

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

In CS/73/2019
IA NO. GA/1/2025

THG PUBLISHING PRIVATE LIMITED
Vs
OCTAVIUS TEA AND INDUSTRIES LIMITED

BEFORE:

The Hon'ble JUSTICE SUGATO MAJUMDAR

Date: 4th February, 2026

Appearance:
Mr. R. K. Khanna, Adv.
Mr. S. Mukhopadhyay, Adv.
Mr. S. Ghosh, Adv.
...for the Plaintiff.

Mr. N. Sengupta, Adv.
Mr. S. Banerjee, Adv.
Mr. M. Gupta, Adv.
...for the Defendant.

The Court: GA 1 of 2025 is filed by the Defendant, under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the present dispute to arbitration.

It is contended in the application that the deed of sub-lease executed between the parties contains arbitration clause. The Defendant is a sub-lessee in respect of the entire first floor of the building. The entire purported claim of the Plaintiff in the suit arises out of the deed of sub-lease dated 30th July, 2007 and the said deed contains arbitration clause. It is further submitted that the Defendant has not yet filed its first statement of claim on the substance of the dispute. Therefore, the instant application is filed, praying for referring the subject matter to arbitration.

The Plaintiff filed affidavit-in-opposition denying all the contentions. Affidavit-in-reply has also been filed.

The main contention of the Learned Counsel for the Defendant was that the subject matter of the suit squarely falls within the ambit of sub-lease for which the subject matter should be referred to arbitration. Secondly, it was argued that first statement on the substance of the dispute is yet to be filed. Therefore, there is no bar to file the instant application. The Learned Counsel for the Defendant relied upon **Greaves Cotton Ltd. Vs. United Amchinery & Appliances [(2017) 2 SCC 268]**.

The Learned Counsel for the Plaintiff objected to entertaining the application principally on two grounds. Firstly, it was argued that time limit for filing the first statement of claim or better to say, the written statement has expired. The upper limit of time for filing written statement is ninety days which has long expired. Therefore, the Defendant has lost right to file the first statement of claim and consequently this application. It is argued by the Learned Counsel for the Plaintiff that the phrase “not later than the date of submitting his first statement on the substance of the dispute” means that this time frame refers to statutory period for filing written statement. An application under Section 8 cannot be filed, after the statutory period is over.

Secondly, it was argued that the subject matter of the suit is not covered under the deed of sub-lease, leaving no scope to attract arbitration clause in his case.

The Learned Counsel for the Plaintiff referred to **Hitachi Payments Services Pvt. Ltd. & Anr. Vs. Shreyans Jain & Anr. (2025 SCC OnLine Del 1042)** and **M/s. Surya Pharmaceuticals Ltd. Through Harvinder Kaur Jatana, Liquidator Vs. State Bank of India** and also the recent notification

being **The Repealing & Amending Act, 2025** which along with others repealed the Amendment Act of 2015. The Learned Counsel for the Plaintiff in reply referred to **Jethanand Detab Vs. State of Delhi (1959 SCC OnLine Sc 109)** to refute this submission.

I have heard rival submissions.

Section 8(1) of the Arbitration and Conciliation Act, 1996 provides:

“8.Power to refer parties to arbitration where there is an arbitration agreement.—(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.”

The scope of Section 8(1) of the Arbitration and Conciliation Act, 1996 have been examined and explained by the Supreme Court of India in number of cases. In **P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539**, it was observed:

“5. The conditions which are required to be satisfied under sub-sections (1) and (2) of Section 8 before the court can exercise its powers are:

- (1) there is an arbitration agreement;
- (2) a party to the agreement brings an action in the court against the other party;
- (3) subject-matter of the action is the same as the subject-matter of the arbitration agreement;

(4) the other party moves the court for referring the parties to arbitration before it submits his first statement on the substance of the dispute.

This last provision creates a right in the person bringing the action to have the dispute adjudicated by the court, once the other party has submitted his first statement of defence. But if the party, who wants the matter to be referred to arbitration applies to the court after submission of his statement and the party who has brought the action does not object, as is the case before us, there is no bar on the court referring the parties to arbitration.”

In **Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. [(2011) 5 SCC 532]** the appellant filed a detailed affidavit opposing the application for interim injunction on 15-12-1999. Thereafter the appellant filed the application under Section 8 of the Act on 12-10-2001. On the date of filing of the application under Section 8, the appellant had not filed the written statement. In other words, after lapse of the statutory period to file written statement, the application under section 8 of the Act was filed. Though the Supreme Court of India upheld rejection of the application filed under section 8 of the Act, the following observations are important.

“25. Not only filing of the written statement in a suit, but filing of any statement, application, affidavit by a defendant prior to the filing of the written statement will be construed as “submission of a statement on the substance of the dispute”, if by filing such statement/application/affidavit, the defendant shows his intention to submit himself to the jurisdiction of the court and waives his right to seek reference to arbitration. But filing of a reply by a defendant, to an application for temporary injunction/attachment before judgment/appointment of Receiver, cannot be considered as submission of a statement on the substance of the dispute, as that is done to avoid an interim order being made against him.”

This was further considered by the Supreme Court of India and reiterated in **Greaves Cotton Ltd. Vs. United Amchinery & Appliances [(2017) 2 SCC 268]**:

“12. In view of the law laid down by this Court, as above, we find it difficult to agree with the High Court that in the present case merely moving an application seeking further time of eight weeks to file the written statement would amount to making first statement on the substance of the dispute. In our opinion, filing of an application without reply to the allegations of the plaint does not constitute first statement on the substance of the dispute. It does not appear from the language of subsection (1) of Section 8 of the 1996 Act that the legislature intended to include such a step like moving simple application of seeking extension of time to file written statement as first statement on the substance of the dispute. Therefore, in the facts and circumstances of the present case, as already narrated above, we are unable to hold that the appellant, by moving an application for extension of time of eight weeks to file written statement, has waived right to object to the jurisdiction of judicial authority.”

The Defendant in this case has yet to file written statement. Though the statutory time frame to file written statement elapsed, scope to file written statement is not closed since the time can be extended at the discretion of the court. Till the first statement of defence on the substance of dispute has not been filed, it cannot be said that the Defendant has waived his right and subjected to the jurisdiction of this Court. All that is to be considered is whether the Defendant has subjected itself to the jurisdiction of this court or not. This situation exceeds and this principal of law holds goods irrespective of amendments. Therefore, the Defendant has not lost his

rights to file the instant application. The argument of the Learned Counsel for the Plaintiff that the application is barred by time holds no leg to stand.

The subject matter of the suit is claim of money which the Plaintiff claims to be entitled to costs on account of structures partition, glass doors and main doors. The deed of sub-lease contains clause on entitlement of the sub-lessee to make wooden partition, installation of air-conditioning machine and others exactly which is the subject matter of the suit. It is clear that there exists an agreement containing arbitration clause; one of the parties has instituted the suit subject matter of which comes within the ambit of the arbitration clause; the applicant has yet to file the first statement of claim on the substance of the dispute, the applicant has not subjugated himself to the jurisdiction of this Court.

On hearing rival submissions and on perusal of material records this Court is of opinion, for the reasons as discussed above, that the instant application under Section 8 succeeds; the present dispute is to be referred to arbitration.

The parties shall approach the appropriate Bench of this Court for appointment of an Arbitrator.

The instant suit accordingly stands disposed of.

(SUGATO MAJUMDAR, J.)