

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

CR-6785-2018 (O&M)

Date of pronouncement: 09.12.2022

AMARJTI KAUR

...Petitioner

Versus

UTTAR HARYANA BIJLI VITRAN NIGAM AND ANR

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Brijender Kaushik, Advocate for the petitioner.

Ms. Ruchita Garg, Advocate for
Mr. Vishal Garg, Advocate for the respondents.

H.S. MADAAN, J.

Briefly stated facts of the case are that plaintiff Amarjit Kaur had brought a suit against Uttar Haryana Bijli Vitran Nigam, Panchkula (for short 'UHBVN'), and its SDO seeking a declaration that checking report dated 16.04.2010 and demand of Rs.6,31,246/- against electricity connection bearing No.SU42-1100-X/WSP-247 served upon the plaintiff is wrong, illegal, arbitrary etc., and the plaintiff was not liable to pay the said demanded amount but had deposited it under protest and compulsion on 20.04.2010 besides carving for grant of mandatory injunction directing the defendants to refund the said amount.

2. On being given notice, the defendants had put in appearance and an application under Section 8 of the Arbitration & Conciliation Act was filed by them for referring the parties to arbitration in view of such

agreement between them. In the application, the applicants/defendants contended that the electricity connection to plaintiff/respondent was released under an agreement duly executed between them, which contains an arbitration clause i.e. Clause No.29 providing that every dispute, difference, question, matter or claim arising out of or concerning or relating to the supply of electricity between the Nigam and consumer shall be referred to the sole arbitrator of Chief Engineer (Planning and Construction) of the Nigam or his nominee not below the rank of Superintending Engineer. It is further provided that decision of the arbitration shall be final and binding on the consumer and the Nigam. Therefore, application be accepted.

3. This application was opposed by the plaintiff/respondent contending that the dispute involved is not covered under the arbitration clause. Even otherwise, the applicants/defendants are estopped from filing the present application by their own act and conduct. The plaintiffs had challenged the demand in question firstly in the year 2010 by approaching the Consumer Forum by filing a complaint under Section 12 of the Consumer Protection Act, which was disposed of by DCDRF, Ambala, vide order dated 23.07.2013. That complaint was hotly contested without invoking arbitration clause. The defendants had appeared in the Court on 03.03.2014 and on 01.07.2014, they filed an application under Order 7 Rule 11 CPC and after contesting, the case hotly for about eight years, filed the application in question, which is not maintainable when there are serious allegations of theft, the matter cannot be referred to

Arbitrator and it cannot be adjudicated by him, therefore, application be dismissed.

4. After hearing arguments, vide detailed order dt. 14.08.2018, the trial Court allowed the application, referring the matter to Arbitrator to be appointed by applicant/defendants after giving proper notice to the plaintiff.

5. This order left the plaintiff aggrieved and the present revision petition has been filed and its notice was given to the respondents who have put in appearance through counsel.

6. I have heard learned counsel for the parties besides going through the record.

7. On perusal of the impugned order passed by the trial Court goes to show that it has observed that plaintiff does not deny herself to be consumer of electricity supplied by the UHBVN and having entered into an agreement with the defendant No.1 in view of Clause 29 of the agreement, the jurisdiction of Civil Court to entertain and try the suit is barred. The trial Court has relied upon two judgments **Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleums, 2003 (3) RCR Civil 686 (SC)** and **Regent Automobile Vs. Indian Oil Corporation Ltd., 2008(3) RCR Civil 752** to the effect that once it is admitted/established that there is an Arbitration clause in the agreement, it is mandatory for the Court to refer the dispute to arbitration. Dealing with the objections raised by the plaintiff that the application filed by the defendants is highly belated, they had not invoked it before consumer forum where the matter was hotly contested and before the trial Court

also, it had been filed after gross delay. However, the trial Court referring to judgment **Rashtriya Ispat Nigam Ltd., Vs M/s Verma Transport Company, 2006(4) RCR Civil 478 (SC)**, has observed that in this case, the applicants have filed the present application before filing the written statement and no statement on the substance of the dispute has been filed by the defendants in the suit and in fact the earlier application U/o 7 Rule 11 CPC was also filed on the ground that jurisdiction of the Civil Court is barred. District Consumer Forum had also dismissed the complaint for the reason of the same being not maintainable. Therefore, it cannot be said that the defendants have waived their right to seek arbitration and subjected themselves to the jurisdiction of the Court causing any delay amounting to waiving of right. With regard to objection that since there are serious allegations of theft against the plaintiff, the matter cannot be adjudicated upon by the Arbitrator, however, Clause 29 of the arbitration agreement does not exclude the matters with regard to theft of electricity from its preview. Therefore, such type of dispute can definitely be adjudicated upon by the Arbitrator.

8. Learned counsel for the revisionist referring to judgments **Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. & Ors.**, in Civil Appeal No.5440-2002 decided on 15.04.2011, **Rashtriya Ispat Nigam Ltd., and Anr., Vs M/s Verma Transport Company, 2006(4) RCR Civil 478** has submitted that the matter could have been referred to Arbitrator since the application for doing so was not filed at the first instance to say before the Consumer Forum, however, such contention is

without any merit. The judgments cited does not help the petitioner in any manner. One has to see the things in proper context, when the dispute between the parties was pending before the District Consumer Forum. The complaint had been dismissed being not maintainable and thereafter, in the suit, the defendants had filed an application which was allowed. No fault can be found with the Court in making reference of dispute to arbitration. There is no illegality or infirmity in the order passed in that regard. The revision petition is found to be without any merit and is dismissed accordingly.

09.12.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No