

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

CR No.1913 of 2016

Indusind Bank & Anr.

....Petitioners

Versus

Neeraj

....Respondent

Date of Order: 08.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashwani Talwar, Advocate for the petitioners.

AMIT RAWAL, J (ORAL)

Present revision is directed against the impugned order dated 18.2.2016 (P.1) passed by learned Civil Judge (Jr. Division), Jagadhri whereby the application of the petitioners-Bank filed under Order 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 (for brevity “the Act”) for rejection of the plaint (P.5), arising out of loan agreement dated 31.10.2012, has been dismissed.

Learned counsel for the petitioners submitted that the respondent-plaintiff filed the suit for mandatory injunction on 04.2.2016, directing the petitioner-defendant Nos.1 & 2 to release and hand over the truck bearing HR 58A-2178 along with original R.C and other relevant documents; with consequential relief of permanent injunction, restraining the defendants from selling away the suit property.

Learned counsel for the petitioners submitted that in the afore-mentioned suit, an application under Section 8 of the Act was moved on the ground that the respondent-plaintiff was extended loan as per Loan Agreement dated 31.10.2012 (P.2) and he was to pay instalment, in terms of

said agreement. Having failed to do so, the matter was referred to the Arbitrator and there was an interim order dated 11.12.2015 (P.4) passed by the Arbitrator. Since the matter was seized before the Arbitrator, the suit could not have been filed. The trial Court dismissed the application only on the ground that the original copy of Loan agreement was not submitted. He submitted that the Bank had placed on record copy of the loan agreement certified by it and that was sufficient requirement of law, in view of ratio of law culled down by Hon'ble Supreme Court in **Bharat Sewa Sansthan Vs. U.P Electronics Corporation Limited, 2007 (4) RCR (Civil) 98** and by this Court in **M/s Vishal Retail Limited Vs. Sachin Deep Sood and Others, 2015 (7) RCR (Civil) 693**.

There is no representation on behalf of the respondents despite service as has been noticed from order dated 04.8.2016 passed by this Court, which reads as under:

“There is no representation on behalf of the respondent despite service.

Adjourned to 9.12.2016 for arguments.”

I have heard learned counsel for the petitioners and gone through the case file minutely.

Order under challenge is not sustainable in the eyes of law since it is conceded that the loan agreement dated 31.10.2012 was entered into between the respondent-plaintiff and the petitioners for extending loan facility to the respondent-plaintiff. Relevant clauses 23.1 & 23.2 of the said Loan Agreement are reproduced hereinbelow:

“ 23.1 All disputes, differences and/or claim arising out of or touching upon this Agreement whether during its subsistence or thereafter shall be settled by

arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on all the Parties to this agreement.

23.2 Dispute for the purpose of Arbitration includes default committed by the Borrower as per clause 14 of this Agreement. It is a term of this agreement that in the event of such an Arbitrator to whom the matter has been originally referred to dying or being unable to act for any reason, the Lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.”

The petitioners had placed on record certified copy of the Loan Agreement, which was sufficient requirement of law, as discussed in **Bharat Sewa Sansthan's case (supra)**. Para 21 of this judgment reads thus:

“21. It is not in dispute that on 11.11.1980 the respondent-Corporation took from the appellant-Sansthan an area measuring 14,925 sq. ft. on monthly rent under a lease agreement. In June 1981, the appellant-Sansthan let out additional accommodation measuring 3000 sq. ft. area on monthly rent for setting up Marketing Office of M/s Uptron India Limited, which is the subsidiary of the respondent-Corporation. The appellant-Sansthan filed suit for recovery of arrears of rent and ejectment of the respondent-Corporation from the demised premises. In the trial court, the respondent-Corporation preferred two applications, i.e. one under Section 8(1) of the Arbitration Act and second under Order XI Rule 14 CPC for summoning of the original lease deed from the

appellant-Sansthan. The learned Additional District Judge (Special Judge, E.C. Act), Lucknow, has rejected both the applications. The High Court in writ petition filed by the respondent-Corporation against the order of the trial court, allowed the application of the respondent-Corporation filed under Section 8(1) of the Arbitration Act. It was the specific case of the respondent-Corporation before the High Court that the original agreements are in the possession of the appellant- Sansthan, whereas the stand of the appellant-Sansthan was that the original agreements are not in its possession. The respondent-Corporation placed on record of the trial court photocopies of the agreements along with an application under Section 8 (1) of the Arbitration Act. The High Court, in our view, has rightly held that the photocopies of the lease agreements could be taken on record under Section 8 of the Arbitration Act for ascertaining the existence of arbitration clause. Thus, the dispute raised by the appellant-Sansthan against the respondent-Corporation in terms of the arbitration clause contained in the lease agreement is arbitral.”

There is already an interim order dated 11.12.2015 (P.4) by the Arbitrator since the loanee had defaulted in making the payment. Suit is filed subsequent to the one and in my view, the same is not maintainable as the Civil Court did not have jurisdiction in this respect.

Consequently, the petition is accepted. The impugned order dated 18.2.2016 (P.1) is set aside and the application filed by the petitioners under Section 8 of the Act is allowed. The parties are relegated to avail the remedy before the Arbitrator.

March 08, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No