

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

201

CR No. 7865 of 2015

Date of Decision-01.08.2018

ICICI BANK LIMITED.

..... Petitioner

Versus

RAJESH AND ANOTHER

..... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Suri, Advocate
for the petitioners.

Ms. Rajesh Bansal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

Petitioner has assailed the order dated 15.9.2015 passed by Civil Judge (Junior Division), Panipat, whereby application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') was dismissed.

A suit for recovery was filed by the plaintiff against defendant-petitioner along with interest. In the said suit, an application under Section 8 of the Act was filed by the defendant-petitioner by invoking clause 6 (b) (i) of the arbitration agreement dated 24.9.2008. For ready reference, clause 6 of the arbitration agreement is reproduced here as under:-

“Governing Law and Arbitration

(A) in the event the services are being provided in

India then the following provisions shall apply

(a) the provisions of the service provider agreement and the other transaction documents shall be governed by and construed in accordance with Indian law, unless other specified in any of the transaction documents.

(b) (i) any dispute, controversy or claim is arising out of or relating to the service provider agreement and/or the other transaction documents or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996

(ii) the dispute, controversy or claims arising out of in connection with the service provider agreement and/or the other transaction documents shall be referred to two (2) arbitrators, one (1) to be appointed by each party and such arbitrators shall then appoint a 3rd arbitrator.”

The execution of agreement between the parties is not in dispute. Petitioner claims that the plaintiff-respondent No.1 was a service provider to the petitioner-bank. After collection of money, he did not deposit it in the account of the bank, rather misappropriated the same in his personal account. As per bilateral understanding, petitioner-bank operated the

account of the plaintiff to recover the due amount from him. In case of any dispute, clause 6 (A) (b) has to be invoked for referring the matter to the arbitrator. The existence of arbitration clause is not in dispute. The only dispute is with regard to recovery of the amount from the personal account of the plaintiff-respondent No.1, who was a sole proprietorship of the plaintiff.

In **Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens and others, (2007) 3 Supreme Court Case 686, The Branch Manager, M/s Magma Leasing & Finance Limited and another Vs. Potluri Madhavalata and another, 2009(4) RCR (Civil) 900, Bharat Rasiklal Ashra Vs. Gautam Rasikla Ashra and another, 2011(4) RCR (Civil) 869**, the provisions in terms of Section 8 of the Act are preemptory in nature. In the event of finding existence of arbitration clause, the Court is obligated to refer the matter to arbitrator. The breach of agreement by any of the party to the agreement and even if, there is termination of agreement, the same will not affect the arbitration clause. The arbitrator is competent to decide his jurisdiction under Section 16 of the Act.

In **Hindustan Petroleum Corporation Limited Vs. M/s Pinkcity Midway Petroleums, 2003 RCR (Civil) 686**, the Hon'ble Apex Court while interpreting Sections 8 and 16 of the Arbitration and Conciliation Act, held that once the agreement

and existence of arbitration clause are admitted then as per mandatory language of Section 8 of the Act, the Court is bound to refer the dispute to the Arbitrator. The question whether that arbitration clause applied to the facts of the case, has to be decided by the Arbitrator as the Arbitrator is competent and has the jurisdiction to adjudicate upon and decide upon his jurisdiction and validity and existence of arbitration agreement with reference to arbitrability of the subject matter of dispute under arbitration clause. Once the existence of agreement between the parties is found containing arbitration clause, the jurisdiction of the civil Court has to be treated as barred.

The application under Arbitration and Conciliation Act is meant to encourage alternate mode of redressal of dispute. Once the bilateral agreement is executed between the parties and the same provides for arbitration clause by way of alternate mode of redressal, then, it would be just and appropriate to honour the onerous obligation arising out of bilateral understanding. The ratio of ***Hindustan Petroleum Corporation Limited's case (supra)*** was approved by the subsequent judgment of the Hon'ble Apex Court in ***Swiss Timing Ltd., Vs. Commonwealth Games 2010 Organizing Committee, (2014) 6 SCC 677.***

In ***Rewa Electricals Vs. Movil, 2012(II) SCC 93***, it was held by the Hon'ble Apex Court that the Legislature in its

wisdom has made it clear in Section 16 of the Act that any obligation with regard to objection or validity of arbitration agreement has to be treated as an agreement independent of other terms of the contract. The contentious issues should not be gone into or to be decided at the stage of appointment of arbitrator and no time should be wasted in such an exercise. The remedy of the aggrieved party is to raise the objections before the arbitral Tribunal. The arbitral Tribunal is always empowered under Section 16 of the Act to rule about its own jurisdiction. It is, therefore, open to the plaintiff to raise all these issues and pleas before the arbitral Tribunal, including all the pleas. The Arbitration Act in itself is a complete code and provides for all channels of adjudication.

The proposition of law can be appreciated from the subsequent judgments in **Kvaerner Cementation India Ltd. Vs Bajranglal Agarwal and another, (2012) 5 SCC 214; A. Ayyasamy Vs. A. Paramasivam and others, 2017(2) RCR (Civil) 518** and **Mrs. Hema Khattar and another Vs. Shiv Khera, 2017(3) RCR (Civil) 277.**

It is a settled position that once the conditions, which are required to be satisfied under sub sections 1 and 2 of Section 8 of the Act are fulfilled, the Court is bound to refer the matter to the arbitrator. Similar view was expressed in **Greaves Cotton Limited vs. United Machinery and Appliances, 2017**

(1) RCR (Civil) 737.

For the reasons recorded hereinabove, I deem it appropriate to allow the present revision petition.

Accordingly, the present revision petition is allowed. Impugned order dated 15.9.2015 is set aside. Normal consequences to follow.

**(RAJ MOHAN SINGH)
JUDGE**

August 01, 2018

anita

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