

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 132 of 2020

Date of Decision: 31.01.2020

Bajaj Auto Limited

.....Petitioner

Vs.

M/s Shivam Automobiles at Hoshiarpur Road and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Jasdev Singh Mehndiratta, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

On 10.01.2020, the following order had been passed:-

“Learned counsel for the petitioner submits that even where the agreement relied upon by the petitioner-defendant before the civil court, is denied by the plaintiff (respondent herein) before adjudicating on an application filed under Section 8 of the Arbitration and Conciliation Act, 1996, the question of such agreement having been entered into by the petitioner must be decided.

He relies upon a judgment of the Supreme Court in Sundram Finance Limited v. T. Thankam (2015) 14 SCC 444, wherein it has been held that the approach of a civil court, once an application under Section 8 is filed, should be not to see whether it has jurisdiction but to see whether its jurisdiction has been ousted.

He thus submits that it was necessary to see whether the agreement (by which any dispute must be

referred for arbitration), was in fact entered into by the respondent-plaintiff or not, and if eventually it is found that it had been entered into, obviously the jurisdiction of the civil court would stand ousted.

Notice of motion be issued to the respondent, returnable on 31.01.2020.

Process dasti as well.

In the meanwhile, the trial court would adjourn the matter to a date beyond that given by this court.

To be shown in the urgent motion list to determine as to whether the interim order needs to be continued or not and as to whether the petition itself can be disposed of finally, because as a matter of fact, it could have been disposed of today itself with a direction to the trial court to first determine that issue as a preliminary issue and thereafter only proceed with the case, but obviously even such a direction would entail setting aside of the impugned order, which naturally cannot be done without at least calling upon the respondents.

Today, Mr. Vinod K. Kaushal, Advocate, has put in an appearance on behalf of respondent no. 1, with Mr. Mehndiratta, learned counsel for the petitioner, submitting that in fact respondent no. 2 is an agent of the petitioner-company itself, who is present in court, but in fact need not be served of the notice issued in the petition, the claim only being against respondent no. 1.

On his statement, respondent no. 2 is ordered to be deleted from the array of the parties.

Learned counsel for respondent no. 1 submits that in terms of the aforesaid order of this court, the said respondent has no objection if this petition is disposed of by giving a direction to the trial court to first decide the issue of its

jurisdiction to try the suit, on the ground raised by the petitioner before that court, to the effect that in fact the suit is not maintainable in view of an arbitration clause being existent in the contract between the parties.

That being so, this petition is disposed of with a direction to the trial court that whether or not it has jurisdiction at all to try the suit, will be framed as a preliminary issue, which shall be then decided by that court at the outset and only thereafter, if it finds that it does have jurisdiction, would other issues be touched upon by it.

Obviously, no observation made by this court in the present petition shall be taken to be an observation on the merits of the case even as regards jurisdiction, which naturally would be gone into by the trial court wholly on its own merits.

January 31, 2020
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.