



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 19th July, 2023**

+ **C.R.P. 23/2022**

MR KC AGGARWAL Petitioner

Through: Petitioner in person.

Versus

NATIONAL STOCK EXCHANGE OF INDIA LIMITED & ANR.

..... Respondents

Through: Ms.Shivani Khandeka, Advocate for
R-1
Md.Zaryab Jamal Risvi, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed by the petitioner seeking the following reliefs:

"I). Quash, set aside and declare null and void the impugned order dated

17.11.2021 passed by Ld. Trial Court in CSCJ 677 of 2021,

II). Direct the Ld. Trial Court to entertain and proceed with the trial of suit of the petitioner as per law.



III). Pass such further orders as may be considered just and appropriate in the facts and circumstances of the case.”

FACTUAL MATRIX

2. The petitioner is an individual investor, carrying out transactions in shares, stocks, and derivative products at the National Stock Exchange of India (hereinafter “NSE”), respondent No. 1. National Stock Exchange of India Limited, a company incorporated in the year 1992, is running a stock exchange recognized by and under regulatory framework/control of Securities and Exchange Board of India (hereinafter “SEBI”). The respondent No. 2, ICICI Securities Limited, is also a company incorporated in the year 1995 and is functioning *inter-alia* as a share broker having membership with respondent No.1.
3. The petitioner had executed an Account Opening Form (hereinafter “AOF”) with the respondent no. 2 and is maintaining a Share Trading Account and a Demat Account of shares with defendant no. 2/respondent no. 2.
4. On 4th and 5th February 2021, the petitioner executed Futures Contract/Stock Futures with respect to 32,500 shares of Indian Oil Corporation Limited at an average rate of Rs.103.55/-. The above future positions were squared off on 11th February 2021 at an average rate of Rs.96.74/-. It is alleged that a gross sum of Rs. 2,21,325/- was to be credited to the petitioner’s account instead of a debit of Rs. 22,175.
5. The petitioner raised his grievance by way of a Complaint to the



respondent no. 2. In their reply, to the said Complaint, it was stated that the same is the result of a Corporate Action Adjustment (hereinafter “CAA”), in compliance with letters/circulars issued by the respondent no. 1 and as per the authority derived from Securities and Exchange Board of India (hereinafter “SEBI”) Master Circular dated 16th December 2016 read with Circular dated 5th July 2018.

6. The petitioner served a legal notice dated 27th February 2021 to the respondent no. 2. Further, a Complaint dated 26th March 2021 was also made on the web portal namely ‘NICEPLUS’ maintained by the respondent no. 1. In the said complaint, the petitioner had raised his grievance for deduction of the above said amount, against the respondent no. 2.

7. Thereafter, the petitioner filed a Civil Suit bearing No. CSCJ/677/2021 against respondent nos. 1 and 2, before the learned Senior Civil Judge, Patiala House Court, New Delhi, for the recovery of Rs. 2,43,500/-. The petitioner had further sought a permanent injunction against the practice of CAA being illegal, as the same amounts to misappropriation and to quash letters/circulars issued by respondent no. 1 and followed by respondent no. 2.

8. In the said Civil Suit, respondent no. 2 filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act, 1996”) seeking reference to the arbitration, as the AOF executed between the petitioner and the respondent no. 2 contains an arbitration clause. The learned Trial Court *vide* Order dated 17th November 2021, allowed the application filed by respondent no. 2 under Section 8 of the Act, 1996. It was



held that there exists an agreement for arbitration between the petitioner and the respondent no. 2 in the AOF. Hence, the parties may resolve their disputes by way of entering into arbitration. Therefore, the main dispute of the petitioner is with respondent no. 2.

9. Aggrieved by the impugned Order dated 17th November 2021, the petitioner has approached this Court by way of the instant revision petition.

