

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 1736 OF 2016

***State Bank of India Staff Association* *Petitioners*
***Co-operative Society Odisha Ltd.,*
*Cuttack and others*****

Mr. S.S. Bhuyan, Advocate

-versus-

***Debashram Apartment Owners Welfare* *Opp. Parties*
Society and another**

Mr. Devashis Panda, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.12.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. This CMP has been filed assailing the order dated 5th November, 2016 (Annexure-5) passed by learned Civil Judge (Senior Division), Bhubaneswar in I.A. No.1 of 2016 (arising out of C.S. No. 1886 of 2016), whereby an application filed by the Defendant No.1-Petitioner No.1 under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') has been rejected.
3. 3. Mr. Bhuyan, learned counsel for the Petitioners submits that the application under Section 8 of the Act has been rejected only on the ground that neither the arbitration agreement in original nor duly certified copy thereof was filed along with the application in compliance with the mandatory provision of Section 8 (2) of the Act. Thus, learned trial Court relying upon the case law in *Vishal Retail Ltd. and another –v- Achhar Singh Bhumber and others*, reported in 2011 (2) CLR 68, rejected the petition under Section 8 of the Act. He further submits that although the

arbitration agreement was not filed along with the application under Section 8 of the Act, but subsequently the said agreement was filed, wherein Clause-15 (Q) relates to arbitration. Although this aspect has been reflected in the impugned order under Annexure-5 and learned trial Court has categorically held that the dispute should be resolved through arbitration only, but erroneously observing that the application did not accompany the original arbitration agreement, rejected the petition. Hence, the impugned order under Annexure-5 is not sustainable.

4. Mr. Panda, learned counsel appearing for Opposite Party Nos.1 and 2 submits that he has no instruction in the matter.

5. Considering the submission made by learned counsel for the Petitioners and on perusal of the record, it appears that the original arbitration agreement was filed by the Defendant No.1- Petitioner No.1 subsequent to filing of the application under Section 8 of the Act. Be that as it may, the original arbitration agreement being available with learned trial Court at the time of adjudication of the application under Section 8 of the Act, it should not have resorted to hyper technicality in rejecting the petition under Section 8 of the Act.

6. In that view of the matter, the impugned order under Annexure-5 is set aside and the matter is remitted back to the learned trial Court for fresh adjudication of the application under Section 8 of the Act, giving opportunity of hearing to the parties concerned.

7. Since the suit is of the year, 2016, learned trial Court shall make an endeavour to dispose of the application under Section 8 of

the Act as expeditiously as possible preferably within a period of one month from the date of production of certified copy of this order, giving opportunity of hearing to the parties concerned.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks

