

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

**CR No.6556 of 2018(O&M)
Date of Decision:05.02.2020**

Mrs. Kusum Gupta

... Petitioner

Versus

RPS Infrastructure Limited

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ritesh Khatri, Advocate,
for the petitioner.

Mr. Sunil Garg, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner has approached this Court by way of this petition filed under Article 227 of the Constitution assailing the order dated 30.07.2018 passed by learned Civil Judge (Junior Division), Faridabad, under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') allowing the application filed by the respondent-defendant putting an end to the suit and referring the parties to avail remedy through alternative dispute resolution process by arbitration.

2. When this matter came on for hearing on January 30, 2020, the following order was passed:-

“Contents that the arbitration clause 53 in the agreement has not been signed by the petitioner and cannot be used as an arbitration clause. Argues that trial Court has wrongly allowed the application filed by the defendant to bring an end to this suit and divert parties to arbitration. On this short point, respondent has to be heard.

Learned proxy counsel appearing on behalf

of the respondent prays for a short adjournment.

Adjourned to 5.2.2020.

To be shown in the urgent list to attempt final disposal.”

2. The clause relied on by the respondent itself is a disputed question of fact and law to be decided by trial. The contention of the respondent while admitting that Clause 53 of the buyer's agreement is contained in an unsigned contract which also has annexures which are not authenticated under signatures of the parties, that it should be treated as one and, therefore, the impugned order is maintainable. In the alternative it is argued that if the order is set aside then the plaintiff would not be entitled to raise any plea in her favour on any of the recitals in the home buyer's agreement.

3. Heard learned counsel for the parties. Read the file.

4. On a consideration of the matter this court is of the view that as far as the first submission is concerned the same deserves to be rejected because it is peremptory to return any such firm finding by this Court at this stage of the proceedings in the suit filed by the petitioner on the applicability of the arbitration clause.

5. It lies within the province of the civil court to examine the evidential worth of the disputed document as a whole and accordingly, no observation can be made at this stage which might prejudice the case of the parties without them leading evidence. I would thus express no opinion on the merits on this aspect and leave it to the discretion of the civil court to determine.

6. Accordingly, the learned Civil Judge (Junior Division), Faridabad, fell in grave error of reasoning in allowing the application filed by the respondent under Section 8 of the Act terminating the suit.

Therefore, suit must proceed to allow parties to lead evidence to establish their rights.

7. The petition is allowed. Impugned order dated 30.07.2018 is quashed. Suit is revived. To cut short any delay, parties are directed to appear before the learned trial court on 28.02.2020.

(RAJIV NARAIN RAINA)
JUDGE

05.02.2020
monika

Whether speaking/reasoned	Yes
Whether reportable	Yes/No