

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

Civil Revision No.8085 of 2015 (O&M)

Date of decision: 28.01.2016

V.K. Mantrao & son and others

.....Petitioners

Versus

M/s Select Global Hotel Pvt. Ltd. and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.P.S. Bal, Senior Advocate,
with Mr. A.D.S. Bal, Advocate,
for the petitioners.

Ritu Bahri, J.

Challenge in this petition is to the order dated 21.10.2015 passed by the Civil Judge (Senior Division), Gurgaon, whereby application filed by the defendants-petitioners under Order 7 Rule 11 CPC has been dismissed.

M/s Select Global Hotel Pvt. Ltd.-plaintiff (respondent No.1 herein) filed a suit for permanent injunction and recovery of Rs.18,95,218/- against the petitioners and others (Annexure P-2). Upon notice, defendant-petitioners filed their written statement, copy thereof has been attached as Annexure P-4. After framing of issues, the case was adjourned for evidence of plaintiff. On 01.09.2014 the petitioners filed an application (Annexure P-5) under Order 7 Rule 11 CPC for rejection of plaint with the averments that as per agreement executed between the parties, there was a clause of Arbitration at serial No.21 (pages 16 & 17), according to which, in case of any difference or dispute arising between the parties, the matter would be referred to the sole Arbitrator for adjudication. The trial Court has dismissed

the said application on the ground that a separate application under Section 8 of the Arbitration and Conciliation Act should have been filed by the defendants-petitioners for referring the dispute to the Arbitrator before filing their written statement. Objection regarding arbitration clause taken in the written statement would not meet the requirement of Section 8 of the Act and the plaintiff cannot be non-suited on this ground. Reference has been made to the judgment passed by a Co-ordinate Bench of this Court in **Vijay Kumar Vs. Zira Co-operative Sugarmills Ltd., Zira**, 2012 (4) PLR 446. Defendant (in that case) had filed an application under Order 7 Rule 11 CPC for dismissal of the suit on the ground of arbitration clause in the agreement. This Court while allowing the appeal of appellant-plaintiff, observed as under:-

“8. I have carefully considered the rival contentions. The defendant did not move any application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, the Act) before filing of written statement. Section 8 of the Act stipulates that such an application has to be moved before filing of written statement. Objection regarding arbitration clause taken in the written statement does not meet the requirement of Section 8 of the Act. On the contrary, according to Section 8 of the Act, the defendant before submitting his written statement should have filed application under Section 8 of the Act for referring the dispute to the Arbitrator. However, it was not so done. Consequently, the plaintiff cannot be non-suited on this ground.

9. Counsel for respondent contended that application under Order 7 Rule 11 of the Code of Civil Procedure (in short, Civil Procedure Code) had also been moved by defendant on the ground of arbitration clause. However, said application was dismissed by the trial Court and the said order was upheld by this Court in revision petition. Consequently, the plaintiff cannot be non-suited on the ground of arbitration clause.”

Learned counsel for the petitioners has referred to a decision given by the Hon'ble Supreme Court in **Rashtriya Ispat Nigam Limited Vs. Verma Transport Company**, 2006 (7) SCC 275. In this case, the Hon'ble

India and another Vs. Yadav Engineer and Contractor, 1983 (1) SCR 95

and held that in case, before filing the first statement, an application under Section 8 of the Act for reference of dispute for Arbitration is made, that application cannot be held to be wholly unmaintainable. The necessary question to be considered is, when first statement on the substance of the dispute was filed. The expression 'first statement on the substance of the dispute' contained in Section 8 (1) of the Act has to be distinguished with the expression 'written statement'. It employs submission of the party to the jurisdiction of the judicial authority. The ratio of aforesaid judgment of the Hon'ble Supreme Court is that once a written statement is filed, it would amount to waiving his right to invoke the arbitration clause. It was further observed that disclosure of defence for the purpose of opposing a prayer for injunction would not necessarily mean that substance of the dispute has already been disclosed in the main proceeding. Supplemental and incidental proceeding are not part of the main proceeding.

In the facts of the present case, after filing of the suit, written statement was filed, issues were framed and the trial was fixed for recording of evidence of plaintiff-respondent No.1. For all intents and purposes, the defendants-petitioners had taken their entire defence by filing their written statement. The trial was, at the same time, fixed for recording evidence of the plaintiff. Thereafter, the present application under Order 7 Rule 11 was filed on 01.09.2014. Hence, as per the judgment passed by the Hon'ble Supreme Court in FCI's case (supra), they had disclosed their defence and had waived their right to invoke the arbitration clause as per Section 8 (1) of the Act. The ratio of the aforesaid judgment has been followed by this Court in Vijay Kumar Sondhi's case (supra).

impugned order does not suffer from any illegality, much less, perversity, warranting interference by this Court in exercise of its revisional jurisdiction.

Dismissed.

28.01.2016
ajp

(RITU BAHRI)
JUDGE