

13-11-2024
Court No.3
Sl. No. 1
T.Ojha

**In The High Court At Calcutta
Circuit Bench At Jalpaiguri**

CO/157/2024

**BELA AGARWAL AND ORS.
VS
ANUP SARKAR AND ANR.**

Mr. Amales Ray, Adv.
Mrs. Aayushi Agarwal, Adv.
Mr. Nigam Mittal, Adv.

...for the petitioners

Mr. Amritam Mondal, Adv.

...for the opposite parties

The instant application filed under Section 227 of the Constitution of India against the Order No. 31 dated 3.8.2024 passed by the Civil Judge, Senior Division, Jalpaiguri in Title Suit No. 145 of 2018, in terms of which the Learned Trial Court allowed the application filed by the respondents/defendants under Section 8 of the Arbitration and Conciliation Act, 1996.

The Learned Trial Judge while passing the order, considered Clause 14 of the agreement which is an arbitration clause. Considering express provision for referring disputes, arising

out of the agreement for arbitration, the Learned Trial Court allowed the application filed under Section 8 of the Arbitration and Conciliation Act, 1996.

The Learned Counsel for the petitioners submitted that the Learned Trial Court did not take into consideration Clause 12 of the agreement which takes away the suit from the ambit of arbitrability. Clause 12 is an exception to the Clause 14. Disputes contemplated in Clause 12b are not arbitrable. That was the intention of the parties and that is why the Clause 12 was included in the agreement.

The Learned Counsel for the petitioners referred to ***Vidya Drolia and Others vs. Durga Trading Corporation* [(2021) 2 Supreme Court Cases 1]** and ***Cox and Kings Limited vs. SAP India Private Limited and Another* [(2024) 4 Supreme Court Cases 1]**. Referring to the said decisions of the Supreme Court of India, the Learned Counsel argued that if the parties agree, that particular dispute shall not be arbitrable or subject to arbitration then the civil court can have jurisdiction to decide on the issue. Clause 12 was specifically inserted in the agreement with this object.

According to the Learned Counsel, the Learned Trial Court committed error and overlooked this issue.

Per contra, the Learned Counsel appearing for the respondents/defendants firstly argued that it is the plaintiff who filed an application initially under Section 9 of the Arbitration and Conciliation Act, 1996 praying for necessary interim relief which was subsequently withdrawn. It is further argued that under no circumstance an interpretation be given the Clause 12 which would exclude the dispute involved in this suit outside the ambit of arbitration.

I have heard rival submissions.

Against the application filed by the respondents/defendants under Section 8 of the Arbitration and Conciliation Act, 1996 a written objection was filed, a copy of which is annexed herewith. It is nowhere pleaded that Clause 12 is in the form of an exception to the arbitration clause namely, Clause 14; it is not in the pleading that by virtue of Clause 12, the present dispute would go outside the ambit of arbitration. Rather, by filing an application under Section 9 of the Arbitration and

Conciliation Act, 1996 in the pending suit the petitioners/plaintiffs confirmed that the subject matter of the suit is not outside the scope of arbitration or that Clause 12 shall exclude applicability of Clause 14 in the pending suit.

The Learned Trial Court considered the whole issue as pleaded, considered the principles of law properly and decided the application without any error. The ratio of ***Vidya Drolia and Others (supra)*** and ***Cox and Kings Limited (supra)*** have no application in the context of facts of the instant case. What Clause 12 says is that parties shall take “legal action” in certain contingencies. It is submitted by the Learned Counsel for the petitioners/plaintiffs that the very word “legal action” excludes arbitrability of dispute. I cannot agree with that. It cannot be accepted that referring a matter to arbitration is not a legal action. More so, this point was not in the pleading. It is raised for the first time here.

On hearing both the parties and on perusal of the rival pleadings, I do not find any reason to entertain the instant application or to interfere with the order passed by the Learned Trial Court.

The instant application stands dismissed
and disposed of accordingly.

(SUGATO MAJUMDAR, J.)