

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO.4343 OF 2018

M/s.Aneka Estate Pvt. Ltd.

.. Petitioner

Vs.

M/s.Ashapura Minechem Ltd.

.. Respondent

Mr.Rajesh Kachare a/w Mr.Sandeep Suryawanshi i/by Tamhane & Co.
for the petitioner.

Mr.Amrut Joshi a/w Mr.Rushabh M.Sheth, Ms.Neha M.Shah i/by M.S.
Bodhanwalla & Co. for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 31st August 2018

P.C.:

. By this petition under Article 227 of the Constitution of India, the petitioner has impugned the order dated 3rd July 2017 passed by the learned trial Judge in Notice of Motion No.530 of 2017 in Summary Suit No.535 of 2015 filed under Section 8 of the Arbitration and Conciliation Act, 1996 inter alia praying for referring the parties to the arbitration.

2. There is no dispute that the arbitration agreement was recorded in the Leave and License Agreement entered into between the parties. The possession of the property was already handed over by the respondent to the petitioner under the said leave and license agreement. The claim in the summary suit filed by the petitioner herein was the monetary claim. It is an admitted position that the respondent (original defendant) did not file any written statement before the learned trial Judge in the said summary suit.

3. Learned counsel for the petitioner submits that the respondent has opposed the summons for judgment taken out by the petitioner herein on the ground that the respondent was before the BIFR at that point of time. It is submitted that while opposing the said summons for judgment, the respondent had filed an affidavit opposing the said summons for judgment had filed a notice of motion for stay of the suit on that ground and thus subsequently no application under Section 8 of the Arbitration and Conciliation Act, 1996 could have been filed by the respondent against the petitioner in the said summary suit for referring the parties to the arbitration under the Leave and License arrived at between the parties.

4. Supreme Court in the case of **Booz Allen and Hamilton Inc. Vs.SBI Home Finance Limited & Ors., (2011) 5 SCC 532** has held that the affidavit filed in the application for interim relief filed by the defendant in a suit would not amount to the submission of the defendant to the jurisdiction of the Court. In this case, the respondent has admittedly not filed any written statement in the summary suit. Thereafter, the respondent herein has taken out a notice of motion inter alia praying for stay of the suit on the ground that the respondent was before the BIFR in view of the said application which also would not amount to the submission of the defendant to the jurisdiction of the Court. In my view, the respondent at that point was before the BIFR and was thus justified in filing the said application. The principles of law laid down by the Supreme Court in the said judgment in the case of **Booz Allen and Hamilton Inc. (supra)** would apply to the facts of this case.

5. Learned trial Judge has thus rightly allowed the notice of motion filed by the respondent under Section 8 of the Arbitration and Conciliation Act, 1996. I do not find any infirmity in the impugned order dated 3rd July 2017 passed by the learned trial Judge. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.