

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 5357 of 2015
Date of decision: 19.3.2019

Shriram Transport Finance Company Limited and another
.. Petitioners

v.

Sh. Jasvir Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. G. S. Sandhu, Advocate for the petitioners.

Mr. Vipin Mahajan, Advocate for the respondent.

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AVNEESH JHINGAN, J. (Oral)

The issue involved in present petition is whether failure to raise an objection with regard to arbitration clause in the reply filed before the District Consumer Disputes Redressal Forum (hereinafter described as 'the Consumer Forum') will debar the raising of the issue in civil suit?

The facts giving rise to the present petition are summarized below:

The respondent-plaintiff (hereinafter described as 'the respondent') availed a loan facility from the petitioners-defendants (hereinafter described as 'the petitioners') for purchasing a truck. The respondent was aggrieved of charging of exorbitant rate of interest, a consumer complaint was filed for rendition of accounts. In the reply filed before the Consumer Forum, the petitioners never raised an issue that as per the agreement, there was an arbitration clause. The Consumer Forum

dismissed the complaint holding that the issue involved is complex and

cannot be decided by the Consumer Forum. Thereafter, the respondent filed a civil suit for rendition of accounts regarding loan account of truck bearing registration No. PB-06-E-2110 with a prayer to place the entire statement of account of the respondent after calculating the entire principal amount, interest and profit or loss. Further relief of mandatory injunction was prayed for.

On notice, the petitioners filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the 1996 Act') relying upon Clause 15 of the agreement stating that all the disputes and differences arising out of the agreement shall be settled by arbitration to be held at Ludhiana. The application was dismissed by the Civil Judge (Senior Division), Gurdaspur (for short, 'the Civil Court') vide order dated 18.5.2015, hence, the present revision petition.

The challenge is to dismissal of the application that the Civil Court erred in holding that objection with regard to arbitration clause was not taken in the reply filed before the Consumer Forum and same cannot be raised in civil suit.

Learned counsel for the respondent relies upon Section 8 of the 1996 Act and argues that the petitioners failed to raise the objection at the first instance i.e. in the reply filed before the Consumer Forum.

Before dealing with the contentions raised, relevant clause of the agreement and relevant provisions of the 1996 Act and Consumer Protection Act, 1986 (for short, 'the 1986 Act') are reproduced below:

“Clause 15 of the agreement

15. ARBITRATION:

All disputes, differences and/or claims arising out of these

presents or as to the construction, meaning or effect hereof or as to the rights and liabilities of the parties hereunder shall be settled by arbitration to be held in Ludhiana in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof or any statute enacted for replacement thereof and shall be referred to the sole arbitration of a person to be nominated/appointed by Shriram. In the event of death, refusal, neglect, inability or incapability of the persons so appointed to act as an arbitrator, Shriram may appoint a new arbitrator. The award including the interim award/s of the arbitrator shall be final and binding upon all parties concerned. The arbitrator may lay down from time to time the procedure to be followed by him in conducting arbitration proceedings and shall conduct arbitration proceedings in such manner as he considers appropriate. Any proceedings to be initiated in any court of law in pursuance of this arbitration shall be instituted and held in the Court at Ludhiana only.

Sections 5 and 8 of the 1996 Act:

5. Extent of judicial intervention. -Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part.

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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.

Section 3 of the 1986 Act

3. Act not in derogation of any other law.- The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.”

Section 5 of the 1996 Act starts with a *non obstante* clause. It provides that no judicial authority shall intervene except where so provided in that Part of the Act.

Section 8 of the 1996 Act provides that where the parties have agreed for the arbitration in the agreement, the judicial authority shall refer them to arbitration. The party has to apply not later than the date of

submitting his first statement on the substance of the dispute.

Section 3 of the 1986 Act provides that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

There is no challenge to existence of arbitration clause in the agreement and to the fact that objection of availability of arbitration was not raised in proceedings before the Consumer Forum.

The pin pointed controversy is that the reply filed in the Consumer Forum would be construed to be falling within the ambit of “first statement on the substance of the dispute.”

To answer the issue raised, it would be important to note that proceedings under the 1986 Act are in addition to the other remedies available. Meaning thereby that in spite of availing the remedy under the 1986 Act, the party can still invoke arbitration proceedings whereas vice versa is not possible.

The Supreme Court in Fair Air Engineers (P) Ltd. v. N. K. Modi, (1996) 6 SCC 385 held as under:

“The provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act

purports to operate in derogation of the provisions of the Arbitration Act. *Prima facie*, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act

rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act."

The Supreme Court in **M/s National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and another**, (2012) 2 SCC 506 held as under:

"The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996 Act. Moreover, the plain language of Section 3 of the Consumer Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force."

