

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL REVISION APPLICATION NO.66 OF 2016

(M/S. POLARIS STEEL CASTING PVT. LTD.CO.& OTH...VS..RAJIV SHIVJI SHARMA)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : OCTOBER 05, 2016.

Heard Shri M.D.Samel, advocate for the
applicants / original defendants.

The non-applicant/ plaintiff has filed summary suit under Order 37 of the Code of Civil procedure praying for decree for recovery of Rs.27,35,850/-. After receiving summons, the defendants filed an application seeking leave to defend. This application was allowed by the trial Court on condition that the defendant Nos. 2 and 3 shall deposit Rs.27,33,850/-. This condition imposed by the trial Court while granting leave was challenged by the defendants before this Court. This Court inquired from the defendants whether they are willing to deposit 50% of the amount and to furnish security for the balance 50% of the amount. The defendants showed their incapacity. This Court refused to interfere with the order passed by the trial Court granting leave to defend on condition of depositing the amount. The defendants approached the Hon'ble Supreme Court in the matter, however, the Special Leave Petition was dismissed.

After this exercise, the defendants filed application (Exh.23) under Section 8(1) of the Arbitration and Conciliation Act, 1996 contending that the purchase order dated 1st March, 2011 contains a clause that if there is any dispute between the parties it would be resolved by arbitration and therefore, the suit filed by the plaintiff is not maintainable and the matter be referred for arbitration. The learned trial Judge has dismissed this application and being aggrieved by the order passed by the learned trial Judge Civil Revision Application is filed.

The learned advocate for the applicants has submitted that Section 8 of the Arbitration and Conciliation Act, 1996 confers a right on the defendant to seek reference of dispute for arbitration till the defendant submits his first statement on the substance of dispute and as the defendant has not submitted his statement on the substance of dispute till the filing of the application under Section 8 of the Arbitration and Conciliation Act, 1996, the trial Court should have referred the dispute to arbitrator. To support the submission, reliance is placed on the following judgments :

- i) Judgment given by this Court in the case of N.C. Ltd. Vs. Amravati Growers Co-op. Spin, reported in 2016(2) Mh.L.J. 134,
- ii) Judgment given by the Karnataka High Court in the case of Ganeshlal Tapadiya Vs. Basavraj Patil Alias Raja Patil, reported in 2014(1) Arb. LR 479 (Karnataka)

In the present case, the suit filed by the plaintiff is summary suit and the defendant is not entitled as of right to file written statement or submit his statement on the

substance of dispute unless leave is granted by the Court. The defendants had applied seeking leave and it was granted by the trial Court, however, on condition of depositing the amount. The defendants chose to challenge the order passed by the trial Court imposing condition for grant of leave. Of course, the defendants had right to challenge the order passed by the trial Court imposing conditions, however, it is unexplained why the defendants did not file application under Section 8(1) of the Arbitration and Conciliation Act, 1996 requesting that the matter be referred for arbitration. As informed by the learned advocate for the applicants/ defendants now the matter is closed for judgment and is kept on 7th October, 2016.

Considering the facts of the case, in my view, the proposition laid down in the judgments relied upon by the learned advocate for the applicants/ defendants is not of any assistance to the applicants/ defendants. I am not inclined to interfere with the impugned order.

The civil revision application is dismissed. No costs.

JUDGE

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

Uploaded by : R.B. Raut, PS

Uploaded on : 06/10/2016.