SUBMISSIONS

(on behalf of the petitioner)

10. Petitioner appearing in person submitted that a shareholder having his name in the prescribed register is to be maintained by the Company i.e., respondent no. 2. It is submitted that when a person sells certain shares on a cum dividend date, then the buyer has a right to the dividend and the seller has to return any dividend they have received. It is submitted that a holder of Stock Futures who does not have his name in the shareholder's register has no rights and incurs no liability for the return of dividends. Therefore, no dividend can be deducted from the value position of the petitioner. However, the respondents have grossly abused the SEBI Circular, in collusion with each other and have illegally debited the dividend amount.

11. It is further submitted that the arbitration clause in the AOF with respondent no. 2 does not cover the dispute in the Suit by any stretch. The respondent no. 1 is opposing the suit only to get away with the misappropriated amount. The respondents have not even disclosed any information regarding the status of money which has been debited to the petitioner's account despite numerous requests and RTI application.



12. It is submitted that there is a bipartite agreement between the petitioner and respondent no. 2. Therefore, the same is not applicable to the dispute in the present matter as the same is a tripartite dispute among the petitioner, respondent no. 1 and respondent no. 2.

13. It is also submitted that a bipartite agreement for the arbitration has no application to a tripartite dispute. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in ***Deutsche Post Bank Home Finance Ltd. v. Taduri Sridhar & Anr., Civil Appeal No. 2691/2011*** and ***Yogi Agarwal v. Inspiration Clothes & U 2009 (1) SCC 372***. In the said cases, it has been held by the Hon'ble Court that, the dispute should be between the parties to the agreement for referring the matter to the arbitration under Section 8 of the Act, 1996 and the agreement should relate to or be applicable to the dispute.

14. It is further submitted that the respondent no. 1, having no arbitration agreement with the petitioner, cannot be forced to arbitrate with regards to the dispute the petitioner has with the respondent no. 2. Similarly, the petitioner cannot be forced to arbitrate with the respondent no. 1 as no arbitration agreement exists between them.

15. It is submitted that the matter brought before the learned Trial Court is not a subject of the arbitration clause in the AOF as the same does not cover the present tripartite dispute. The AOF governs a matter which arose only between the petitioner and respondent no. 2. The arbitration clause under the AOF does not cover the tripartite dispute where respondent no. 1 is also a party. Therefore, respondent no. 1 is a necessary party as the dispute is not



only against the respondent no. 2.

16. It is submitted that the impugned Order has totally obliterated the consideration of the clearly worded exclusion clause in the Byelaw No. 18 of the NSE which is subordinate to the AOF. The said byelaw has been reproduced herein below:

“Exclusion

(18) For removal of doubts, it is hereby clarified that the Exchange shall not be construed to be a party to the dealings, contracts and transactions referred to under these Byelaws; and the provisions of this Chapter shall not apply in case of claims, differences or disputes between the Exchange and a Trading Member and no arbitration shall lie between the Exchange and a Trading Member.”

17. It is submitted that the impugned letters/circulars dated 1st February 2021 and 8th February 2021 by which CAA is done against the petitioner, are illegal because the value position of the market participant is not being protected. A perusal of the said letters/circulars shows that the respondents derive their authority from the Master Circular dated 16th December 2016 read with Circular dated 5th July 2018. The action taken by respondent No. 2 is a serious violation of the above-said Master Circular as the CAA has been taken on the Futures Contract. The same is not permissible under the SEBI Master Circular as CAA can only be taken whenever there is an announcement and payment of dividend yield of more than 5%.

18. It is submitted that the case of the petitioner is maintainable since there is no further remedy available with the petitioner against the



respondent no. 1, as there is no arbitration agreement with respondent no. 1, no arbitral tribunal can get constituted. Further, the applicability of the arbitration clause with respondent no. 2 is clearly excluded as per the Byelaw no. 18.

