

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2718 of 2014 (O&M)
Date of decision: 12.03.2015

Indus Ind Bank Limited and another

... Petitioner

versus

Harpreet Singh and another

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Amarjit Singh Virk, Advocate for the petitioners.

Mr. Paras Talwar, Advocate for the respondents.

K.Kannan, J.

The revision petition is against the dismissal of the petition filed by the Bank under Section 8 of the Arbitration and Conciliation Act. The suit had been filed by the respondent-plaintiff contending that there had been no arbitral agreement at any point of time and the proceedings before the Arbitrator were incompetent. The contention under Section 8 in the application was that there was an arbitration agreement and even the validity of the agreement will be decided only by the Arbitrator himself under Section 16, the suit cannot be permitted to be tried. His contention was rejected by the trial court before which the application was filed. It appears that the award has also been passed during the pendency of the proceedings and an application has been filed by the plaintiff to set aside the award under Section 34. The said application is already reported to be pending.

Learned counsel appearing on behalf of the petitioners cites before me a judgment of Hon'ble the Supreme Court in Nimet Resources Inc. Vs. Essar Steels Limited, 2000 (4) R.C.R (Civil(676, that held that existence of arbitral agreement between the parties would still be an adjudication under Section 16. Counsel also refers to

two decisions one of the Division Bench of Hon'ble Madras High Court in NIIT Limited Vs. Ashish Deb and another, 2004 (2) RAJ 505, and another of Hon'ble Andhra Pradesh High Court in Lakshmi General Finance Limited, Vijayawada Vs. Anantha Raja Rao, 2002(1) Andh LD 716, to say where an arbitration agreement is said to be brought about on record that would still be an adjudication under Section 16 of the Arbitration and Conciliation Act.

When the suit is filed, the issue of whether there had been any agreement at all and it has been brought about by forgery, I must observe that without an adjudication regarding the genuineness of the document, Section 8 cannot be taken as appropriate to exclude the jurisdiction of the Civil Court to make an adjudication regarding the document. None of the decisions cited before me related to a situation where the arbitration agreement was denied as forgery and it was essential for the court to consider whether there existed an arbitration agreement at all. Civil court jurisdiction to decide whether such an agreement existed cannot be taken to be ousted by Section 16. Section 16 is more generic in the sense that it will enable to rule Arbitrator on his own jurisdiction. This Section does not compel an Arbitrator to decide whether the arbitration clause which is a part of the document is forgery or not. It shall be left to civil court jurisdiction to decide. In Bharat Raiklal Ashra Vs. Gautam Rasiklal Ashra, (2012) 2 SCC 144, Hon'ble the Supreme Court set aside the order of High Court exercising jurisdiction under Section 11 of the Arbitration and Conciliation Act appointing an arbitrator without deciding validity of arbitration agreement. The Supreme Court ruled that before appointing an Arbitrator, the court should decide the validity of arbitration agreement. The dismissal of the petition under Section 8 is modified and the trial Court will undertake an adjudication on whether the arbitration agreement is genuine which is another way of finding whether the plea by the plaintiff that is forgery or not. In any event the burden is only on the defendant which propounds the arbitration agreement to prove the

validity, irrespective of the fact that the plaintiff says that it is a forgery. Forgery vitiates all transactions and the person that propounds the document which is attacked as forgery will be proved by the person who wants to rely on the same.

If the arbitration agreement is found to be valid, a fresh reference is not necessary since an award is reported to have been already passed. The suit will be dismissed. If this arbitration agreement is found to be forged, the petition under Section 8 will be dismissed and the suit tried on merits. The adjudication on the truth or otherwise of this agreement shall be concluded within 12 weeks and reported to this Court.

(K.KANNAN)
JUDGE

12.03.2015

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