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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 92/2015 & C.M. No.1908/2015

M/S TECH BOOKS INTERNATIONAL & ANR

..... Petitioners

Through Ms.Shanta Devi Raman, Advocate.

versus

DR NITI SAXENA & ANR

..... Respondents

Through Mr.VijayK.Singh, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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06.05.2016

Petitioner is aggrieved by the order dated 24.9.2014 vide which the application filed by the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) had been dismissed.

Contention is that the impugned order is liable to be set aside as it has not appreciated that the “subject matter” of the arbitration was the disputed book and the agreement dated 24.4.2005 entered into between plaintiff no.2 and the defendants encompass this subject matter. Contention being that even presuming that plaintiff no.1 had not signed this agreement, the matter should have been referred to arbitration; the Arbitrator would be well within his power under Section 8 of the said Act to decide as to whether the arbitration

agreement exists qua petitioner no.2 or not.

This submission is refuted.

Learned counsel for the parties placed reliance upon respective case laws.

In the judgment of Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Anothers AIR 2003 SC 2252 the Apex Court had occasion to consider the scope of Section 8 of the said Act. The language of Section 8 “in a matter which is the subject matter of an arbitration agreement” had been disputed, the Court had noted that the suit should be in respect of “a matter” which the parties agreed to refer and which comes within the ambit of the arbitration agreement; the words “a matter” would indicate the entire subject matter of the suit and which should be subject to the arbitration agreement. The Court had also gone on to discuss if there was any provision for partly referring the dispute to the arbitration or whether the suit could be divided or bifurcated in two parts which the Court was of the view would not be permissible. The scope and its impact as to when some parties to the suit were not parties to the arbitration agreement was also gone into.

Learned counsel for the petitioner has placed reliance upon Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums (2003) 6 SCC 503 to reiterate her stand that under Section 16 of the said Act the Arbitrator has wide powers to decide about the existence / validity of the arbitration agreement or whether this

agreement would be subsisting and valid against plaintiff no.1 can be answered by the Arbitrator; the suit must necessarily fail.

Per contra, in reply learned counsel for the respondent submits that the so-called arbitration agreement (dated 24.02.2005) has been disputed by the respondents. Attention has been drawn to the said document and the cuttings thereupon which find mentioned at 2-3 places on the first page and which are admittedly not counter signed by the parties and submission being that this agreement is not a valid agreement. Additional submission being that even presuming that this document could be the subject matter of consideration by the Arbitrator, the next submission on this count is that the arbitration agreement admittedly was not signed by plaintiff no.1 and plaintiff no.1 also has an independent right in the suit claim which has been filed which is a claim for infringement. Attention has been drawn to the para 3 of the plaint wherein it has categorically been stated that both plaintiff nos.1 and 2 had actively participated in writing the book.

The submission of petitioner that plaintiff no.1 has no independent status is thus belied from the averment in this plaint. The text of the plaint and the prayer clause seek damages and royalty to both the plaintiffs; it is not to one plaintiff alone. The claim of the plaintiff is also canvassed on certain communications which are mentioned there. Conspicuous absence to the arbitration agreement dated 24.02.2005 is noted.

In this background, this Court is of the view that it may not be possible for the Court to force the plaintiff no.1 to appear before an Arbitrator when admittedly her claim is an independent claim; it is independent of the status of plaintiff no.2 and the averments in the plaint prima facie show that she has set up her claim on communications and e-mails which are de hors and not in any manner connected with the arbitration agreement dated 24.02.2005. Thus even presuming that the validity/existence of the arbitration agreement dated 24.02.2005 can become the subject matter of the arbitration; this arbitration agreement would only be qua the role of plaintiff no.2 and the respondent and the Arbitrator would not be able to answer the claim sought to be set up by the plaintiff no. 1.

In this background, the impugned order dismissing the application under Section 8 of the said Act suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 06, 2016
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