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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1561 OF 2018

Powergrid Corporation of India Ltd.	...Petitioner
V/s.	
Pune District Security Guard Board	...Respondent

Mr.Aniket Ranade for the Petitioner.

Ms.Lata Desai with Dr.Ms.Pallavi Divekar and Mr.Salil Dabke i/b
M/s.Divekar & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 4TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the undated order annexed at page 33 of the writ petition.
2. A perusal of the record indicates that though the principal submission raised by the petitioner in the application annexed at page 27 was under section 8 of the Arbitration & Conciliation Act, 1996 requesting the learned Trial Judge to refer the parties to arbitration, the petitioner has also referred to section 9-A along with section 151 of the Code of Civil Procedure, 1908.
3. Learned Trial Judge accordingly framed an issue on 6th April, 2016 "whether the Court had jurisdiction to try the suit or not". In

the month of April, 2015, by an impugned order however the learned Trial Judge has rejected the application filed under section 8 of the Arbitration & Conciliation Act, 1996 read with section 9-A of the Code of Civil Procedure, 1908 on the ground that the petitioner had already filed the written statement and thus could not have applied for referring the parties to arbitration.

4. Ms.Desai, learned counsel appearing for the respondent does not dispute that in the impugned order the learned Trial Judge has not rejected the said application on the ground that the arbitration agreement does not exist between the parties. She has no objection if the matter is remanded back to the learned Trial Judge to decide the matter afresh. The statement is accepted.

5. Learned counsel appearing for the petitioner states that he will restrict his application only under section 8 of the Arbitration & Conciliation Act, 1996 and not under section 9-A read with section 151 of the Code of Civil Procedure, 1908. The statement is accepted.

6. The impugned order annexed at page nos.33 and 34 of this writ petition is quashed and set aside. The application (Exhibit – 19) filed by the petitioner is restored to file. The said application is restricted only under section of the Arbitration & Conciliation Act, 1996. Learned Trial Judge shall decide the matter afresh without being influenced by the observations made and the conclusion drawn

in the impugned order.

7. Learned Trial Judge shall decide whether an application filed along with the written statement having raised an issue that in view of the existence of the arbitration agreement such application for referring the parties under section 8 of the Arbitration & Conciliation Act, 1996 was maintainable or not. Learned Trial Judge shall also *prima-facie* render a finding whether the arbitration agreement exists between the parties or not while deciding the said application under section 8 of the Arbitration & Conciliation Act, 1996.

8. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

Vasant
Anandrao
Idhol

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by Vasant
Anandrao Idhol
Date: 2018.09.05
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(R.D. DHANUKA, J.)