19. It is further submitted that the Securities and Exchange Board of India Act, 1992 (hereinafter “SEBI Act, 1992”) does not impose a bar to a Suit, particularly for the recovery of an amount. The SEBI Act, 1992 only provides for adjudication and procedure for appeal which only leads to imposition of penalty. On the contrary, the SEBI Act, 1992 specifically protects the right to sue under Section 21, where no adjudication or procedure for appeal is provided for in the said Act.

20. The petitioner has placed reliance on the **order dated 06th December 2010 in M/s Shoes East v. M/s Subhash B Dalal, RFA No. 424/2001**, wherein it has been held that the matters pertaining to the circulars is not barred under Section 15 (Y) or Section 20 (A) of the SEBI Act, 1992. In the said case, it was also held that there is no question of the bar of jurisdiction of civil court in a suit for recovery. It is submitted that respondent no. 1 has no locus or *bona fide* to object to the maintainability of the present petition.

21. In view of the foregoing paragraphs, the petitioner submitted that the present revision petition be allowed and the Order dated 17th November 2021 be set aside.

(on behalf of the respondent)

22. *Per contra*, learned counsel appearing on behalf of the respondents vehemently opposed the averments made by the petitioner and submitted



that the present petition has been filed with the sole purpose of harassing the respondent and coercing them. The present petition is nothing but an abuse of the process of law.

23. It is submitted that only members registered with the NSE are permitted to carry out trades on its platform. NSE is a supervisory and regulatory body, and its function is to organize and discipline the activities of its members. In order to regulate and monitor the activities of its members, NSE has put in place a framework including byelaws, rules and regulations, which have been framed in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (hereinafter “SCRA”) and are duly approved by the Central Government and SEBI under the SCRA.

24. It is submitted that Section 9 of the SCRA empowers NSE to make byelaws to regulate contracts between trading members, or between a trading member and its constituent. Pertinently, the byelaws also provide for the consequences of a breach or omission by a seller or a buyer, including the method and procedure for the settlement of claims or disputes through arbitration.

25. It is submitted that Chapter 11 of the byelaws provides that all claims, differences, or disputes *inter se* between the trading members as well as between trading members and constituents, arising out of, or in relation to dealings and contracts pertaining to transactions made on NSE’s platform shall be settled by arbitration.

26. It is submitted that the byelaws further provide that the arbitration agreement extracted shall be deemed to be incorporated in all the contracts



pertaining to the trades made on the NSE's platform. The byelaws also state that the NSE shall not be construed to be a party to the dealings, contracts and transactions between the constituents and trading members.

27. It is also submitted that the SCRA provides for an appeal before the Securities Appellate Tribunal in the event a party is aggrieved by an order or decision of the NSE or any other registered stock exchange. Therefore, the SCRA read with the SEBI Act, 1992 and the NSE byelaws provide a framework capable of resolving any grievance faced by investors.

28. It is further submitted that the petitioner has claimed an amount of Rs. 2,21,325/- towards futures transactions carried out through respondent no. 2, the stockbroker. NSE is a regulatory body and was not party to the dealings and the transactions between the petitioner and respondent no. 2. Therefore, NSE is neither a necessary party nor a proper party to the dispute and has been added only to circumvent the arbitration agreement.

29. It is submitted that the petitioner has filed a suit for recovery instead of taking recourse to the remedial measures provided under the applicable law.

30. It is further submitted that the learned Trial Court has correctly allowed the application filed under Section 8 of the Act, 1996. Moreover, the judicial proceedings challenging an order of the Court, referring parties to the arbitration under Section 8 of the Arbitration Act are not maintainable within the ambit of Section 115 of the CPC for revision. In this regard, reliance has been placed upon the decision of this Court in *Asha Saini v. Omaxe Ltd.*, CM (M) No.784/2017 and *Arun Srivastava v. Larsen &*



Toubro Ltd., 2021 SCC OnLine Del 4909.

