

\$~A-43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 35/2017

M/S ZEBA AGRO PRIVATE LIMITED..... Petitioner

Through Mr.T.A.Rahman and Mr.Kushagra
Pandey, Advocates

versus

M/S M H CONSTRUCTION CO Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

11.01.2017

%

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.11.2016 by which an application filed by the petitioner seeking leave to defend the summary suit for recovery of Rs.34,17,720/- was allowed subject to deposit of Rs.20 lacs as FDR by the petitioner.

2. Learned counsel appearing for the petitioner submits that Clause 23 of the alleged agreement contains an arbitration clause and that in any case the trial court has wrongly passed the impugned order granting conditional leave to defend in view of section 8 of the Arbitration Act. He further submits that though this argument was raised before the trial court and a plea to that effect has also been raised by the petitioner in their application for leave to defend, the trial court has not dealt with the issue and has not passed appropriate orders under section 8 of the Arbitration Act.

3. Perusal of the impugned order shows that the trial court has noted that in the application filed by the petitioners such a plea has been raised. However, it is not clear from the order as to whether this submission was argued when the matter was heard.

4. Accordingly, it would be appropriate for the petitioner to approach the trial court with an appropriate application for review/recall of the order dated 2.11.2016, in view of the averments made that arguments had been addressed before the court on the applicability of section 8 of the Arbitration Act.

5. Granting leave and liberty to the petitioner to approach the trial court with an application for review/recall of the impugned order the present petition is disposed of. In case such an application is filed within two weeks from today, the time for depositing the FDR for a sum of Rs.20 lacs shall stand extended till disposal of the said application. In case such an application is filed the trial court may adjudicate upon the same uninfluenced by any observations made by this court.

6. Petition and all pending applications stand disposed of.

JAYANT NATH, J

JANUARY 11, 2017

n