

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

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**CWP No.18452 of 2021
Decided on : 16.09.2021**

H.P.S.Sandhu

... Petitioner

Versus

Capital Small Finance Bank Ltd. & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Ms.Jyoti Sareen, Advocate, for the petitioner.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the arbitration proceedings before the sole Arbitrator-respondent No.2, appointed by respondent No.1-Financial Institution.

It is submitted that the claim petition dated 27.04.2021 (Annexure P-4) filed by respondent No.1 is without jurisdiction and in contravention of the provisions of Recovery of Debts and Bankruptcy Act, 1993 (for short, the 'Act'). Counsel for the petitioner has vehemently submitted that the provisions of the Act provide that in case of any dispute regarding the recovery of debts due to banks and financial institutions, the jurisdiction would lie with the Tribunal set-up under the Act, while referring to Section 2, whereby the definition of 'bank' has been detailed.

It is submitted that under Section 18, the jurisdiction of the Courts or other authorities is barred, in relation to the matters specified under Section 17 of the Act. It is, thus, submitted that respondent No.2 as Arbitrator has, without jurisdiction, entered into reference by issuing notice dated 28.04.2021 (Annexure P-2) for answering the claim filed by respondent No.1 on the basis of a hypothecation agreement dated 26.05.2017 (Annexure P-3) on account of filing a claim petition under Section 23 of the Arbitration & Conciliation Act, 1996 on 27.04.2021 (Annexure P-4).

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In the considered opinion of this Court, the petitioner has an alternative and efficacious remedy available under Section 16 of the 1996 Act. Same reads as under:

“16. Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

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A plain reading of the same would go on to show that the Arbitral Tribunal has to rule on its own jurisdiction wherever the plea is raised before it which is not later than the submission of statement of defence. In such circumstances, once there is an alternative and efficacious remedy available to the petitioner, this Court is of the opinion that the extraordinary writ jurisdiction of this Court is not liable to be exercised. Reliance in this regard can be placed upon judgments of the Apex Court in **United Bank of India Vs. Satyawati Tondon & others 2010 (8) SCC 110** and **Authorized Officer, State Bank of Travancore & another Vs. Mathew K.C. (2018) 3 SCC 85**.

Faced with this situation, counsel does not press the present petition and submits that the petitioner may be permitted to take up the said plea before respondent No.2.

Ordered accordingly. Needless to say if such a plea is raised before respondent No.2, he is under a statutory obligation to decide the same.

September 16, 2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No