

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1328 of 2018**

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Bihar State Tourist Development Corporation Ltd. through its Managing
Director, Birchand Patel Path, Patna-800001

... .. Petitioner/s

Versus

Amit Kumar s/o Shiv Pujan Swami, resident of Kapatiya, P.S. Nalanda, P.O.
and District- Nalanda. At Present Nalanda Cafeterua, Nalanda, P.O. and
District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anshuman Jaipuriyar
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

5 28-01-2022 The present civil miscellaneous petition has been

preferred against the order dated 28.10.2013, passed in Title Suit

No. 01 of 2013 by the Additional District judge-1st, Nalanda,

Biharsharif, whereby the learned court below rejected the

petition dated 03.06.2013 filed by this defendant/petitioner

under Section 8 of the Arbitration and conciliation Act, 1996,

for referring the matter to the Arbitrator as per Clause 40 of the

‘arbitration agreement’ and accordingly to appoint the Arbitrator

from the list of the persons provided/agreed by the parties as

well as to decide the maintainability of the suit as preliminary

issue.

The learned counsel for the petitioner has submitted

that despite specific arbitration clause, the learned court below



has committed illegality for not referring the matter to the Arbitration by rejecting the application of the petitioner.

From perusal of Section 37 of the Arbitration and Conciliation Act, 1996, it appears that the order against which this civil miscellaneous petition has been filed, is appealable one.

Section 37 of of the Arbitration and Conciliation Act, 1996 reads as follows:-

*“37. **Appealable orders.**—(1)
[Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authored by law to hear appeals from original decrees of the Court passing the order, namely:—*

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.



(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.”

From bare perusal of Section 37(1) (a), it appears that any order passed under Section 8 of the said Act, refusing to refer the parties to arbitration is appealable one and accordingly this civil miscellaneous petition is not maintainable.

Accordingly, the civil miscellaneous petition is dismissed as not maintainable.

(Nawneet Kumar Pandey, J)

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