31. It is submitted that in the matter of *Asha Saini (Supra)* it has been observed that a revision petition filed under Section 115 of the CPC would not be maintainable against an order referring parties to the arbitration under Section 8 of the Act, 1996, in view of the principle of *kompetenz-kompetenz*. The said principle requires any challenge to the jurisdiction of the arbitral tribunal (including any challenges to the existence and validity of the arbitration agreement) to be raised before the arbitral tribunal thus appointed. The above-said ratio has also been reaffirmed in the matter of *Arun Srivastava (Supra)*.

32. It is submitted that Section 37 of the Act, 1996 specifically excludes appeals against orders referring parties to the arbitration under Section 8 of the Act, 1996, in view of the principle of *kompetenz-kompetenz*. It states that once the parties are referred to arbitration, the parties are required to approach the arbitral tribunal under Section 16 of the Act, 1996.

33. It is submitted that as per the judgment of the Hon'ble Supreme Court in *Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503*, it has been ruled that it is a mandatory duty of a court to refer the dispute to an arbitrator in case of the existence of a valid arbitration clause covering the subject matter of the suit.

34. It is also submitted that in view of the judgment of the Hon'ble Supreme Court in *Ameet Lalchand Shah & Ors. V. Rishabh Enterprises & Anr. (2018) 15 SCC 678*, amended Section 8 of the Act, 1996 would apply notwithstanding any prayer, judgment, decree, or order of the Supreme



Court or any other Court and it is the duty of the Court to impart commercial understanding between the parties with a sense of business efficacy and not by mere averments made in the plaint.

35. It is further submitted that in view of the judgment of *Ameet Lalchand (Supra)*, reference to the arbitration cannot be rejected on account of the prayers and averments made in the plaint. The present case of the petitioner is not maintainable and this Court does not have the jurisdiction to entertain a revision against the order of the learned Trial Court referring the dispute of the petitioner to the arbitration.

36. It is therefore submitted that the present revision petition, being not maintainable, is baseless and does not fall within the strict category of Section 115 of the CPC. The grounds raised are frivolous and not substantial. Hence, the petition is liable to be dismissed.

ANALYSIS AND FINDINGS

37. The matter was heard at length with arguments advanced by both the sides. This Court has also perused the entire material on record including the judicial pronouncements relied upon by the parties.

38. Before delving into the merits of the case, it is pertinent to understand the context behind Section 115 of the CPC. The same has been reproduced herein for reference:

“Section 115 - Revision

1[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears



(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

2[Provided that the High Court shall not, under this Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.]

3[(2) The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

4[(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation-- In this Section, the expression "any case which has been decided" includes any order made, or any order deciding an issue in the course of a suit or other proceeding.]”

39. Keeping in view the arguments advanced by the parties, the following issue has been framed for adjudication by this Court:

Whether the petitioner's challenge against the impugned Order of learned Trial Court allowing reference to arbitration is maintainable under Section 115 of the CPC?

40. The petitioner has raised the objections against the impugned Order dated 17th November 2021 on the ground that the dispute of the petitioner is



a tripartite dispute with respondent no. 1 and respondent no. 2, and the matter cannot be referred to arbitration under Section 8 of the Act, 1996. The respondent no. 1 is a necessary party for the proper adjudication of the present dispute. It is the case of the petitioner that the letters/circulars issued by the respondent no. 1, containing directions for the Stock Broker/respondent no. 2 are illegal.

41. The challenge to the impugned Order is solely on the ground that, allowing the application of the respondent no. 2 under Section 8 is illegal and the same is not maintainable in the eyes of law. This very contention has been opposed by the respondent by relying upon various judgments of Hon'ble Supreme Court and this Court wherein the challenge under Section 115 of the CPC against an order allowing reference to the arbitration has been strictly restricted.

