civil Judge has commented upon the conduct of the Petitioner in the matter of approbation and reprobation. It clearly transpires that the very making of such application was lacking in bonafides. In such circumstances, this Revision Application is dismissed, with costs of Rs.25,000/- (Rupees Twenty Five Thousand Only). The Petitioner to deposit such costs before the trial Court on or before 29/06/2015. Once such costs are deposited, the Respondent-Plaintiff shall be at liberty to withdraw the same unconditionally.

13. Considering that the suit is of the year 2003, the learned Civil Judge is directed to dispose of the same as expeditiously as possible and in any case, within a period of one year from today.

14. At this stage, the learned Counsel for Petitioner seeks for continuation of the interim order i.e. stay on further proceedings in the suit for a period of six weeks from today. In deference to such

request, the parties are directed to present themselves before the Civil Judge on 29/06/2015 at 11.00 a.m. and produce the authenticated copy of this order. This would afford the Petitioner sufficient time and opportunity to take recourse against the present Judgment and Order.

15. Rule is discharged. Interim relief is vacated.

(M. S. SONAK, J.)