

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7957 of 2014 (O/M)
Date of decision : 24.8.2015

Exide Industries Limited

..... Revisionist

Versus

Smt. Manpreet Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Chetan Mittal, Senior Advocate, with,
Mr. Samir Rathore and Mr. Vipul, Advocates,
for the revisionist.

None for respondent.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present revision is the order dated 1.11.2014 (Annexure-P-5), passed by the learned Civil Judge (Junior Judge), Chandigarh, vide which the application of the present revisionist under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the Act'), for referring the dispute to the Arbitrator was dismissed.

The brief facts of the case are that the plaintiff (respondent herein), who is the wife of Tejinder Pal Singh, had filed

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a suit for permanent injunction for restraining the defendant from enforcing the agreement dated 1.4.2012, executed between her husband and respondent (revisionist herein). It is stated that she is legal guardian of her husband Tejinder Pal Singh, who is the proprietor of M/s Chadha and Company. An agreement dated 1.4.2002 was executed between Tejinder Pal Singh (husband of plaintiff/respondent) and the defendant. The said agreement is void ab initio under Section 11 of the Indian Contract Act, 1872.

On appearance, the present revisionist/defendant filed an application under Section 8 of the Act, stating that under clause 13 of the CFA Agreement dated 1.4.2012, the matter is to be decided by the Arbitrator.

The learned Civil Judge (Junior Division), Chandigarh, held that the suit has been filed on the ground that the husband of the plaintiff/respondent was not in proper mental position to execute the agreement. Therefore, clause 13 of the CFA Agreement is not attracted in the present case.

I have heard learned senior counsel for the revisionist and have also carefully gone through the file.

The respondent did not appear, despite notice and her case has been considered.

A perusal of the plaint shows that the plaintiff/respondent is seeking relief on behalf of her husband Tejinder Pal Singh, stating

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that the agreement is not binding upon him. She is claiming the said relief on the ground that when the said agreement was executed between the parties, her husband was of unsound mind. The present suit is infact a proxy suit filed by Tejinder Pal Singh through her legal guardian wife Manpreet Kaur. Though cleverly, no such mention has been made in the Memo of Parties in the suit. However, the pleadings show that relief is being sought in favour of Tejinder Pal Singh. The law in this regard is very clear. If Tejinder Pal Singh is of unsound mind and he wants to challenge the agreement, he could do the same by filing a suit through his legal guardian.

As the effective relief in the suit is being sought by the plaintiff for her husband Tejinder Pal Singh, therefore, this Court is to see as to whether clause 13 of the agreement is attracted in the present case. Clause 13 of the agreement is reproduced as under :-

“13. Any dispute, difference or question which may arise at any time hereafter between the Company and the C and F Agent touching the true construction of this Agreement or the rights and liabilities of the parties hereto shall unless otherwise herein expressly provided, be referred to arbitration of a single Arbitrator to be appointed by the Company in accordance with the subject to the provisions or the Arbitration and Conciliation Act, 1996. The venue of arbitration shall be Kolkata and the proceedings shall be held in English”

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Therefore, it is clear that in case of dispute regarding rights and liabilities of the parties in the agreement, the matter is to be decided by the Arbitrator. Under Section 16 of the Act, the Arbitrator is competent to decide about the validity of the agreement itself. The present suit is nothing, but a suit filed by the wife as a proxy on behalf of her husband. Once, there is an arbitration clause between the parties, the matter is required to be decided by the Arbitrator, including the validity of the agreement and grounds taken in the present revision can be taken by the plaintiff on behalf of her husband before the Arbitrator. As such the revision is allowed. The impugned order is set aside. The lower Court is directed to refer the matter to the Arbitrator in view of Clause 13 of the agreement, who shall also decide about the unsoundness of Tejinder Pal Singh, proprietor of Chadha and Company, unless the clause is already not invoked.

(KULDIP SINGH)
JUDGE

24.8.2015
sjks