

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

CR No.515 of 2012 (O&M)

Date of decision : 20.12.2017

The Kissan Workers Cooperative Labour & Construction Society Ltd.

...Petitioner

Versus

Punjab State and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Baldev Raj Mahajan, Sr. Advocate with
Ms. Tanika Goyal, Advocate for the petitioner.

Mr. Pawan Sharda, Sr. DAG, Punjab
for respondent Nos.1 to 3.

Mr. Anurag Arora, Advocate for respondent No.4.

ANIL KSHETARPAL, J.

The plaintiff is in revision petition against the order dated 06.08.2011 allowing the application filed by defendant No.4 under Section 8 of the Arbitration and Conciliation Act, 1996 directing the parties to get their dispute adjudicated upon by the Arbitrator.

I have heard the learned counsel for the parties at length and with their able assistance gone through the documents filed.

It is not in dispute that there was an agreement between the parties containing a arbitration clause for resolving the dispute between the parties.

It is the case of the petitioner that the respondents had waived

their right to get the matter referred to the Arbitrator because the defendants filed an application under Order 7 Rule 14 of Code of Civil Procedure for directing the plaintiff to produce the documents. He has submitted that the reply to the aforesaid application was filed and after consideration, the application was decided. He has further submitted that although the respondents appeared before the Court on 01.02.2002, however, no reply was filed and application under Section 8 of the Arbitration and Conciliation Act, was filed only after the plaintiff had filed an application for striking off the defence of the respondents.

On the other hand, learned counsel for the respondents has submitted that as per Section 8 of the Arbitration and Conciliation Act, application can be filed before the submission of a statement on the substance of the dispute. He has submitted that application under Order 7 Rule 14 of Code of Civil Procedure for directing the plaintiff to produce the certain documents cannot be considered as a submission of a statement on the substance of the dispute.

In the considered opinion of this Court, the issue which needs determination in the present case is whether application filed for directing the plaintiff to produce certain documents under Order 7 Rule 14 of Code of Civil Procedure would be a statement on the substance of the dispute or not. An application under Order 7 Rule 14 of Code of Civil Procedure is only for direction to the plaintiff to produce documents on which the plaintiff relies upon. Such an application cannot be treated as a submission on the substance of the dispute. Reference in this regard can be made to the judgment passed by Hon'ble the Supreme Court in the case of *Greaves*

Cotton Limited Vs. United Machinery and Appliances, 2017 (2) SCC 268.

Hon'ble the Supreme Court in para No.12 of the judgment has held as under:-

“12. In view of the law laid down by this Court, as above, we find it difficult to agree with the High Court that in the present case merely moving an application seeking further time of eight weeks to file the written statement would amount to making first statement on the substance of the dispute. In our opinion, filing of an application without reply to the allegations of the plaint does not constitute first statement on the substance of the dispute. It does not appear from the language of sub-section (1) of Section 8 of the 1996 Act that the Legislature intended to include such a step like moving simple application of seeking extension of time to file written statement as first statement on the substance of the dispute. Therefore, in the facts and circumstances of the present case, as already narrated above, we are unable to hold that the appellant, by moving an application for extension of time of eight weeks to file written statement, has waived right to object to the jurisdiction of judicial authority.”

Learned counsel for the petitioner has further submitted that as per Order 8 Rule 1 of Code of Civil Procedure, the defendant shall within 30 days of the service of summons on him present a written statement of his defence. The Court has further been given power to extend the time upto 90 days from the date of service. He has submitted that since no written statement was filed within the time prescribed and the defendants participated in the proceedings, therefore, it must be assumed that the defendants had waived their right to move an application under Section 8 of

the Arbitration and Conciliation Act, 1996.

I have considered the submission of learned counsel for the petitioner, however, I do not find any substance therein. The language of Section 8 of the Arbitration and Conciliation Act, 1996 is clear and specific. It is clearly provided that the defendant would have to apply under Section 8 of the Arbitration and Conciliation Act, not later than the date of submitting his first statement on the substance of the dispute. The impact of Section 8 of the Arbitration and Conciliation Act, 1996 when compared to the provision in Section 34 of the Arbitration and Conciliation Act, 1940 are quite different. In Section 34 of the 1940 Act, it was provided that the application for relegating the parties to the Arbitrator shall not be entertained, if the application is not filed before filing the written statement or taking any other steps in the proceedings, whereas under Section 8 of the Arbitration and Conciliation Act, application can be filed at any time before submitting first statement on the substance of the dispute.

In these circumstances, learned counsel for the petitioner is not correct in asserting that the petitioner had waived his right.

The argument of the learned counsel is that as per the amendment in the Code of Civil Procedure, the written statement had to be filed within 30 days extendable upto 90 days. Hence, the time for filing the written statement had elapsed. No doubt, after the amendment in the Code of Civil Procedure, the maximum period permissible for filing the written statement is 90 days, however, such provision has already been interpreted by Hon'ble the Supreme Court to hold that the Court certainly has power to extend the time beyond 90 days.

In view of the aforesaid discussions, this Court does not find any good ground to interfere with the order passed by the trial Court referring the parties to the Arbitration.

Revision petition is dismissed.

20.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No