



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

Arbitration Appeal (AA) No. 44 of 2023

Desein Private Limited Consulting Engineers, New Delhi through its
Versus
Bhairab Dutt Joshi

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.S.Dhore, Advocate for the appellant.

Shri Saurabh Singha, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 3rd NOVEMBER, 2023.

Heard.

2. The application moved by the appellant under Section 8 of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred as 'Arbitration Act, 1996') in a proceeding filed by the respondent under Section 33-C(2) of the Industrial Dispute Act, 1947 to refer the matter to the arbitrator, came to be rejected vide impugned order dated 11th September, 2023.

3. I have heard learned counsel for the respective parties.

4. Shri Dhore, learned counsel for the appellant submits that there is an arbitration agreement more particularly clause 12 in the terms and conditions of an appointment of the respondent and as per the said agreement in case of any dispute with regard to the

interpretation of appointment letter with regard to the matter connected with the employment such dispute shall be referred to the sole-arbitration. He, therefore, submits that the application was moved under Section 8 of the Arbitration Act, 1996 which came to be rejected on the ground that the petitioner does not fulfill the condition of Section 8 of the Arbitration Act, 1996. He, therefore, prays for quashing and setting aside the impugned order dated 19th September, 2023.

5. On the other hand Shri Singha, learned counsel for the respondent strongly opposes the arbitration appeal and submits that in earlier round before the learned Labour Court as well as before the learned Labour Commissioner, the appellant remained absent and after the direction by the learned Labour Court to the petitioner to pay amount of Rs.69,728/- towards dues along with interest, he approached to this Court on technical aspect and the matter was remanded back to the learned Labour Court vide order passed by this Court on 7th June, 2023 in writ petition 4489 of 2022.

6. He, therefore, submits that as he failed to appear in earlier round before the learned Labour Commissioner as well as learned Labour Court, after the remand the filing of an application under Section 8

cannot be considered as application filed at the first instance. Accordingly, he prays for dismissal of the arbitration appeal.

7. In the light of rival contentions of both the parties, I have perused the record and the impugned order.

8. There is no dispute that on 7th June, 2023, this Court set aside the order passed by the learned Labour Court on 28th August, 2021 and remanded the matter back to the learned Labour Court to decide the application under Section 33-C(2) of the Industrial Dispute Act, 1947 afresh. While remanding the matter, this Court has observed that the learned Labour Court has failed to exercise its jurisdiction in a proper manner as the Labour Court without determining the amount payable to the respondent issued direction to make the payment. This Court has also observed in a categorical term that the petitioner failed to appear before the Labour Commissioner as well as before the Labour Court.

9. Admittedly, even while raising the challenge to the order dated 28th August, 2021 passed by the learned Labour Court in a writ petition, no ground as regards the arbitration agreement was raised or argued.

10. In the circumstances, filing of application under Section 8 of the Arbitration Act, 1996 cannot be treated as filing of the application at the first instance as contemplated under Section 8 of the Arbitration Act, 1996.

11. It is difficult to hold that the party who failed to appear at the first instance despite he was served and allowed the matter to be decided *ex parte* and on remand after setting aside the *ex parte* order if he moves application under Section 8 of the Arbitration Act, 1996, such application be treated as the application filed at the first instance as contemplated under Section 8 of the Arbitration Act, 1996.

12. In that view of the matter, I do not find any error committed by the learned Labour Court. Accordingly, the arbitration appeal is dismissed.

[ANIL S. KILOR, J.]