

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

CR No.7256 of 2014(O&M)

Date of decision: 17.11.2017

Punjab State Civil Supplies Corporation and another Petitioners

VERSUS

M/s Khalsa Rice Mills Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.S. Brar, Advocate for the petitioners.

Mr. Mukand Gupta, Advocate for the respondent.

REKHA MITTAL, J.

The present petition directs challenge against order dated 28.03.2014 (Annexure P-3) passed by the Additional Civil Judge (Senior Division), Gurdaspur whereby application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') was dismissed.

Counsel for the petitioners has submitted that respondent- M/s Khalsa Rice Mills filed a suit for mandatory injunction directing the defendant to submit true, genuine and legal accounts for shelling during the crop year 2010-11 and 2011-12 and release the cost of such rice with consequential relief of permanent injunction restraining the defendant from interfering in day to day business of the plaintiff-firm. The petitioner/defendant filed the written statement raising preliminary objection that in the light of arbitration clause in the agreement, the suit does not lie before the Civil Court and liable to be dismissed. Later, the

instant application for dismissal of the suit for want of jurisdiction in the light of bar created under Section 8 of the Act was filed but the same has been dismissed by the trial Court. It is argued with vehemence that in view of arbitration clause contained in clause 26 of the agreement between the parties, application filed by the petitioner is liable to be allowed and the suit may be dismissed. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya and another, (2003) 5 SCC 531** and **Booz Allen and Hamilton Inc. Vs. S.B.I. Home Finance Limited and others, (2011) 5 SCC 532.**

Counsel representing the respondent has supported the impugned order with the submission that the application under Section 8 of the Act was filed to delay and prolong decision of the suit. It is further argued that as the petitioner filed the written statement answering claim of the respondent/plaintiff on merits, it amounts to the petitioner having submitted to jurisdiction of the Civil Court, therefore, application under Section 8 of the Act has rightly been dismissed by the trial Court. For this purpose, he has referred to judgment of this Court **Vijay Kumar Sondhi Vs. The Zira Cooperative Sugar Mills Ltd. Zira, 2012(13) RCR (Civil) 173.**

I have heard counsel for the parties, perused the paper-book particularly the various annexures available on record.

Indisputably, the petitioner filed the written statement (Annexure P-2) wherein the petitioner controverted the allegations raised in the plaint. However, preliminary objections including issue of non-maintainability of the suit in the light of arbitration clause were raised.

The question that falls for consideration is, whether the petitioner can be

heard to say that since it raised an issue with regard to arbitration in the written statement, it can escape adverse consequence of having file the written statement. This Court in **Vijay Kumar Sondhi's** case (supra) has held, reads as follows:-

“8...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.”

The controversy in the present petition is squarely covered by the judgment of this Court in **Vijay Kumar Sondhi's** case (supra). Counsel for the petitioner has failed to cite any contrary law laid down by this Court much less Hon'ble the Supreme Court of India. In this view of the matter, I find merit in contention of the respondent that as the petitioner filed the written statement, it amounts to submission to the jurisdiction of the Civil Court, therefore, the petitioner cannot press its claim under Section 8 of the Act.

To be fair to the petitioner, counsel has relied upon observations of Hon'ble the Supreme Court recorded in para 25 of the judgment in **Booz Allen and Hamilton Inc case** (supra), a relevant extract wherefrom reads as follows:-

“Not only filing of the written statement in a suit, but filing of any statement, application, affidavit filed by a defendant prior to the filing of the written statement will be construed as 'submission of a statement on the substance of the dispute', if by filing such statement/application/affidavit, the defendant shows his intention to

submit himself to the jurisdiction of the court and waive his right to seek reference to arbitration. But filing of a reply by a defendant, to an application for temporary injunction/attachment before judgment/appointment of Receiver, cannot be considered as submission of a statement on the substance of the dispute, as that is done to avoid an interim order being made against him.”

Perusal of the aforesaid extract in my considered opinion, does not support cause of the petitioner against order impugned. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

NOVEMBER 17, 2017
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no