42. To elucidate upon the scope of Section 115 of the CPC, reliance has been placed on the observations of the Hon'ble Supreme Court in ***Pandurang Dhondi Chougule v. Maruti Hari Jadhav, (1966) 1 SCR 102***, wherein it was held that:

“10. The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to



exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

43. The Hon’ble Supreme Court has further reiterated the scope of revisional powers of High Court in the matter of ***D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh, (1969) 3 SCC 807***, wherein it was observed as under:

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. Clauses (a) and (b) of this Section on their plain reading quite clearly do not cover the present case. It was not contended, as indeed it was not possible to contend, that the learned Additional District Judge had either exercised a jurisdiction not vested in him by



law or had failed to exercise a jurisdiction so vested in him, in recording the order that the proceedings under reference be stayed till the decision of the appeal by the High Court in the proceedings for specific performance of the agreement in question. Clause (c) also does not seem to apply to the case in hand. The words “illegally” and “with material irregularity” as used in this clause do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with. The High Court does not seem to have adverted to the limitation imposed on its power under Section 115 of the Code. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was no illegality or material irregularity committed by the learned Additional District Judge in his manner of dealing with this question. It seems to us that in this matter the High Court treated the revision virtually as if it was an appeal.”

44. The scope of Section 115 of the CPC includes jurisdiction alone, the irregular exercise or non-exercise of it or the illegal assumption of it. The mere fact that the decision of the Trial Court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation. The High Court will not interfere merely because the Court below has wrongly decided a particular suit being



not maintainable, or because it proceeds with an erroneous construction of the various provisions of any particular Act.

45. Further, in the matter of ***Baldevdas Shivilal v. Filmistan Distributors (India) (P) Ltd., (1969) 2 SCC 201***, Hon'ble Supreme Court has held as under:

“11. It may also be observed that by ordering that a question may properly be put to a witness who was being examined, no case was decided by the trial court. The expression “case” is not limited in its import to the entirety of the matter in dispute in an action. This Court observed in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409] that the expression “case” is a word of comprehensive import: it includes a civil proceeding and is not restricted by anything contained in Section 115 of the Code to the entirety of the proceeding in a civil Court. To interpret the expression “case” as an entire proceeding only and not a part of the proceeding imposes an unwarranted restriction on the exercise of powers of superintendence and may result in certain cases in denying relief to the aggrieved litigant where it is most needed and may result in the perpetration of gross injustice. But it was not decided in Major S.S. Khann case [(1964) 4 SCR 409] that every order of the Court in the course of a suit amounts to a case decided. A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; every order in the suit cannot be regarded as a case decided within the meaning of Section 115 of the Code of Civil Procedure.”

46. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of



the CPC. It is also prudent to apply the ratio observed in the judgments, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

47. In view of the instant matter, the learned Trial Court has referred the dispute of the petitioner for arbitration under Section 8 of the Act, 1996. Relevant paras of the impugned Order are reproduced herein below:

“Section 8 of the Arbitration and Conciliation Act, 1996 is peremptory in nature. It provides that a judicial authority shall, on the basis of the Arbitration agreement between the parties, direct the parties to go for Arbitration.

The application filed before this court is duly accompanied with the account opening form which provides rights and obligations in Part-C and duly agreed upon by the plaintiff vide declaration in Part-A of the account opening form. It clearly stipulates the reference of dispute between the client and the stock broker to Arbitration. Further, Chapter-11 of the National Stock of India Byelaws provides for Arbitration between the trading members inter se and between trading members and constituents arising out of or in relation to dealings, contracts and transactions made subject to byelaws, rules and regulations of the Exchange. On perusal of the relief claimed by the plaintiff, it is seen that the plaintiff is seeking prayer 1, prayer 2 qua the defendant no.2 and on the said dispute the aforementioned reference to the Arbitration is mandatory. The contention of the plaintiff that the present dispute is a tripartite dispute and not a bipartite dispute cannot be accepted since the prayer 1 and 2 are between the plaintiff and the defendant no.2. Qua prayer



