

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1993 of 2012
Date of Decision:13.5.2016

M/s Bharti Airtel Limited and another

---Petitioners

vs.

Vikas Kumar Sachdeva

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sanjeev Pabbi, Advocate
for the petitioners

Mr. Sandeep Jasuja, Advocate
for the respondent

1. Whether Reporters of local papers 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?

Rekha Mittal, J.

The present petition has been directed against the order dated 2.1.2012 (Annexure P-4) passed by the Civil Judge (Senior Division), Mohali whereby application filed by the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (in short “the Act”) was dismissed.

Counsel for the petitioner has submitted that the respondent has filed a suit for recovery of Rs.5,50,000/- i.e. Rs. 1,00,000/- deposited as security, Rs. 3,50,000/- spent on renovation and Rs. 1,00,000/- as

compensation for the alleged losses suffered on account of breach of agreement alongwith interest at the rate of 18% per annum.

The suit filed by the respondent is based upon the agreement appended as Annexure P-3 with the plaint. It is argued that as the subject matter of the suit is covered within the purview of arbitration clause incorporated in the agreement executed between the parties and claim of the respondent is based upon the agreement, the matter is liable to be referred to the Arbitrator in the light of Clause 24 thereof.

Counsel for the respondent has supported the impugned order with the submissions that the dispute involved in the suit has nothing to do with Clause 24 of the agreement, therefore, trial court has rightly dismissed the application filed by the petitioners.

I have heard counsel for the parties and perused the paper book with able assistance of counsel for the parties.

Before advertng to the submissions made by counsel for the parties, it is appropriate to refer to clause 24 of the agreement, admittedly, executed between the parties:-

“Any and all disputes, controversies and conflicts (“Disputes”) arising out of this Agreement between the Parties or arising out of or relating to or in connection with this Agreement or the performance or non-performance of the rights and obligations set forth herein or the breach, termination, invalidity or interpretation thereof shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996 or any amendments thereof. Prior to submitting the

Disputes to arbitration the Parties shall resolve to settle the dispute/s through mutual negotiation and discussions. In the event that the said dispute/s are not settled within 30 days of the arising thereof, the same shall finally be settled and determined by arbitration in accordance with the Arbitration and Conciliation Act, 1996 or any amendment thereof. The place of arbitration shall be Mohali and the language used in the arbitral proceedings shall be English. Arbitration shall be conducted by a sole arbitrator.

24.2 The sole arbitrator shall be appointed by the Chief Executive Officer (CEO) of Bharti Airtel Limited, Punjab.

24.3 The arbitral award shall be in writing and shall be final and binding on each party and shall be enforceable in any court of competent jurisdiction. None of the Parties shall be entitled to commence or maintain any action in a court of law upon any Dispute arising out of or relating to or in connection with this Agreement (infringement of IPR and breach of confidentiality excepted), except for the enforcement of an arbitral award or as permitted under the Arbitration and Conciliation Act, 1996

24.4 Pending the submission to arbitration and thereafter, till the tribunal renders its award or decision, the Parties shall, except in the event of termination of this Agreement or in the event of any interim order/award is granted under the aforesaid Act, continue to perform their obligations under this Agreement.”

The respondent/plaintiff has filed the suit for recovery on account of alleged breach of the agreement in question. Keeping in view the terms and conditions of the agreement coupled with the scope of arbitration clause which takes in sweep any and all disputes, controversies and conflicts (disputes) arising out of this agreement between the parties or arising out of or relating to or in connection with this agreement or the performance or non-performance of the rights and obligations set forth therein or the breach, termination, invalidity or interpretation thereof, I find it difficult to accept the submissions made by counsel for the respondent and to sustain the findings recorded by the trial court that the dispute raised in the present suit does not fall within the purview of the arbitration clause. As a consequence, I find merit in contention of the petitioners that the controversy raised in the suit is an arbitrable dispute and liable to be referred to the arbitrator in compliance with the provisions of Clause 24 reproduced hereinbefore.

For the foregoing reasons, the petition is allowed, the impugned order is set aside, the application filed by the petitioners under Section 8 of the Act is allowed and the dispute raised by the respondent by filing civil suit is held to be liable to be referred to the Arbitrator. As a consequence, the suit filed by the respondent/plaintiff is held to be not maintainable.

(Rekha Mittal)
Judge

13.5.2016
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