

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**Civil Revision No.2341 of 2016**

**Date of decision : 13.05.2016**

**Abhishek Industries Ltd.**

.....Petitioner

*Versus*

**Kamaldeep Singh Sandhu and another**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Sanjeev Sharma, Senior Advocate with  
Mr. Shekhar Verma, Advocate for petitioner.

Mr. Satish Goel, Advocate for respondent No.1.

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**DARSHAN SINGH, J.**

The present revision petition has been preferred against the order dated 15.02.2016 passed by learned Civil Judge (Junior Division), Barnala, whereby the application moved by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 (for short the 'Act') has been dismissed.

2. Learned counsel for the petitioner contended that there was an arbitration clause in the agreement dated 25.07.2011. The petitioner-defendant had moved an application under Section 8 of the Act

to refer the matter to the arbitration but the said application has been dismissed simply on the ground that the respondent did not agree to appear before the Arbitrator. Thus, he contended that the order passed by the learned trial Court is not in proper prospective and in fact the merits of the application have not been touched.

3. On the other hand Mr. Satish Goel, Advocate learned counsel for respondent No.1 contended that the learned trial Court has taken into consideration Clause 2.28 of the agreement dated 25.07.2011 and has thereafter passed the impugned order.

4. I have duly considered the aforesaid contentions.

5. From the perusal of the impugned order it comes out that the learned trial Court has not properly adjudicate upon the application moved by the petitioner under Section 8 of the Act. The learned trial Court has mentioned that the applicant is not agreed to appear before the Arbitrator. The willingness and non-willingness of a party before the Arbitrator is not the ground to decline the application under Section 8 of the Act. The provisions of Section 8 of the Act, if there exists the arbitration clause in the agreement, are mandatory. So, the impugned order is not sustainable in the eye of law. The same is hereby set aside. The learned trial Court is directed to pass the fresh order on the application moved by the petitioner under Section 8 of the Act in accordance with law.

**13.05.2016**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**