

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

123

CR No.574 of 2022 (O&M)
DATE OF DECISION : 28th FEBRUARY, 2022

**M/s. Chat Aroma through its proprietor Parvinder Sharma,
Manimajra, Chandigarh**

.... Petitioner

Versus

**Hamir Real Estate Pvt. Ltd., 104A, Triveni Plaza Building, WEA,
Karol Bagh, New Delhi, through its authorized representative & anr.**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court
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Present : Ms. Priyanka Kansal, Advocate for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saurabh Gautam, Advocate;
Mr. Saksham Mahajan, Advocate;
Mr. Rohit Khanna, Advocate &
Mr. Abhiudai Singh, Advocate for respondent No.1.

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RAJBIR SEHRAWAT, J. (Oral)

1. The petitioner has filed this petition under Article 227 of the Constitution of India, praying for setting aside order dated 27.01.2022 (Annexure P-12) passed by the Additional District Judge, SAS Nagar, Mohali, vide which the order dated 18.10.2021 (Annexure P-10) passed by Civil Judge (Junior Division), SAS Nagar, Mohali, has been set aside and the appeal under Section 37 of the Arbitration and Conciliation Act (in short, 'the Arbitration Act') filed by the respondent has been allowed; with a further prayer to dismiss the application filed under Section 8 of

the Arbitration Act filed by the respondent; along with certain other prayers.

2. It is submitted by the counsel for the petitioner that the respondents, the defendants in the suit for injunction against dispossession, had made the statement before the trial court that they will not dispossess the petitioner except in accordance with law. This was the main prayer in the plaint. Therefore, the respondents had submitted to the jurisdiction of the court qua the subject matter in almost its entirety. Had the court not adjourned the matter on the said date, the main suit itself would have been disposed off on the basis of the above statement. It was only in the discretion of the trial court that the matter was referred to the *Lok Adalat* for disposal despite the above said statement of the respondents. However, after going before the *Lok Adalat* the respondents took a stand which ruled out any compromise between the parties. Hence, the matter was referred back to the trial court. After the suit had come to the trial court the counsel for the respondents had again sought time to file written statement. Accordingly the case was adjourned by the court. It is only on such adjourned date that the application under Section 8 of the Arbitration Act was filed by the respondents. In view of this factual situation, the application filed by the respondents becomes the one filed later than the first statement made by the respondents qua the subject matter, whereas, the Act prescribes that such application should have been made not later than such date of making first statement qua the substance of the suit. The counsel has relied upon the judgment of Hon'ble the Supreme Court rendered in the case of ***Booz Allen and***

Hamilton Inc. Vs. SBI Homes Finance Limited & ors. (2011) 5 SCC

322, particularly para 25 thereof, which reads as under:

25. Not only filing of the written statement in a suit, but filing of any statement, application, affidavit filed by a defendant prior to the filing of the written statement will be construed as 'submission of a statement on the substance of the dispute', if by filing such statement/application/affidavit, the defendant shows his intention to submit himself to the jurisdiction of the court and waive his right to seek reference to arbitration. But filing of a reply by a defendant, to an application for temporary injunction/attachment before judgment/appointment of Receiver, cannot be considered as submission of a statement on the substance of the dispute, as that is done to avoid an interim order being made against him.

3. Accordingly, it is submitted by the counsel for the petitioner that since the first statement on the substance had come from the respondents wherein they had expressed their intention not to dispossess the petitioner, except in accordance with law, therefore, any subsequent application, moved under Section 8 of the Arbitration Act, would not be sufficient to take away the jurisdiction of the civil court.

4. Notice of motion.

5. Mr. Abhiudai Singh, Advocate, assisting Mr. Sumeet Mahajan, Senior Advocate, accepts notice on behalf of respondents.

6. The learned Senior counsel for the respondents has submitted that the respondents had, in fact, made a statement on 20.07.2021. In that statement the petitioner had not submitted to the

jurisdiction of the court, rather, had asserted his right to take action against the respondents-defendants, in accordance with law, including the agreement relating to the arbitration. Hence, this statement, by any means, cannot be interpreted to mean that the petitioner had relinquished his right to seek arbitration or had even shown any intention not to seek arbitration in the matter. Moreover, that was a statement made at the time of consideration of interim injunction and was made to avoid injunction. The subsequent order passed by the Court on 27.07.2021 was only with regard to referring the matter to the *Lok Adalat*. The reference to the *Lok Adalat* was only for a limited purpose of finding a meeting ground between the parties. Since that effort had failed, therefore, the matter was returned to the court by the *Lok Adalat* on 11.09.2021 and the matter was fixed for 17.09.2021. On the said date the case was adjourned for filing of the written statement and the matter was adjourned for 24.09.2021. This was, in fact, the first opportunity for the respondents-defendants to make statement on the substance of the suit. On that date the respondents had filed application under Section 8 of the Arbitration Act. Therefore, the court below has rightly reversed the order passed by the trial court and has ordered for referring the matter to the Arbitrator. The counsel for the respondents has also relied upon the judgment of the Supreme Court rendered in ***Booz Allen (supra)*** and ***Greaves Cotton Ltd. Vs. United Machinery and Appliances (2017) 2 SCC 268***. Accordingly it is submitted that merely the statement which was made to avoid an interim order at the stage of consideration of the application under Order 39 Rule 2 CPC, cannot be taken as statement on the substance of the

subject matter. Hence, the present petition deserves to be dismissed and the order of referring the parties to arbitration, deserves to be upheld.