There are two aspects of the matter. Firstly, jurisdiction of the Civil Court is ousted under Section 8 of the 1996 Act, if there is a clause of arbitration in the agreement and the said objection is raised at the first statement on the substance of dispute. Secondly, the 1996 Act would be special law *vis-a-vis* the proceedings before the Civil Court. The law is well settled that general law should give way to the special law. The corollary to this would be that where parties agreed to have arbitration they cannot be forced to have recourse to civil remedies.

The Supreme Court in **Ravi Prakash Goel v. Chandra rakash Goel**, AIR 2007 SC 1517 held as under:

“..... In our opinion, the partnership deed clearly recites that all the disputes touching the affairs of the partnership firm were referable to arbitrator and it cannot be gain said that the dispute regarding accounts of the partnership firm is a dispute touching the affairs of the firm. As already stated, it was not legally essential to specifically make a mention that the partners included their legal heirs, representatives, assigns or legatees etc. and the arbitration clause could be invoked by the appellant as the legatee as well as the legal heir/legal representative of the deceased Dulari Devi particularly where the dispute had arisen during her life time. The appellant's claim in the instant case is based on the will as well as being a legal heir of the deceased Dulari Devi. The appellant, in our opinion, possessed a legal and enforceable right to invoke arbitration clause and moved application under

Section 11 of the Arbitration Act before the High Court for appointment of arbitrator. The word "party" as used in the partnership deed does not exclude inclusion of legal heirs, legal representatives etc. as being canvassed by the respondents. Thus, in our opinion, in view of the provisions of Sections 40 and 46 of the Partnership Act read with Section 40 of the Arbitration Act, the appellant has a legal right to commence arbitration by moving an application under Section 11 of the Arbitration Act in the High Court as in our view, the right to sue survives on him as legal representatives of the deceased Dulari Devi and he is entitled to invoke clause 13 of the partnership deed. Moreover, the dispute referable to arbitration had already arisen during the life time of Dulari Devi which is also well settled that where a dispute is referable to arbitration, the parties cannot be compelled to take recourse to in the civil courts. In view of the aforesaid facts, the civil appeal filed by the appellant stands allowed. However, there will be no order as to costs."

The matter needs to be looked into from a different angle also.

Section 8 of the 1996 Act makes it obligatory on part of the Civil Court to refer the matter for arbitration. The Supreme Court in **M/s Sundaram Finance Limited and another v. T. Thankam**, AIR 2015 SC 1303 differentiated the approach to be adopted where there is an arbitration clause. It was held that the Civil Court ought not to proceed to see whether it has jurisdiction or not. The issue is to be seen whether its jurisdiction has

been ousted. The Supreme Court referring to its earlier judgments in **Branch Manager, Magma Leasing and Finance Limited v. Potluri Madhvilata, 2009 (4) R.C.R. (Civil) 900; Hindustan Petroleum Corporation Limited v. Pinkcity Midway Petroleums, 2003 (3) R.C.R. (Civil) 686** and **P. Anand Gajapathi Raju v. P.V.G. Raju (Dead), (2000) 4 SCC 539** held as under:

“10. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in ***Anand Gajapathi Raju and others v. P.V.G. Raju (Dead) and others, (2000) 4 SCC 539.***

11. The position was further explained in ***Hindustan Petroleum Corporation Limited v. Pinkcity Midway Petroleums, 2003(3) R.C.R. (Civil) 686: (2003) 6 SCC 503.*** To quote:

"14. This Court in the case of ***P. Anand Gajapathi Raju v. P.V.G. Raju*** has held that the language of Section 8 is peremptory in nature. Therefore, in

cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration."

12. In ***Branch Manager, Magma Leasing and Finance Limited and another v. Potiuri Madhvilata and another, 2009(4) R.C.R. (Civil) 900: 2009(6) Recent Apex Judgments (R.A.J.) 312: (2009) 10 SCC 103***, the position has been restated holding that no option is left to

the court, once the pre-requisite conditions of Section 8 are fully satisfied.

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15. Once an application in due compliance of Section 8 of the Arbitration Act is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance of the procedure under the special statute. The general law should yield to the special law - *generalia specialibus non derogant*. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.”

In view of the above discussion, it is concluded that once there is an arbitration clause the jurisdiction of the Civil Court is ousted. The remedy before the Consumer Forum is in addition to the other remedies, as such the proceedings before the Consumer Forum and non-raising of

objection of arbitration clause before it, shall not debar moving of an application under Section 8 of the 1996 Act before the Civil Court.

I may hasten to add that in the present case there is no dispute that the application moved in the civil suit was not later than the date of submitting of first statement on the substance of dispute before the Civil Court.

For the reasons stated above, the impugned order is set aside. The application under Section 8 of the Act filed by the petitioners is allowed. The parties are referred to the arbitration in terms of the arbitration clause 15 of the agreement entered into between the parties.

The revision petition is allowed.

(AVNEESH JHINGAN)
JUDGE

19.3.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No