



A. No.5961 of 2023 in Arb.O.P. (COM.DIV.) No.237 of 2023

ABDUL QUDDHOSE,J.

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M/s.Bakyashwri Sea Food Pvt. Ltd.,
represented by its Managing Director
Mr.Suman Manna

.. Applicant

VS

M/s.Grobest Feeds Corporation (India) Pvt. Ltd.

.. Respondent

This application has been filed seeking to recall the order dated 13.07.2023 passed by this Court in Arb.O.P. (Com.Div.) No.237 of 2023.

2.This Court in the aforesaid order had appointed an Arbitrator with regard to the dispute between the applicant and the respondent, which has arisen out of a contract. The applicant in this application was served with a notice in Arb.O.P. (Com.Div.) No.237 of 2023, but did not enter appearance in the said O.P. An exparte order was passed on 13.07.2023 in Arb.O.P. (Com.Div.) No.237 of 2023 under Section 11 of the Arbitration and Conciliation Act, 1996 and an Arbitrator was appointed by this Court.

3.The applicant now contends that the dispute between the applicant and the respondent is not an arbitrable dispute. It is contended that by suppression of material facts, the respondent has obtained an order from this Court through



which an Arbitrator was appointed under Section 11 of the Arbitration and Conciliation Act, 1996.

4.Learned counsel for the applicant drew the attention of this Court to the order passed by the Calcutta High Court in IA NO:GA/1/2023 GA/2/2023 APOT/354/2023 with CS/133/2013. According to him, a learned Single Judge of the Calcutta High Court had observed in the order passed by him that the respondent in this application ought to have brought to the notice of this Court about the pendency of the suit before obtaining an order for appointment of an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. Hence, the learned counsel for the applicant would submit that on account of suppression of material facts and on account of the fact that the dispute is not an arbitrable dispute as observed by a learned Single Judge of the Calcutta High Court, the order dated 13.07.2023 passed by this Court in Arb.O.P. (Com.Div.) No.237 of 2023 appointing an Arbitrator has to be recalled.

5.Learned counsel for the respondent is also present though he has not been served with the typed set of papers, but has been served only with accompanying affidavit filed in support of this application.



6. Admittedly, the applicant was served with the notice in Arb.O.P. (Com.Div.) No.237 of 2023. Despite receiving the said notice, for the reasons best known to the applicant, they have chosen not to defend Arb.O.P. (Com.Div.) No.237 of 2023 on the hearing date, disclosed in the notice. On instructions, the said fact is also not disputed by the learned counsel for the applicant.

7. After giving due consideration to the existence of the arbitration clause available in the contract, which is the subject matter of the dispute between the applicant and the respondent, this Court had appointed an Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 in Arb.O.P. (Com.Div.) No.237 of 2023. Only after being prima facie satisfied with the arbitration agreement, this Court had appointed an Arbitrator. Having received the notice in Arb.O.P. (Com.Div.) No.237 of 2023, if at all the applicant has any objection for the appointment of an Arbitrator by this Court under Section 11 of the Arbitration and Conciliation Act, 1996, they ought to have defended Arb.O.P. (Com.Div.) No.237 of 2023. Having chosen not to do so and that too when the existence of the arbitration clause in the contract is not in dispute, the applicant, at this stage, cannot file this application seeking to recall the order dated 13.07.2023 passed by this Court under Section 11 of the Arbitration and Conciliation Act, 1996 appointing an Arbitrator and the question of arbitrability of the dispute cannot also



be adjudicated at this stage. When this Court has already appointed an Arbitrator as per the provisions of Section 11 of the Arbitration and Conciliation Act, 1996, after giving due notice to the applicant to defend the said petition, despite receiving the notice, the applicant chose not to defend Arb.O.P. (Com.Div.) No.237 of 2023 on the hearing date for the reasons best known to them.

8. There are other remedies available before the Arbitrator to adjudicate the grievances of the applicant, which have been addressed in this application if at all they deserve any merit. Instead of choosing the said option, this Court is of the considered view that the applicant has mistakenly and erroneously approached this Court by filing this application seeking to recall the order dated 13.07.2023 passed by this Court in Arb.O.P. (Com.Div.) No.237 of 2023.

9. For the foregoing reasons, this Court does not find any merit in this application. Accordingly, this application is dismissed.

10. After pronouncement of this order, learned counsel for the applicant seeks liberty for the applicant to approach the Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996, questioning the jurisdiction of the Arbitrator to adjudicate the dispute between the parties.



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11.No prejudice would be caused if such a liberty is granted as it is a statutory power. Accordingly, liberty as sought for by the applicant is granted. As and when any such application is filed under Section 16 of the Arbitration and Conciliation Act, 1996, the Arbitrator shall adjudicate the same uninfluenced by any of the observations made by this Court in this order.

15.11.2023

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Note:Issue order copy on 16.11.2023



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