7. Having heard the counsel for the parties and having perused the record. This court finds substance in the argument of the learned counsel for the respondents. Before proceeding further it would be apposite to have reference to the statement made by the respondents before the trial court, which reads as under:

“Statement dated 20.07.2021:

Statement of counsel for defendant has been recorded that the dispute in this suit emanates from an agreement, which contains an arbitration clause. Further, the plaintiff is duty bound to pay/clear dues as per its obligations stipulated in the agreement and it is under obligation to comply with the same. Without prejudice to the rights and entitlements of the defendant under the agreement and law, it shall not illegally dispossess the plaintiff except in due course of law and terms and conditions of the agreement.”

“Statement dated 27.07.2021:

Statement of Sh. Shekhar Verma, Advocate counsel for defendant has been recorded that on instructions from the defendant, he hereby states that the defendant shall not interfere in the peaceful possession of the plaintiff and shall not dispossess it illegally and forcibly except in due course of law and as per terms and conditions of the agreement.

To this effect statement of Sh. Kabir Vadhera, Advocate counsel for plaintiff has recorded that he has gone through the statement as recorded by the counsel for the defendant and he has no objection in lieu of the statement made on behalf of the counsel

for defendant, if the present suit is dismissed as withdrawn without prejudice to legal remedies available as per law. In case of any infringement of the statement, the plaintiff reserve the right to seek appropriate remedy as per law. The suit may be kindly dismissed as withdrawn being satisfied at this stage. Heard. In view of the above statement, file be put up before Lok Adalat on 11.09.2021 for further proceedings.”

8. The perusal of aforesaid statements shows it clearly that although the respondents had made a statement before the trial court qua not dispossessing the plaintiff, except in accordance with law, however, the respondents had specified the law which they would be following to get eviction of the petitioner. The said statements show that respondents had made these statements subject to seeking recourse under the agreement and the arbitration. Hence, by any means, it cannot be said that the respondents had waived of their right to seek arbitration and had shown any intention to submit it to the jurisdiction of the civil court qua the subject matter of the suit. Hence, even if the statements dated 20.07.2021 or 27.07.2021 are taken to be the first statement made by the respondents, then also, the intention of the respondents is clear that they had communicated to the court that they would take recourse to the provisions of the agreement between the parties and accordingly, to the arbitration proceedings.

9. Although the learned counsel for the petitioner has submitted that the respondents had made the first statement qua the subject matter of the dispute by making a statement that they would not

dispossess the petitioner except in accordance with law, and that had the matter not been referred to the *Lok Adalat* the civil court could have disposed off the suit on the same day as well, hence, any application moved thereafter is prohibited under the provisions of Section 8 of the Arbitration Act, however, this court does not find any substance in this argument of the counsel for the petitioner. Rather, this court finds the reliance of the counsel for the respondents on the judgment in case of ***Booz Allen (supra)*** to be well placed. That judgment of the Supreme Court has amply clarified that any statement made at the stage of and for the purpose of opposition to the application under Order 39 Rules 1 & 2 or to prevent any interim order being passed by the court, could not be taken as a statement on the subject matter of the dispute. Hence, it is clear that in the present case the date of making first statement on the subject matter of the dispute had not yet come by the time the application under Section 8 of the Arbitration Act was filed by the respondents. Except the above mentioned statements made by the respondents, no other statement was ever made. Rather the time was taken to file written statement, which, if filed, could have been taken as a first statement. Anything said earlier to this was nothing but an attempt to prevent the interim order being passed by the court. The judgment of the Hon'ble Supreme Court in ***Booz Allen (supra)*** fully supports the case of the respondents through the law laid down by it as reflected in para Nos.25 and 26 of the said judgment.

10. As mentioned above, any of the statements dated 20.07.2021 or 27.07.2021 does not show any intention of the respondents to waive of

the recourse to the arbitral proceedings. Rather the statements are in the nature of re-enforcing their assertion that they would seek arbitration under the agreement between the parties. Besides the above said statement, the counsel for the petitioner has not been able to refer to any other statement of any kind, made by respondents, which could be interpreted by this court as the respondents waiving the intention to go in arbitration proceedings and submitting to the jurisdiction of the civil court. Merely because, on the statements referred above, the matter was sent by the trial court to the *Lok Adalat* for disposal, would not be conclusive to show that the above said expression was a willingness to the submission to the jurisdiction of the civil court. Again, this conclusion is reiterated by the fact that before the *Lok Adalat* as well; the respondents had not agreed to any claim made on the subject matter of the dispute and the matter was referred back to the court. Hence, it is clear that except above said statements, which reflect the intention of the respondents to take recourse to the arbitration proceedings, there is nothing on record to show that the respondents ever submitted to the jurisdiction of the court.

11. In view of the above, finding no merit in the present petition, the same is dismissed. The order dated 27.01.2022 (Annexure P-12) passed by the lower appellate court is upheld.

28th FEBRUARY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No