

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1539 OF 2015

IN

SUMMARY SUIT NO. 481 OF 2015

M/s. Bengani Food Products Private
Limited & Anr.

...Applicants/Org.
Defendants.

In the matter between

M/s. Emkay Commotrade Limited

...Plaintiff

Versus

M/s. Bengani Food Products Private
Limited & Anr.

...Defendants

Mr. Anoop Sharma, for the Plaintiff.

Mr. Nilesh Ukey, i/b Gajanan Shinde, for the Defendants.

CORAM : S.C. GUPTE, J.

DATE : 23rd February 2016

P.C. :

1. This Notice of Motion is taken out alternatively under Section 8 of the Arbitration and Conciliation Act, 1996 for reference of the parties to arbitration and Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the Plaint.

2. In either case, the basis of the application is the arbitration agreements separately entered into between the Plaintiff and Defendant No. 1, and the Plaintiff and Defendant No. 2. These arbitration agreements form part of Member Client Agreements separately entered into by the Plaintiff with Defendant No. 1 (A/c No. B83H001) and with Defendant No. 2 (A/c No. B83P001).

3. The Plaintiff has filed this Suit on a dishonoured cheque. It is the case of the Plaintiff that this cheque was issued by Defendant No. 1 to secure the dues of Defendant No. 2 arising out of the Member Client Agreement between the Plaintiff and Defendant No. 2. This cheque was dishonoured upon presentation for payment. The Suit is filed for recovery of the debt based on this dishonoured cheque. It is the case of the Defendants that the cheque was issued by Defendant No. 1 not to secure or pay for the liability of Defendant No. 2, as claimed by the Plaintiff, but to secure and pay for the dues of Defendant No. 1 itself. In the first place, there are no pleadings of the Defendants to this effect. Secondly, and at any rate, this is clearly a matter of defence to the Summons for Judgment and does not support the Defendants' case either under Section 8 of the Arbitration and Conciliation Act, 1996 or under Order VII Rule 11 of the Code of

Civil Procedure, 1908. If the cheque is issued by Defendant No. 1 to secure and pay for the liability of Defendant No. 2, the dispute arising between the parties, namely, the Plaintiff and Defendant No. 1 as a result of dishonour of this cheque, clearly does not form part of the subject matter of the arbitration agreement between the Plaintiff and Defendant No. 1 contained in the Member Client Agreement between the two. So also, even for the purposes of Order VII Rule 11 of the Code of Civil Procedure, 1908, it cannot be said that this Court lacks jurisdiction and that the matter be referred to arbitration in pursuance of an arbitration agreement between the Plaintiff and Defendant No. 1. Both for the purposes of an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and application under Section 8 of the Arbitration and Conciliation Act, 1996, the Court has to go by the averments of the Plaintiff. On the Plaintiff's own showing, the cheque was issued by Defendant No. 1 to secure and pay for the dues of Defendant No. 2.

4. In the premises, there is no merit in the Notice of Motion and the same is dismissed with costs.

[S.C. GUPTE, J.]