

July 6, 2023
Sl. No.17
Court No.19
s.biswas

CO 248 of 2022

Adhunik Infotech Limited
(now known as Datawave Infotech Limited)
vs.
LMJ Business Centre Pvt. Ltd. and others

Mr. Aniruddha Chatterjee
Mr. Arik Banerjee
Mr. Nilay Sengupta
Mr. Sujit Banerjee

... for the petitioner

Mr. Reetobrato Mitra
Mr. S. R. Saha

... for the opposite parties

The revisional application has been filed against an order dated March 22, 2021 passed by the learned Civil Judge (Senior Division), 2nd Court, Alipore, in Title Suit NO.532 of 2015. By the order impugned, the learned court below refused to refer the dispute to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act). The petitioner is aggrieved by the aforementioned order and has filed this revisional application.

Mr. Chatterjee, learned advocate appearing on behalf of the petitioner, submits that the application may be treated as one under Order 7 Rule 11(d) of the Code of Civil Procedure, for rejection of the plaint and dismissal of the same would be amenable to the jurisdiction of this court.

This court is not in agreement with Mr. Chatterjee for the following reasons:

- a) Section 8 of the said Act empowers a judicial authority to refer the parties to arbitration where there is an arbitration agreement;
- b) The court refused to exercise such jurisdiction;
- c) As specific application was filed under Section 8 of the Act for dismissal of the suit on the ground of existence of an arbitration clause – the application cannot be treated as one under Order 7 Rule 11(d) of the Code.
- d) Section 37(1)(d) provides that an appeal would lie from an order refusing to refer the parties to arbitration under Section 8 of the Act;
- e) Learned court has entered into the merits of the application filed by the petitioner and has passed an order with reasons. The superintending power of this court cannot be invoked.
- f) Had it been an order passed wholly without jurisdiction or had it been an order passed on extraneous evidence, the same could have been treated as perverse and this court could have entertained the revisional application. If an order is challenged on the ground of the same being erroneous, an appeal would be the correct course of action.

The petitioner is at liberty to approach the appellate forum in accordance with law. The plea of proceeding the case in a different forum, shall be available. The petitioner is at liberty to take appropriate steps.

The prayer of Mr. Chatterjee for limited stay cannot be entertained. As this court does not entertain the revisional application, such prayer is denied. The petitioner can always pray for adjournment before the learned court below.

Liberty is granted to the petitioner to take back the certified copy of the order impugned, upon furnishing a photocopy thereof.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

(Shampa Sarkar, J.)