

07.09.2022
KC(18)

C.O. 2654 of 2022
Madan Mohan Hazra
-versus-
Sanjoy Hazra and Ors.

Mr. Avirup Chatterjee,
Mr. Soumo Roy.....For the petitioner.

Learned advocate for the petitioner is present.

This application is against the order dated August 17, 2022 passed by the learned Judge, Commercial Court, Asansol in Money Suit No. 20 of 2021. The petitioner being aggrieved by the order has come up with the present application.

Learned advocate for the petitioner submits that pursuant to filing of the suit, the written statement was filed and thereafter the defendants chose to file the application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter the said Act). Learned advocate further submits that the learned court erred in entertaining the application under Section 8 of the said Act pursuant to filing of the written statement which is against the provision contained in Section 8 of the said statute. It is also submitted that in order to file application under Section 8 of the said Act, the original agreement containing the arbitration clause or the certified copy thereof must be filed along with the

application, but the defendants did not file the same. Although the defendants did not file the original agreement or a certified copy thereof, but after hearing of the arguments they were permitted to file the same by the learned trial court. Learned advocate draws attention to the order dated August 17, 2022 passed by the learned trial court.

Learned advocate for the petitioner relies upon the following decision of the Hon'ble Supreme Court : Atul Singh and Ors. -vs- Sunil Kumar Singh and Ors., reported in (2008) 2 SCC page 602. The Hon'ble Supreme Court in the said judgment observed as follows:

“There is no whisper in the petition dated 28-02-2005 that the original arbitration agreement or a duly certified copy thereof is being filed along with the application. Therefore, there was a clear non-compliance with sub-section (2) of Section 8 of the 1996 Act which is a mandatory provision and the dispute could not have been referred to arbitration. Learned counsel for the respondent has submitted that a copy of the partnership deed was on the record of the case. However, in order to satisfy the requirement of sub-section (2) of Section 8 of the Act, Defendant 3 should have filed the original arbitration agreement or a duly certified copy thereof along with the petition filed by him on 28-02-2005, which he did not do. Therefore, no order for referring the dispute to arbitration could have been passed in the suit.”

Upon considering the provisions of Section 8 of the said Act and the decision of the Hon'ble Supreme Court this court finds sufficient substance in the case of the petitioner and the argument of the learned

advocate. But when an application is filed under Section 8 of the said Act, the said application is to be decided upon bearing both the parties. Learned court upon hearing both the parties may, either allow the said application or dismiss the same.

In the instant case, no final order is passed by the learned court below. Thus, the petitioner is granted liberty to make relevant submissions with regard to points of law and maintainability of the application under Section 8 of the said Act before the learned trial court. If such submission is made, learned court shall consider maintainability of the Section 8 application as well as the merits. Upon hearing both the parties, learned Judge shall take a reasoned decision in accordance with law.

With the above mentioned observation, this application is disposed of.

(BISWAROOP CHOWDHURY, J.)