

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13753 OF 2023

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2023.11.06
17:02:31 +0530

Jai Ambe Manufacturers Ltd. & Ors. ... Petitioners

V/s.

Pacific Infotech Pvt. Ltd. ... Respondent

Mr. Devendra Tiwari i/by Law Chamber of Siddharth
Murarka for the petitioner.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 6, 2023

P.C.:

1. The petitioners are challenging order passed by the Trial Court rejecting notice of motion under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that the suit is barred by Section 8 of the Arbitration & Conciliation Act, 1996.

2. The bar alleged by the petitioners is under Section 5 of the Arbitration & Conciliation Act, 1996 does not take away power of the Civil Court to entertain the suit if parties acquiesced to the jurisdiction of the Civil Court. On existence of arbitration clause, if a party to the suit files an application under Section 8 of the Arbitration and Conciliation Act, 1996, the Trial Court on being satisfied about existence of arbitration clause is required to refer the suit to the Arbitrator, provided such objection is raised at the time of first delivery of defense.

3. Therefore, in my opinion, the Trial Court has rightly rejected the application under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

4. However, it will be open for the petitioners to file an application under Section 8 of the Arbitration and Conciliation Act, 1996 and if the Trial Court is satisfied about the existence of arbitration clause, and other conditions of Section 8, the Trial Court shall pass appropriate order on such application.

5. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)