

03.01.2022
Ct. No.18
Item No.32
AJ.

C.O. 1288 of 2018

CAN 1 of 2021

CAN 2 of 2021

(Through Video Conference)

Sri Sukhendra Kumar Rudra

-Vs-

**M/s. Ma Tara Builders, represented
by Sri Bidyut Chakraborty & Anr.**

Mr. Mohit Gupta,
Mr. Shameek Chakraborty,
Ms. Ruxmini Basu Roy.
...for the petitioner.

Mr. Susenjit Banik,
Ms. Sutapa Mukhopadhyay.
.....for the opposite parties.

In Re: **CAN 1 of 2021**

with

CAN 2 of 2021

CAN 1 of 2021 is an application for recalling of the order dated December 05, 2019 whereby the revisional application was dismissed for default and CAN 2 of 2021 is an application for condonation of delay in filing the aforesaid application.

Perused the applications.

The said delay has been satisfactorily explained and sufficient cause has been shown in the application for recalling of the order dated December 05, 2019 which prevented the petitioner from appearing before the Court when the matter was called on for hearing.

The order dated December 5, 2019 is, therefore, recalled on condonation of delay.

C.O. 1288 of 2018 is restored to its original file and number.

CAN 1 of 2021 and CAN 2 of 2021 are disposed of without any order as to costs.

In Re: C.O. 1288 of 2018

By consent of the parties, the revisional application is taken up for hearing.

The defendant no.1 in a suit for declaration of title and permanent injunction is the petitioner of the present application under Article 227 of the Constitution of India which is directed against order dated March 15, 2018 passed by the 2nd Court of the learned Civil Judge (Junior Division), Sealdah in the said suit being Title Suit No. 10 of 2015.

The petitioner in the said suit filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 praying reference of the dispute sought to be raised in the suit to arbitration.

The learned Trial Judge, by the order impugned, has dismissed the said application on the ground that the original agreement has not been placed along with the said application.

Mr. Mohit Gupta, learned advocate appearing on behalf of the petitioner submits that the existence of the agreement and an arbitration clause therein are not in dispute, therefore, non-filing of the original agreement along with the application under Section 8 of the said Act of 1996 is a mere technicality for which the prayer for reference to the arbitration cannot be denied.

To fortify his aforesaid submissions he places reliance on the decision of the Hon'ble Supreme Court

in the case of ***BHARAT SEWA SANSTHAN –VS- U.P. ELECTRONICS CORPORATION LTD.*** reported in **(2007) 7 Supreme Court Cases 737** and a decision of the learned Single Judge of this Court in the case of ***RAJEEV MAHESHWARI & ANR. –VS- INDU KOCHER & ORS.*** reported in **2011(3) CHN (CAL) 680.**

Mr. Susenjit Banik, learned advocate appearing on behalf of the plaintiffs/opposite parties, on the other hand submits that the dispute sought to be raised in the connected suit does not come within the sweep of the arbitration clause of the said agreement. He emphatically submits that in fact there is no valid arbitration agreement between the parties requiring reference of the disputes raised in the suit to arbitration.

Having heard the learned advocate for the parties and on perusal of the records it appears that the existence of an agreement between the parties and an arbitration clause in the said agreement are not in dispute. Whether the disputes sought to be raised in the suit are coming within the purview of the arbitration clause of the said agreement or not is not a relevant consideration in deciding an application under Section 8 of the said Act of 1996.

The Court in referring the parties to arbitration under the said provision of the said Act is only obliged to find prima facie that there exists a valid arbitration agreement.

The existence of an agreement with an arbitration clause therein when is not in dispute, filing

of the original agreement along with the application for referring the parties to the arbitration is a mere technicality for which the said prayer cannot be denied. The judgments cited by Mr. Gupta are apposite to the context.

The order impugned for the aforesaid reason is not sustainable and is accordingly set aside.

The learned Trial Judge is requested to decide the said application afresh in accordance with law.

C.O. 1288 of 2018 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)