

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

Civil Revision No.5378 of 2016 (O&M)
Date of Decision: January 18, 2018

M/s Hargobind Rice Mills, Batala Road, Kalanour, District Gurdaspur

...Petitioner

Versus

Punjab State Warehousing Corporation, Chandigarh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

**Present: Mr.Deepak Grover, Advocate for
Mr.Inderjit Sharma, Advocate,
for the petitioner.**

**Mr.Nitin Kaushal, Advocate,
for the respondents.**

AMIT RAWAL, J. (Oral)

The present revision petition is directed against the impugned order, whereby application (Annexure P-6) seeking dismissal of the suit in view of the arbitration award dated 2.1.2014, has been allowed.

Mr.Deepak Grover, Advocate for Mr.Inderjit Sharma, learned counsel for the petitioner submits that the petitioner-M/s Hargobind Rice Mills had instituted a suit for recovery of ₹1,59,12,813.50P on account of damages, compensation and costs of 9483 quintals 25 Kgs.of rice with interest. The defendants in the aforementioned suit, on receipt of the notice, filed an application under Order 12 Rule 1 & 3 and Order XI & 12 & 14 CPC (Annexure P-2) for production of the documents. However, vide order dated 14.3.2013 (Annexure P-4), the same was disposed of and liberty to

file written statement was given. The written statement (Annexure P-5) was filed and thereafter an application was moved for dismissal of the suit. The trial Court abdicated in remanding the matter by invoking the arbitration clause in view of the fact that the award has been passed ignoring provisions of Section 8 of the Arbitration and Conciliation Act (for short “the Act”).

On the contrary, Mr.Nitin Kaushal, learned counsel for the respondents submits that in view of the existence of the arbitration clause, the suit as framed was not maintainable. The petitioner concealed the factum of arbitration from the notice of the Court and, thus, urges this Court for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

Section 8 of the Act reads thus:-

“8. Power to refer parties to arbitration where there is an arbitration agreement.—

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

On a plain and simple reading of the aforementioned provisions of the Act, it is deciphered that the aforementioned application was moved

only before submitting the first statement. However, in the instant case, the respondent-defendants had appeared and moved one application for production of the documents, which was disposed of vide order dated 14.3.2013, which reads thus:-

“Present: Counsel for the parties.

Reply of the application u/o 12 rule 11 & 12 & 14 CPC filed, whereby plaintiff contended that documents in question are not in possession of the plaintiff rather same are in the possession of defendant. Moreover receipts are not necessary for filing written statement. So, accordingly application disposed of. Now case is adjourned to 5.04.2013 for filing written statement.”

Thereafter, respondents filed the written statement (Annexure P-5). In my view, application (Annexure P-6) for dismissal of the suit was not maintainable as the contents of the same reveal that it was purportedly under the provisions of Section 8 of the Act. The trial Court, in my view, committed illegality and perversity in not noticing the aforementioned fact.

Resultantly, the impugned order is hereby set-aside. Revision petition is allowed in the aforementioned terms.

January 18, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No