

Court No. 6
(265719)

18.03.2025
(A 115)
(S. Banerjee)

CO 559 of 2025

M. A. Samad
Vs.
Ramarani Paul, since deceased substituted by Abhijit Paul

Mr. Imtiaz Belal
Mr. Taher Ahemed

...for the petitioner

This application is at the instance of the defendant and is directed against an order being no. 33 dated December 23, 2024 passed by the learned Civil Judge (Jr. Division), Ghatal in Other Suit No. 4 of 2023. By the order impugned the application under Order 7 Rule 11 of the Code of Civil Procedure stood dismissed.

Learned advocate for the petitioner submits that in the tenancy agreement between the parties, there was an arbitration clause. In utter disregard to the said clause, the opposite party herein filed a suit for eviction under Section 6 of the West Bengal Premises Tenancy Act, 1997. He submits that an application under Order 7 Rule 11 was filed by the petitioner herein praying for rejection of the plaint on the ground that the suit is barred under the provisions of Arbitration and Conciliation Act, 1996.

Section 8 of the Arbitration and Conciliation Act, 1996 states that *a judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.*

Thus a judicial authority shall refer the parties to arbitration if it prima facie finds that a valid arbitration agreement exists and also that a party to the arbitration agreement or any person claiming through or under him applies not later than the date of submitting his first statement on the subsistence of the dispute to refer the parties to arbitration.

It is not in dispute that no application under Section 8 of the Arbitration and Conciliation Act, 1996 was filed within the time limit specified under Section 8 of the said Act.

An application under Order 7 Rule 11 of the Code has been filed after the cross-examination of the plaintiff witness no. 1.

It is well settled that mere existence of an arbitration clause does not oust the jurisdiction of the civil court to decide the dispute provided the parties do not take recourse available under Section 8 of the 1996 Act.

The other ground raised in the application under Order 7 Rule 11 of the Code is that the notice issued by the opposite party herein prior to filing of the suit for eviction, is defective.

It has been rightly held by the learned trial Judge that the defect in the notice is a mixed question of law and fact and the same cannot be decided in an application under Order 7 Rule 11 of the Code.

For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

CO 559 of 2025 is dismissed of accordingly without, however, any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of requisite formalities.

(Hiranmay Bhattacharyya, J.)