4 and 5 wherein the plaintiff is seeking the mandatory injunction qua defendant no.1 so as to quash, set aside, declare null and void and non-est in law the letters and circulars issued by the defendant no.1 and followed by the defendant no.2, this court is of the view that the averments in the plaint are silent as to these letters and circulars being non-est in law and same cannot be gone into by this Court in the absence of the pleadings only on the averments that they are illegal. Thus, the dispute of the plaintiff is mainly with the defendant no.2 qua prayer 1 and 2 and over the same the mandate of Section 8 of the Arbitration & Conciliation Act, 1996 is mandatory and where there is an Arbitration Agreement, the courts ought to refer the dispute to Arbitration. Accordingly, the application under Section 8 read with Section 5 of the Arbitration & Conciliation Act, 1996 seeking reference of the matter to Arbitration is allowed and parties are referred to Arbitration. Application stands disposed off.”

48. Considering the facts of the instant case, there is a reference to arbitration as per the AOF executed between the petitioner and respondent no. 2. The relevant clause is necessary to be reproduced and the same is mentioned herein below:

“DISPUTE RESOLUTION

22. The stock broker shall provide the client with the relevant contact details of the concerned Exchanges and SEBI.

23. The stock broker shall co-operate in redressing grievances of the client in respect of all transactions routed through it and in removing objections for bad delivery of shares, rectification of bad delivery etc.

24. The client and the stock broker shall refer any claims and/or disputes with respect to deposits, margin money,



etc., to arbitration as per the Rules, Byelaws and Regulations of the Exchanges where the trade is executed and circulars/notices issued thereunder as may be in force from time to time.

25. The stock broker shall ensure faster settlement of any arbitration proceedings arising out of the transactions entered into between him vis-à-vis the client and he shall be liable to implement the arbitration awards made in such proceedings.”

49. This Court is of the view that any agreement that contains an arbitration clause must be referred to arbitration in an application under Section 8 of the Act, 1996. The same must be done because the parties have already consented to arbitration. Since the AOF in the instant case contains the arbitration clause, it has to be referred to arbitration for the necessary adjudication. The Court in this scenario cannot adjudicate upon whether the disputes which are arbitrable under the agreed terms between the parties.

50. At this juncture, reliance can be further placed on the judgment of Hon’ble Supreme Court in the case of **A. Ayyasamy v. A. Paramasivam, (2016) 10 SCC 386**, wherein the following was observed:

“12.2. When arbitration proceedings are triggered by one of the parties because of the existence of an arbitration agreement between them, Section 5 of the Act, by a non obstante clause, provides a clear message that there should not be any judicial intervention at that stage scuttling the arbitration proceedings. Even if the other party has objection to initiation of such arbitration proceedings on the ground that there is no arbitration agreement or validity of the arbitration clause or the competence of the Arbitral Tribunal is challenged, Section 16, in clear terms, stipulates that such objections



are to be raised before the Arbitral Tribunal itself which is to decide, in the first instance, whether there is any substance in questioning the validity of the arbitration proceedings on any of the aforesaid grounds. It follows that the party is not allowed to rush to the court for an adjudication. Even after the Arbitral Tribunal rules on its jurisdiction and decides that arbitration clause is valid or the Arbitral Tribunal is legally constituted, the aggrieved party has to wait till the final award is pronounced and only at that stage the aggrieved party is allowed to raise such objection before the court in proceedings under Section 34 of the Act while challenging the arbitral award.

32. The Arbitration and Conciliation Act, 1996 does not in specific terms exclude any category of disputes—civil or commercial—from arbitrability. Intrinsic legislative material is in fact to the contrary. Section 8 contains a mandate that where an action is brought before a judicial authority in a matter which is the subject of an arbitration agreement, the parties shall be referred by it to arbitration, if a party to or a person claiming through a party to the arbitration agreement applies not later than the date of submitting the first statement on the substance of the dispute. The only exception is where the authority finds prima facie that there is no valid arbitration agreement. Section 8 contains a positive mandate and obligates the judicial authority to refer parties to arbitration in terms of the arbitration agreement. While dispensing with the element of judicial discretion, the statute imposes an affirmative obligation on every judicial authority to hold down parties to the terms of the agreement entered into between them to refer disputes to arbitration. Article 8 of the Uncitral Model Law enabled a court to decline to refer parties to arbitration if it is found that the arbitration agreement is



null and void, inoperative or incapable of being performed. Section 8 of the 1996 Act has made a departure which is indicative of the wide reach and ambit of the statutory mandate. Section 8 uses the expansive expression “judicial authority” rather than “court” and the words “unless it finds that the agreement is null and void, inoperative and incapable of being performed” do not find place in Section 8.

