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16.8.2023
Ct. 236
SB

C.O. 272 of 2014

In the matter of : Sri Sanatan Dharma Vidyalaya Trust & Ors.

Mr. Partha Pratim Roy
Mr. Suman Dey .. for the petitioners.

Mr. Dhiraj Trivedi
Mr. Sunil Gupta
Ms. Swapna Jha ... for the opposite parties.

This revisional application impeaches the Order No. 21 dated 29.01.2013 passed by learned Judge, 12th Bench, City Civil Court, Calcutta in Title Suit No. 1596 of 2011. By the order impugned, learned Trial Court was pleased to accept the contention of the defendants that the agreement entered into by and between the parties since contained a clause for arbitration, learned Trial Court was pleased to allow the petitioners under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996.

The plaintiffs have assailed the impugned order on the ground that the defendant after entering into appearance since filed written objection to the petition filed by the plaintiffs for injunction, the defendant thereby has waived the right to seek an order to refer the matter for arbitration.

Heard Mr. Roy, learned counsel appearing on behalf of the petitioners and Mr. Trivedi, learned counsel representing the opposite party.

By judicial pronouncement of Hon'ble Supreme Court it has now become the settled principle of law that the expression

has laid down under Section 8(1) of 1996 Act - first statement on the substance of the dispute must be contradistinguished with the expression written statement. Hon'ble Apex Court in **Rashtriya Ispat Nigam Ltd. and Another vs. Verma Transport Co.** reported in **(2006) 7 SCC 275** held that ;

"The expression "first statement on the substance of the dispute" contained in Section 8(1) of the 1996 Act must be contradistinguished with the expression written statement". It employs submission of the party to the jurisdiction of the judicial authority. What is, therefore, needed is a finding on the part of the judicial authority that the party has waived its right to invoke the arbitration clause. If an application is filed before actually filing the first statement on the substance of the dispute, in our opinion, the party cannot be said to have waived its right or acquiesced itself to the jurisdiction of the court. What is, therefore, material is as to whether the petitioner has filed his first statement on the substance of the dispute or not, if not his application under Section 8 of the 1996 Act, may not be held wholly unmaintainable. We would deal with this question in some detail, a little later."

The same view has been taken by the Hon'ble Apex Court in **Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and Others** reported in **AIR 2011 SCC 2507** wherein it is held :

"18. In this case, the counter affidavit dated 15.12.1999, filed by the appellant in reply to the notice of motion (seeking appointment of a receiver and grant of a temporary injunction) clearly stated that the reply affidavit was being filed for the limited purpose of opposing the interim relief. Even in the absence of such a disclaimer, filing a detailed objection to an application for interim relief cannot be considered to be submission of a statement on the substance of the dispute resulting in submitting oneself to the jurisdiction of the court."

From the attending facts of the case the defendant cannot be said to have waived his right and the said written objection cannot be considered as submission of a statement on the substance of the dispute. The written objection was filed to

avoid or to contest the interim order that could have been made against the defendant.

The revisional application, therefore, does not merit any consideration and is dismissed. However, this will not preclude the plaintiff to take out appropriate application before the learned Trial Court according to law.

With the aforesaid observation, the revisional application is disposed of alongwith application, if any.

(Siddhartha Roy Chowdhury, J.)