

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3210 OF 2022

Trident Ltd __ Vs. __ Gurulaxmi Cottex Pvt Ltd

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.S.Dharmadhikari, Advocate for petitioner
Mr. R.M.Tahaliyani, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/03/2023

1] Heard Mr. Dharmadhikari, learned counsel for the petitioner and Mr. Tahiliyani, learned counsel for the respondent.

2] The petition challenges the order dated 25.4.2022 (pg.108), whereby the suit has been proceeded without Written Statement; the order dated 10.8.2022 passed below Exh.10, an application under Section 8 of the Arbitration and Conciliation Act, by which the application has been filed as 'not pressed' on the statement of the counsel appearing for the petitioner (pg.109). The other prayers made in the petition are not pressed.

3] It is contended by Mr. Dharmadhikari, learned counsel for the petitioner that the purchase

order dated 20.8.2020 contained an arbitration clause (pg.31), as a result of which the application at Exh.10 was filed. It is contended that though the application was not pressed by the learned counsel for the petitioner, however, that were not his instructions. It is then brought to my notice that based upon the same purchase order and the arbitration clause as contained therein, the learned Single Judge of the Punjab & Haryana High Court has in an application under Section 11(6) of the Arbitration and Conciliation Act, by the order dated 3.3.2023, appointed Mr. Ashok Paul Batra, Additional District and Sessions Judge (Retd.) as the arbitrator to decide the disputes between the parties. It is therefore contended that Commercial Suit No. 4/2021 in light of the above position would clearly not be maintainable, as the dispute will have to be referred to the arbitrator.

4] Mr.Tahaliyani, learned counsel for the respondent submits that the claim made by the respondent in Commercial Suit No. 4/2021 would still survive, in spite of the appointment of the arbitrator and since the application at Exh.10 was not pressed, the Court is now precluded from considering the plea.

5] The copy of the order dated 3.3.2023 passed in Arbitration Case No. 222/2021 has been placed on record, which indicate the appointment of the arbitrator. The order further indicates that it was passed after noting the objections on behalf of the present respondent that there was no clause for dispute resolution to arbitration and the dispute was not arbitrable.

6] Since an arbitrator has now been appointed in terms of the arbitration clause as contained in the purchase order dated 20.8.2020, it would no longer be permissible for the respondent to proceed with the Commercial Suit No. 4/2021, as the subject matter therein also stems out of the purchase order dated 20.8.2020, which contains the arbitration clause. Because of the order dated 25.4.2022, there is no Written Statement on behalf of the present petitioner in Commercial Suit No. 4/2021. In that view of the matter, it is therefore necessary for the proceedings in Commercial Suit No. 4/21 to be brought in line, in light of what has been held in Arbitration Case No. 222/2021 by appointing arbitrator, as the same will also have to be taken into consideration by the Commercial Court

before proceeding ahead with Commercial Suit No. 4/2021.

7] In view of the above position, it would be appropriate if the order below Exh.10 is set aside, as that would be in the interest of justice and permits the Commercial Court to chart out a course of action after taking into consideration the order dated 3.3.2023 passed in Arbitration Case No. 222/2021. The order dated 10.8.2022 passed below Exh.10 is therefore quashed and set aside and the learned Commercial Court is directed to decide the application below Exh.10 in accordance with law. In so far as the order dated 25.4.2022 is concerned, since the provisions of Order 8 Rule 1 proviso of CPC makes the time period mandatory, no interference can be made with the same.

8] The petition is partly allowed in above terms. No costs.

JUDGE

Rvjalit