38.Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration.

41. In P. Anand Gajapathi Raju v. P.V.G. Raju [P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539] this Court held that the language of Section 8 is peremptory in nature. Hence, where there is an arbitration agreement, it is obligatory for the court to refer the parties to arbitration and nothing remains to be decided in the original action after such an application is made, except to refer the dispute to an arbitrator. The judgment in Abdul Kadir [Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406] came up for consideration before a Bench of two learned Judges in Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums [Hindustan Petroleum Corpn.



Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503] . In that case, the appellant had appointed the respondent as a dealer for selling its petroleum products through a retail outlet. The dealership agreement contained an arbitration agreement. In the course of an inspection the appellant found a breach of the dealership agreement and sales of petroleum products were suspended. The respondent instituted a suit before the ordinary civil court seeking declaratory reliefs in which the appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996. The civil court rejected the application and the High Court in revision affirmed the view. The submission which weighed with the High Court was that the allegation of tampering of weights and of measurement seals could only be adjudicated upon under the Standards of Weights and Measures (Enforcement) Act, 1985 and hence such a dispute was not arbitrable. This Court held that once the arbitration agreement was admitted, in view of the mandatory language of Section 8, the dispute ought to have been referred to arbitration.... ”

51. Furthermore, the Hon’ble Supreme Court in ***Magma Leasing & Finance Ltd. v. Potluri Madhavalata, (2009) 10 SCC 103***, has strictly narrated its view with regard to the cases wherein reference to the arbitration has not been allowed by the Court despite existence of an arbitration clause in the agreement. The following was observed:

“18. Section 8 is in the form of legislative command to the court and once the prerequisite conditions as aforestated are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfilment of the conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. There is



nothing on record that the prerequisite conditions of Section 8 are not fully satisfied in the present case. The trial court, in the circumstances, ought to have referred the parties to arbitration as per arbitration Clause 22.”

52. In another judgment of ***Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums***, (2003) 6 SCC 503, the issue similar to the present petition has been outrightly discussed by the Hon’ble Supreme Court, as under:

“24. This brings us to consider the last question involved in this appeal, namely, the maintainability of the revision petition before the High Court under Section 115 CPC. The High Court by the impugned order has come to the conclusion that its jurisdiction to entertain a revision petition would only be available if the order impugned is such that if it is allowed to stand, it would occasion failure of justice or cause an irreparable injury to a party against whom the said order is made. In support of this finding, the High Court has relied upon certain judgments of this Court. Having perused the said judgments, we are of the opinion that the findings given in those judgments do not apply to the facts of this case at all. We have come to the conclusion that the civil court had no jurisdiction to entertain a suit after an application under Section 8 of the Act is made for arbitration. Therefore, we are of the opinion that the trial court erred when it rejected the application of the appellant filed under Sections 8 and 5 of the Act. In such a situation, refusal to refer the dispute to arbitration would amount to failure of justice as also causing irreparable injury to the appellant. For the said reason, we are of the opinion that the High Court has erred in coming to the conclusion that the appellant was not



entitled to the relief under Section 115 CPC.”

53. The application filed before the learned Trial Court has been properly accompanied by the AOF, which outlines the petitioner’s rights and obligations and acknowledgment of the same by the petitioner therein. It evidently specifies that any dispute between the ‘client and stock broker’ should be referred to arbitration. In addition, Chapter-11 of the National Stock Exchange of India Byelaws provides for arbitration between trading members and constituents deriving from or relating to dealings, contracts, and transactions made subject to the byelaws, rules, and regulations of the Exchange.

