

Civil Revision No.274 of 2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.274 of 2016 (O&M)

Date of Decision: May 26th, 2016

Casio India Co.Pvt.Ltd., New Delhi

...Petitioner

Versus

M/s Netmax Digital Media Pvt.Ltd., Faridabad & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Ajay Sharma, Advocate,
for the petitioner.

Mr.Shivender Singh Tanwar, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

Petitioner-defendant No.1 is aggrieved of the dismissal of the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") for referring the dispute to the Arbitrator in view of arbitration clause No.13.

Mr.Ajay Sharma, learned counsel appearing on behalf of

petitioner-defendant No.1 submits that an agreement dated 1.4.2014

between the plaintiff and petitioner-defendant No.1 was entered into setting out certain terms and conditions, wherein even defendant No.2 M/s Brandbucket Internet Concept, Delhi was also referred to be as “Online Distributor of defendant No.1”. In this regard, he has drawn the attention of this Court to the relevant portion of the agreement, which reads thus:-

“Casio and the Service Provider are hereinafter collectively referred to as “Parties” and severally as “Party”.

Whereas:

A. Casio is engaged in the business of importing, sales and marketing of Casio products like watches, calculators, scientific calculators, digital diaries, label printers, digital cameras, electronic musical instruments, projectors and others (hereinafter referred to as the “Products”). The Company is currently selling its Products in India, through distributors and re-sellers appointed by the Company, for such purposes, in accordance with specific distribution agreement(s) executed by the Company with such distributors/re-sellers.

B. In order to facilitate the sale of Products online, Casio has engaged M/s Brandbucket Internet Concepts, a proprietorship concern having its offices at Unit No.10, First Floor, Gole Market, CSC-5, Sector-9, Rohini, Delhi-110085 and holding PAN-AEWPM1368K (hereinafter referred to as “Online Distributor”) for selling the Products exclusive online, through www.casioindiashop.com

(hereinafter referred to as “Website”).

C. The Online Distributor and the Registered Sellers will be selling the Products through the Website and accepting consideration for such sales directly. Casio is desirous of managing and operating the Website on its own or through a third party service provider appointed by Casio, to ensure proprietary rights of Casio in the Products sold on the Website are maintained. In terms of the agreement executed between Casio and Online Distributor, the Online Distributor has agreed to Casio having the right to appoint a third party service provider for managing/operating the Website, without any objections from the Online Distributor.

D. The Service Provider has represented that it is capable of providing the necessary online web based services, infrastructure and manpower to administer and operate an online e-retail platform. The Service Provider has approached Casio, to manage and operate the Website on behalf of Casio.

E. Based on this representation, Casio is desirous of engaging the services of the Service Provider and the Service Provider is willing to be thus engaged to operate and manage the Website.

F. The Parties are now desirous of setting out herein, their understanding in writing.

Now therefore this agreement witnesseth and the parties agree to as under:-”

As per the categorical pleadings in paragraph 15 of the plaint,

there is no denial to the existence of the agreement dated 1.4.2014, therefore, the order under challenge on account of the fact that the application was not accompanied by original/certified or notarized copy of the agreement is neither here and there and in this regard, relied upon the judgment dated 3.8.2010 rendered by this Court in **Civil Revision No.944 of 2010 (M/s Aero Club through its Authorized representative Mr.Bobby Emmanuel, Regional Sale Manager, North Versus V.P.Arora & others)**, wherein while relying upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Bharat Sewa Santhan Versus U.P. Electronic Corpn. Ltd., AIR 2007 Supreme Court 2961** this Court held that photo copy of the original agreement would be immaterial when the other party itself relies upon the agreement and does not dispute the existence of the same and, therefore, the application should not have been dismissed on this ground and, thus, urges this Court for setting-aside of the impugned order and allowing the application moved under Section 8 of 1996 Act.

Mr.Shivender Singh Tanwar, learned counsel appearing for respondent No.1 submits that there is a separate contract between his client and defendant No.2, i.e., agreement dated 10.12.2014 and, thus, even if the plea of petitioner-defendant No.1 is accepted that defendant

application was not accompanied by original agreement, notarized or certified copy thereof. The cause of action accrued at Faridabad and, therefore, the suit was filed *de hors* of the fact that the parties had set their hands for taking the remedy under law in Courts at Delhi and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit in the contention of Mr.Sharma, for, respondent-plaintiff itself relies upon the agreement dated 1.4.2014. Para 15 of the plaint reads thus:-

“That the Defendant No.1 also assured the Plaintiff that the terms and conditions as agreed earlier would remain the same and even compensation would remain the same. That it was also further agreed that the Plaintiff would get the payment from both the Defendant Nos.1 & 2. That thereafter Plaintiff and the Defendant no.1 executed service agreement dated 01.04.2014.”

On conjoint reading of Para 15 of the plaint and the relevant clause, it is evident that petitioner-defendant No.1 was aware of the appointment of the Online Distributor, i.e., defendant No.2 M/s Brandbucket Internet Concept and, thus, there is no force in the submission of Mr.Tanwar that the matter cannot be referred to the Arbitrator in view of the fact that defendant No.2 was not signatory of

the agreement. Once the respondent relies upon the agreement, I am

totally in agreement with the ratio decidendi culled out by this Court in **M/s Aero Club (supra)** while relying upon the judgment rendered in **Bharat Sewa Santhan's case (supra)** that the original agreement, certified copy or notarized copy alongwith the application under Section 8 of 1996 Act would be wholly immaterial.

For the reasons noted above, I am of the view that the findings rendered by the trial Court are not in consonance with the settled law as it has not noticed the pleadings as culled out in Para 15, *ibid.*

Accordingly, the application filed under Section 8 of 1996 Act is hereby allowed. The parties are relegated to resolve the dispute through the intervention of the arbitrator.

Revision petition stands allowed.

May 26th, 2016
ramesh

(AMIT RAWAL)
JUDGE