

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15462 of 2015

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Ford India Pvt. Ltd.

.... Petitioner/s

Versus

M/s Priyadarshi Purnanand Automobiles Pvt. Ltd. & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Sandeep Kumar, Advocate
Mr. Sidharth Sethi, Advocate

For the Respondent No.1: Mr. S. S. Dwivedi, Sr. Advocate
Mr. Rashid Izhar, Advocate

For the Respondent No.5: Mr. R. Ranjan, Advocate

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Dated : 3rd day of February, 2016

P R E S E N T

CORAM : THE HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

CAV O R D E R

9 03-02-2016 1. The defendant petitioner has filed this application under Article 227 of the Constitution of India for setting aside the order dated 10.09.2015 passed by Sub Judge Ist, Danapur in Title Suit No.2658 of 2015 whereby the Court below has rejected the application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute sought to be raised in title suit to the dispute resolution mechanism provided in Clause 14 of the standard provisions, i.e., Arbitration

in view of the mandatory provision of Section 8 of the Act of 1996.

2. It appears that the plaintiff respondent filed the aforesaid title suit praying for the relief that after adjudication of the facts stated in the plaint, the plaintiff may be declared as an authorized dealer of the defendant No.1-company in view of the letter of intents agreement and further to grant a decree in favour of the plaintiff after declaring the notice of termination of dealer sale and service agreement dated 27.07.2015 and public caution notice dated 30.07.2015 published in Hindi daily newspaper, “Prabhat Khabar” invalid and further prayed that if there is any difficulty in granting relief No.2, actual loss may be assessed and also prayed for injunction for appointing defendant No.5 as authorized dealer as the appointment of new dealer is against the dealer sale and service agreement and letters of intent.

3. The defendant No.1-company appeared and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. Along with the application, the certified copy of the agreement was also annexed. The Court below by the impugned order has rejected this application on the basis of the decision in the case of *Radha Krishna Vs. Maestro Engineering and Others*

2010 (1) SCC 72 and held that since there is question of fraud and malpractice, the matter cannot be decided by the arbitrator and the Civil Court has the jurisdiction to decide the same.

4. It is admitted fact that in the agreement, there is an arbitration clause. So far the reason assigned by the Court below for not referring the dispute to the arbitrator in view of the Arbitration clause firstly that there is allegation of fraud and malpractice is concerned, it may be stated that the plaint has been annexed with this application. From perusal of the same, it appears that there is no pleading or whisper of either fraud or malpractice. It is settled principal of law that fraud has to be specifically pleaded as required under Order VI Rule 4 CPC. So far the decision relied upon by the Court below, i.e., **(2010) 1 SCC 72 Radha Krishna (Supra)**, it may be mentioned here that this decision has already been held to be per incuriam in **(2014) 6 SCC 677 Swiss Timing Ltd. Vs. Commonwealth Games 2010 Organizing Committee**.

5. The other reason assigned by the Court below that defendant No.5 is not a party to the arbitration agreement is concerned, it may be mentioned here that the defendant No.5 is agent appointed by the company after terminating the agency of



the plaintiff, therefore, once there is an arbitration agreement with the principal then the agent who is claiming through Principal and / or is liable through principal would not have any independent cause of action and thus the dispute between the plaintiff and the principal defendant company (Petitioner) can be resolved by the arbitrator which will be binding on the defendant No.5. It is also evident from the agreement that the company has the right to appoint more than one agent.

6. The Hon'ble Supreme Court in many cases such as (i) *(2003) 6 SCC 503 Hindustan Petroleum Corporation Vs. Pink City Midway Petroleum* (ii) *(2000) 4 SCC 539 Anand Gajpati Raju Vs. P.J.V. Raju* (iii) *(2015) SCC Online SCC 147 M/s Sundaram Finance Ltd. Vs. T. Thamkam* held that Section 8 of Arbitration and Conciliation Act is mandatory provision and once the application under Section 8 is filed by the defendant, the Court is required to see as to whether the jurisdiction of the Court is ousted by the Arbitration clause and the Court is not required to see whether Court has the jurisdiction to decide the dispute which can be resolved by the arbitrator. Once it is brought to the notice of the Court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the Civil Court should first see whether there is ouster of jurisdiction. Once there



is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party violating terms of the agreement, approaches the Civil Court, the other party can apply to Court in terms of Section 8, which is obligatory for the Court, to refer the dispute to arbitration in terms of the agreement. The provision as contained in Section 8 is peremptory in nature. In the present case admitted fact is that the dispute between the parties arises out of the contract between the parties and that can be decided by the arbitrator.

7. From perusal of the impugned order, it appears that much emphasis has been given by the Court below that while terminating the dealership the company has not followed the terms of the agreement is concerned, simply it can be said that because of non-compliance of the terms, the dispute has arisen but on the ground that company has not followed the terms, the reference cannot be refused. As in the present case, the parties have voluntarily chosen the arbitral tribunals to adjudicate their dispute in place of Courts and Tribunals which are public fora constituted under the laws of the country. Therefore, when the parties themselves choose the private fora all the disputes of civil or commercial nature either contractual or non-contractual, which can be decided by a Court, is in principle can be capable of being

adjudicated and resolved by arbitration unless the jurisdiction of arbitral Tribunals is excluded either expressly or by necessary implication.

8. In view of the above settled proposition of law, in my opinion, the Court below has wrongly not exercised the jurisdiction vested in it by law and thereby occasioned failure of justice and the Court below has exercised the jurisdiction in the manner not permitted by law. Therefore, the impugned order is set aside and the Court below is directed to pass fresh order in terms of the arbitration clause as provided under Section 8 of the Arbitration and Conciliation Act, 1996.

9. **Thus, this writ application under Article 227 is allowed and the impugned order is set aside.**

(Mungeshwar Sahoo, J)

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