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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2018

+ CM (M) 615/2015 and CM APPL.11815/2015 (stay)

MANISH JAIN

.... Petitioner

Through: Mr. K. Sunil, Advocate with
Ms. Anuradha Kaushik, Advocate

Versus

M/S. HDB FINANCIAL SERVICES & ORS..... Respondents

Through: Ms. Priyanka Tomar, Advocate for
R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand has been filed to assail the order dated 25.03.2015 whereby the application of the respondent under Section 8 of the Arbitration and Conciliation Act, 1996 was allowed and the parties were referred to arbitration in the context of the dispute brought before the Additional District Judge in civil suit No.69/2013 instituted by the petitioner seeking recovery of Rs.10,70,140/-

2. A copy of the plaint presented by the petitioner in the civil court on 25.02.2013 has been submitted (Annexure P-2). It is clear from the averments in the said plaint that the dispute arises out of an agreement of loan taken by the petitioner from the first respondent. It is fairly conceded in these proceedings that the said loan agreement had an

arbitration clause. The petitioner contends that the loan amount has already been re-paid, his prime grievance being that on account of collusion and connivance of the second and third respondents, he was induced to part with money which was not payable. It is his case that he was assured that half of the process fee would be refunded, but the said amount was not paid and instead has been grabbed by the second and third respondents. It is also his case that seven blank cheques duly signed by him, which were taken over at the time of advancement of the loan, were not returned in spite of the assurances held out. It is also his case that he was charged interest beyond his liability and that in spite of it having been agreed to the contrary, pre-payment charges were recovered. He prayed for a decree in the sum of Rs.10,70,140/- with interest @ 18% per annum *pendente lite* and future, such amount inclusive of the pre-payment charges of Rs.8,08,515/-, notice charges at Rs.5500/-, interest of Rs.6127/-, besides damages in the sum of Rs.2,50,000/-.

3. When the application under Section 8 of the Arbitration and Conciliation Act, 1996 was filed, the petitioner resisted the same arguing that the nature of the case brought before the civil court was such as could not be referred to arbitration. The additional district judge by the impugned order, however, rejected the contention referring, *inter alia*, to *Hindustan Petroleum Corporation Limited vs. Pinkcity Midway Petroleum* (2003) 6 SCC 503.

4. The petitioner relies on *N. Radhakrishnan vs. M/s. Maestro Engineers & Ors.*, AIR 2010 SC (Supp.) 307. It is his submission that

the case at hand also presents such a scenario where the issues cannot be properly addressed by the arbitrator.

5. Having heard the learned counsel and having gone through the record, this court finds no merit in the petition. The factual matrix of *N. Radhakrishnan* (supra) is distinguishable. Unlike the present case, allegations of fraud and serious malpractice had been leveled there by the plaintiff. It is in those peculiar facts and circumstances that the Supreme Court held that the issues could not be properly addressed in the arbitral proceedings.

6. In the present case the dispute relates to the loan agreement, the grievances of the petitioner being that he has been made to pay more than what was due. The ruling of the Supreme Court in *P. Anand Gajapathi Raju vs. P.V.G. Raju* (2000) 4 SCC 539 which was reiterated in *Hindustan Petroleum* (supra) squarely applies. The language of Section 8 of the Arbitration and Conciliation Act, 1996 is peremptory in nature. It having been shown that an arbitration agreement exists and the dispute is covered by the said arbitration clause, the civil court had no option but to refer the dispute to arbitration.

7. The petition and the accompanying application are, thus, dismissed.

R.K.GAUBA, J.

JANUARY 16, 2018

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