

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.8507 of 2017 (O&M)

Date of Order:19.01.2024

Kulbhushan Narang

.Petitioner

Versus

Akhilesh Chawla

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.C.Shahpuri, Advocate
for the petitioner.

Mr.Sachin Jain, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. The petitioner herein is a defendant in the plaintiff's suit for grant of decree of dissolution of the partnership firm and the rendition of accounts of the firm.

2. The respondent (plaintiff before the trial court) while filing the suit produced a photocopy of the partnership deed executed between the parties on 01.04.2012. Clause 11 thereof reads as under:-

“11. That in case of any difference between the partners with regard to this partnership thereafter shall be referred and got this decided by the arbitration in accordance with the provisions of Indian Partnership Act in force.”

3. The defendant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the 1996 Act'). He also filed an application for direction to the plaintiff to produce the original partnership deed, however, the plaintiff did not produce the

same on the ground that it is not in his possession. Ultimately the trial court refused to refer the parties to arbitration while staying the proceedings in the suit on the ground that the original or certified copy of the agreement containing arbitration clause has not been produced.

4. The correctness of the aforesaid order has been challenged in this revision petition.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

6. Section 8 of the 1996 Act, enables the court to refer the parties to the arbitration where there is an arbitration agreement between the parties. It requires that the original agreement or its duly certified copy is to be annexed with the application under Section 8 of the 1996 Act. Though, in this case, the original agreement or a certified copy thereof has not been produced, however, the existence of the partnership deed containing resolution of the dispute through arbitration is not disputed either by the plaintiff or by the defendant. The plaintiff while filing the suit has relied upon the partnership deed dated 01.04.2012, whereas the defendant relies upon it while filing the application under Section 8 of the 1996 Act. In other words, the existence of the partnership deed dated 01.04.2012, containing the agreement for resolution of the dispute through arbitration is not in dispute. The purpose of filing the original agreement or a certified copy thereof containing arbitration clause is to ensure that the parties are not referred to the Arbitrator without any agreement. However, in this case, the situation is otherwise. Both the parties do not dispute the agreement containing the arbitration clause. Reliance in this regard can be placed on

the judgment passed in **Bharat Sewa Sansthan vs. U.P.Electronics**

Corporation Limited, (2007) 7 SCC 737.

7. Keeping in view the aforesaid facts and discussion, the
impugned orders are set aside.
8. The parties are referred to arbitration for resolution of their
dispute.
9. With these observations, the revision petition is allowed.
10. All the pending miscellaneous applications, if any, are also
disposed of.

January 19, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO