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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2255 OF 2015
IN
SUIT NO. 5500 OF 1999**

M/s S. S. Wire Products (I)
Pvt. Ltd. ... Applicants.

IN THE MATTER BETWEEN

N. M. T. C. Ltd. ... Plaintiffs.

V/s.

M/s S. S. Wire Products (I)
Pvt. Ltd. ... Defendants

Mr. A. M. Vernekar a/w Mr. Suraj S. Ghogare, for the
plaintiffs.
None for Defendants.

CORAM : N. J. JAMADAR, J.

DATE : 9th December, 2019.

PC. :

1] Heard the learned counsel for the plaintiffs.

2] This Notice of Motion is taken out by the defendant seeking the reference of the dispute to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”), in accordance with the arbitration clause contained in the agreement dated 13th June, 1995.

3] None appeared for the applicant-defendant when the Notice of Motion was listed on 18th November, 2019.

4] Today also none appears for the applicant defendant.

5] Though it is not in dispute that there is arbitration clause No.9(c) in the General Conditions of the Agreement dated 13th June, 1995, yet the prayer for referring the dispute to arbitration seems to have been made at very belated stage.

6] If there is a valid arbitration clause in the agreement and a party thereto moves the Court in respect of the subject matter of the dispute, which is susceptible to arbitration, then Section 8 of the Act is peremptory and the Court is enjoined to refer the dispute to arbitration, provided the other party to the agreement applies the Court not later than the date of submitting the first statement on the substance of the dispute.

7] In the instant case, the defendant applicant has filed written statement on 26th August, 2008. In the written statement, the defendant has not taken the ground of the dispute being covered by arbitration clause. It has, thus, submitted to the jurisdiction of the Court and proceeded further with the suit.

8] In this backdrop, the defendant-applicant cannot be now permitted to seek the reference of the dispute to arbitration.

9] Hence, the Notice of Motion, being devoid of substance, stands dismissed.

[N. J. JAMADAR, J.]