

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

CR-5959-2022 (O&M)

Date of decision: 16.12.2022

Bell Finvest India Ltd.

....Petitioner

Versus

Mukesh Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vikas Mohan Gupta, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. The respondent is a former employee of the petitioner. He is stated to be poor. He has filed a suit for the recovery of salary of Rs.60,260/- which is claimed to have remained unpaid. As per the case of the plaintiff-respondent, he has worked for the petitioner from 09.12.2017 to 01.05.2018 i.e for 5 months. The respondent was posted in Karnal. On the basis of an employment contract, the petitioner claims that the dispute is required to be resolved through the medium of arbitration at Mumbai. Both the courts have dismissed the application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '1996 Act').

2. Heard the learned counsel representing the petitioner at length and with his able assistance perused the paperbook.

3. Learned counsel representing the petitioner contends that Section 8 of the 1996 Act mandates the civil court to refer the parties to arbitration, particularly when they have entered into an agreement to refer such disputes to arbitration.

4. This Court has considered the submission of the learned counsel representing the petitioner. The alleged arbitration clause reads as under:-

“Any dispute or difference or claim arising out of or in connection with this contract shall be resolved by reference to arbitrator appointed by Bell Finvest India Ltd., at its sole discretion. The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 and the Rules framed thereunder and any amendments thereto. The language of arbitration shall be English. The venue of arbitration shall be at Mumbai and courts at Mumbai shall have exclusive jurisdiction. The award of the arbitrator shall be final and binding on the parties. The governing law shall be the laws of India.”

5. The plaintiff has resigned from the said post. Thereafter, he filed a suit for recovery of the arrears of salary. The plaintiff has always remained posted at Karnal, whereas, as per the agreement, the seat of Arbitration is situated at Mumbai. In the facts and circumstances of the present case, particularly when the plaintiff was only working at a monthly salary of less than Rs.25,000/- per month, it would not be appropriate to drive the respondent to Mumbai for recovery of Rs.60,000/- only. Moreover, it is apparent from the reading of the above-extracted clause that the petitioner, on account of having a higher bargaining power, has unreasonably exercised the same in his favour and to the disadvantage of the respondent. The Supreme Court has categorically held that such terms/clauses in a contract, which reflect misuse of position, must be struck down being against the public policy

under Section 23 of the Indian Contract Act, 1872. Thus, this Court does not find it appropriate to interfere in the exercise of its limited revisional jurisdiction under Article 227 of the Constitution of India.

6. Hence, the present petition is dismissed, in the interest of justice.

7. All the pending miscellaneous applications, if any, are also disposed of.

16.12.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE