

* HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE A. SHANKAR NARAYANA

+ CIVIL REVISION PETITION No. 1870 of 2016

%07.08.2017

#Zee Learn Ltd .. Petitioner

Vs.

\$ J. Naveen Kumar .. Respondent

! Counsel for the Petitioner: Sri V.R.N. Prashanth
Counsel for Respondent : Sri C. Ramaiah

<Gist :

>Head Note:

? Cases referred:



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C.R.P.No. 1870 of 2016

O R D E R:- (ORAL)

Per Hon'ble Sri Justice Suresh Kumar Kait)

This Civil Revision Petition is filed assailing the order dated 10.03.2016 in I.A.No. 17 of 2016 in O.S.No. 2015 of 2015 passed by the learned V Junior Civil Judge, City Civil Court, Hyderabad whereby the application filed by the petitioner-defendant under Section 8 of the Arbitration and Conciliation Act, 1996 has been dismissed.

The case of the petitioner-defendant before the trial Court was that when any dispute arose with regard to Kidzee Franchisee Agreement entered into by the parties on 12.12.2014, as per Clause 19 of the Agreement, the dispute shall be referred to Arbitrator.

The trial Court observed that the dispute between the petitioner-defendant and the respondent-plaintiff is not clear since there are no pleadings of the petitioner as it has not filed written statement in the suit to know whether the issue between both the parties is with regard to Kidzee Franchisee Agreement dated 12.12.2014 or not. It is further observed that as per the pleadings of the respondent-plaintiff, the dispute is not with regard to Kidzee Franchisee Agreement dated 12.12.2014. Even though as per Clause 19 of Kidzee

Franchisee Agreement dated 12.12.2014, the parties shall be referred to the Arbitrator, but there are no pleadings to the effect that the dispute is with regard to Kidzee Franchisee Agreement dated 12.12.2014.

As per the plaint filed by the respondent-plaintiff, the cause of action for the suit arose on 09.12.2014 when the petitioner-defendant received advance amount from the plaintiff, and thereafter, the petitioner-defendant executed agreement in favour of the plaintiff on 12.12.2014. It is specifically stated that the plaintiff issued a legal notice to the defendant, but the defendant has failed to repay the advance amount to the plaintiff in time.

It is not in dispute that an amount of Rs.2,50,000/- was paid by the respondent-plaintiff on 09.12.2014 towards franchisee fee. However, the case of the respondent-plaintiff is that signatures on the Agreement dated 12.12.2014 are taken by the petitioner-defendant by fraudulent means.

We have gone through the plaint, however, it is nowhere mentioned that the signatures of the respondent-plaintiff on the Agreement are taken fraudulently. However, the case of the respondent-plaintiff is that the said agreement was not handed over to the respondent-plaintiff and only a draft was handed over wherein such clause of arbitration is not found place.

As per the plaint, the admitted case of the respondent-plaintiff is that he paid an amount of Rs.2,50,000/- on 09.12.2014, and thereafter, Kidzee Franchisee Agreement was entered into between the parties on 12.12.2014.

For better adjudication of the case, Section 8 of the Arbitration and Conciliation Act, 1996 is reproduced hereunder:

“8. Power to refer parties to arbitration where there is an arbitration agreement:- (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court].

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and on arbitral award made.”

Having regard to the facts and circumstances of the case and in the light of the above provision, we are of the considered view that the petitioner-defendant has rightly moved an application under Section 8 of the Act mentioned above, before the trial Court and on receipt of such application it was the duty of the Court to direct the parties to approach the Arbitrator. However, in spite of existence of Clause No.19 of the Kidzee Franchisee Agreement, dated 12.12.2014, the learned Junior Civil Judge, City Civil Court, Hyderabad, without referring the parties to an arbitrator, has erred in dismissing the application filed by the petitioner-defendant.

Hence, the Civil Revision Petition is allowed setting aside the impugned order dated 10.03.2016 in I.A.No. 17 of 2016 in O.S.No. 2015 of 2015 passed by the learned V Junior Civil Judge, City Civil Court, Hyderabad. The respondent-plaintiff is at liberty to take steps as may be available under law for getting an Arbitrator appointed to resolve the dispute between the parties. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

07.08.2017

SURESH KUMAR KAIT, J

A.SHANKAR NARAYANA, J

Note:- L.R. Copy to be marked
b/o bcj