

S/L 15
03.04.2024
Court. No. 3
Sourav

CO 3288 of 2018

Cholamandalam Investment & Finance Co. Ltd.
Vs.
Tarak Kundu

Ms. Arunima Lala
Mr. Ranjit Singh

...for the petitioner.

1. The affidavit-of-service as filed today be taken on record.
2. Heard learned advocate for the petitioner.
3. By filing the instant application under Article 227 of the Constitution of India, the defendant before the learned Trial Court in Title Suit No. 272 of 2017 has impugned the order dated 31.08.2018 as passed by learned Judge, 8th Bench, City Civil Court at Calcutta in the aforesaid suit whereby and whereunder the learned Trial Court rejected the defendant's application under Order 7 Rule 11 of the Code of Civil Procedure.
4. In course of her submission, Ms. Lala, learned advocate for the petitioner at the very outset draws attention of this Court to the copy of the plaint, copy of the written statement, copy of the petition under Order 7 Rule 11 (d) CPC (hereinafter referred to as the said application in short) and the copy of the written objection as filed before the learned Trial Court.
5. It is contended that from the averments of the plaintiff as made in the plaint, it would reveal that an arbitration agreement was entered into by and between the plaintiff and the defendant when the plaintiff purchased a vehicle bearing registration number WB23C 2433 after taking

loan from the defendant company by way of hypothecation agreement. It is argued by Ms. Lala, learned advocate for the petitioner that from the averments of the plaint, the learned Trial Court ought to have come to a finding that the suit as filed before the learned Trial Court cannot be proceeded with since there exists an arbitration agreement between the plaintiff and the defendant and that pursuant to such agreement, the dispute has been referred to arbitral tribunal and even an award has also been published.

6. On perusal of the entire materials as placed before this Court, it does not appear to this Court that in the plaint as filed before the learned Trial Court there is any whisper with regard to the existence of any arbitration agreement. However, it appears to this Court that in its written statement as well as in the said application, the defendant has categorically stated about the existence of such arbitration clause, holding of arbitration proceeding before the arbitral tribunal and publication of award in the meantime.
7. At this juncture, this Court proposes to look to the provision of Order 7 Rule 11 of the Code of Civil Procedure which is reproduced hereinbelow in verbatim:

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a)

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e).....

(f)

***provided that the time fixed
.....to the plaintiff.”***

8. On perusal of the aforesaid legislative provision, it thus appears to this Court that it is the legislative intent that a plaintiff is liable to be rejected on various grounds out of which one ground is where the suit appears from the statement in the plaint is barred by law.
9. On careful consideration of the entire averments of the plaint, it does not appear to this Court that the plaint as filed before the learned Trial Court is barred by any law as rightly noticed by the learned Trial Court. In further considered view of this Court, the provision of Order 7 Rule 11 CPC cannot be invoked on the basis of the averments made either in the written statement or in any other application.
10. Such being the position, this Court finds no merit in the instant revisional application and the instant revisional application being **CO 3288 of 2018** is dismissed.
11. The impugned Order No. 26 dated 31.08.2018 as passed in Title Suit No. 272 of 2017 by learned Civil Judge, 8th Bench, City Civil Court at Calcutta is hereby affirmed.
12. However, considering the facts and circumstances as involved in the instant *lis*, liberty is given to the defendant of Title Suit No. 272 of 2017 to file appropriate application before the learned Trial Judge either under the provisions of Arbitration and Conciliation Act, 1996 or any other provisions of law, if so advised.

13. All parties to act on the server copy of this order duly downloaded from the official website of this Court.
14. Urgent photostat certified copy of this order, if applied for be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)