54. In ***Jatin Pratap Desai v. A.C. Chokshi Share Broker (P) Ltd., 2021 SCC OnLine Bom 646***, the Bombay High Court has observed as under:

“66.The Hon'ble Supreme Court in the said judgment adverted to earlier judgment in case of S.N. Prasad v. Monnet Finance Limited¹⁴. The Hon'ble Supreme Court in the said judgment in case of S. N. Prasad (supra) had held that there could be reference to arbitration only if there is an arbitration agreement between the parties. If there is a dispute between a party to an arbitration agreement, with other parties to the arbitration agreement as also non-parties to the arbitration agreement, reference to arbitration or appointment of arbitrator can only be with respect to the parties to the arbitration agreement and not the non-parties. As there was no arbitration agreement between the parties, the impleadment of appellant as a respondent in the proceedings and the award against the appellant in such arbitration cannot be sustained.”



55. On bare perusal of the reliefs sought by the petitioner before the learned Trial Court, it is *ex facie* apparent that the petitioner's primary concern is against respondent no. 2. The reference to arbitration is mandatory for adjudication of the dispute in the present petition. The petitioner's contention that the current dispute is a tripartite dispute and not a bipartite dispute is not sustainable.

56. The petitioner has not been able to make out his case as to how his grievances could be resolved *qua* respondent no. 1. Section 8 the Act, 1996 requires that the dispute be referred to arbitration if an arbitration agreement exists. Accordingly, the application under Section 8 the Act, 1996 seeking arbitration has been allowed, and the parties are referred to arbitration.

57. The petitioner's grievances are arising out of the AOF and the respondent no. 2 is a party to it. It is necessary to state that the reference to arbitration is legally justifiable in the light of the facts and statements. The learned Trial Court has acted in accordance with its jurisdiction under the law.

CONCLUSION

58. Therefore, this Court is of the view that the learned Trial Court has not committed any error of law that can be the subject matter to be exercised by this Court exercising its revisional powers under Section 115 of the CPC. Section 8 of the Act, 1996 refers to a clause that limits Court's interference in the arbitration procedure. This Court has serious objections to the extent of interference on the grounds of the arbitrability of the subject matter, and the competence of the arbitral tribunal to deal with it. Section 8 of the Act,



1996 continues to serve as a hope for arbitration, forming the basis for mandating the parties to follow the model of arbitration where an arbitration agreement exists.

59. Further, with regards to the maintainability of the revision petition, the learned Trial Court has rightly determined that its jurisdiction to hear the suit does not exist due to the presence of an arbitration clause. After relying upon the aforementioned judgments, it is concluded that the observations made therein apply to the facts of the case in hand.

60. Therefore, it is held that the learned Trial Court did not have the jurisdiction to hear a dispute after an application for arbitration under Section 8 of the Act, 1996 was filed. As a result, the learned Trial Court has correctly allowed the said application under Section 8 of the Act, 1996. In such a case, refusing to refer the matter to arbitration would be a failure of justice, causing irreparable harm to the parties and violating the settled principles of law.

61. This Court is of the view that no case of revision as defined under Section 115 of CPC has been made out by the petitioner as no such cause exists wherein the learned Trial Court has failed to exercise its jurisdiction as per law. The learned Trial Court has neither acted illegally in the exercise of its jurisdiction nor has there been any material irregularity. Accordingly, the issue framed above has been decided.

62. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned Order dated 17th November 2021 in Civil Suit bearing No. CSCJ/677/2021 passed by the learned Senior Civil Judge,



Patiala House Court, New Delhi.

63. The petition is, accordingly, dismissed.
64. Pending applications, if any, also stand disposed of.
65. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 19, 2023
SV/RP/AV

Click here to check corrigendum, if any