



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**(1) Civil Revision No. 121 of 2022 (O&M)
Date of Decision: 19.01.2026**

Anil Kumar
..... Petitioner

Versus

Sahara Q Gold Mart Ltd;, Sahara India Bhawan,
1-Kapurthala Complex, Lucknow (U.P.) and another
..... Respondents

AND

(2) Civil Revision No. 141 of 2022 (O&M)

Anil Kumar
..... Petitioner

Versus

Sahara Q Gold Mart Ltd;, Sahara India Bhawan,
1-Kapurthala Complex, Lucknow (U.P.) and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Maninderjit Singh, Advocate
for the petitioner-plaintiff (in both cases).

None for the respondents-defendants.
(in both cases).

HARKESH MANUJA, J. (ORAL)

This order shall dispose off the present two revision petitions bearing CR Nos. 121 & 141 of 2022 as the same arise out of common impugned order involving identical facts and question of law.

[2] The petitioner(s)-plaintiff(s), by way of present revision petition(s), seek(s) setting aside of an order dated 03.08.2021 (Annexure P-

10) passed by the learned Civil Judge (Junior Division), Khanna **(hereinafter to be referred as “trial Court”)**, whereby an application filed at the instance of respondents-defendants under Section 8 of the Arbitration and Conciliation Act, 1996 **(for short “1996 Act”)** in Civil Suit Nos. 76 & 78 of 2019 instituted by the petitioner-plaintiff, was allowed.

[3] Briefly stating, the petitioner(s)-plaintiff filed the aforementioned suits for recovery against the respondents-defendants. In the said suits, after being served, the respondents-defendants appeared before the trial Court on 03.10.2019. Thereafter, written statement was filed on 05.12.2019 and the suits were adjourned for filing of replication. In the meanwhile, the respondents-defendants preferred application(s) dated 06.01.2020 under Section 8 of the 1996 Act with a prayer for referring the matter to Arbitration. The prayer made in the said application(s) was opposed at the instance of petitioner-plaintiff. In addition thereto, the plaintiff filed replication(s) before the learned trial Court on 07.02.2020 setting up a plea of fraud being allegedly played upon him at the instance of respondents-defendants. The learned trial Court, vide two separate orders dated 03.08.2021 (Annexure P-10), allowed the application(s) preferred at the instance of respondents-defendants while referring the matter to Arbitration. Aggrieved thereof, the present petition(s) have been preferred at the instance of petitioner(s)-plaintiff.

[4] Despite service, no one has chosen to appear on behalf of the respondents-defendants.

[5] I have heard learned counsel for the petitioner(s)-plaintiff and gone through the paper-book.

[6] A perusal of the record shows that the respondents-defendants appeared before the trial Court on 03.10.2019, the written statement was filed on 05.12.2019 whereas the application(s) in terms of Section 8 of the 1996 Act were preferred at their instance on 06.01.2020. The learned trial Court vide order dated 03.08.2021 allowed the same. The relevant para 6 of the said order is reproduced hereunder:-

“In the present case the applicant while filing the written statement in para no 4 and 6 clearly made reference to arbitration as such never submitted to the jurisdiction of this Court nor waived his right Thus filing of the application in hand subsequent to filing of written statement is of no consequence.”

[7] In the light of the factual matrix as elaborated above, the first question this Court feels necessary to answer is whether an objection in the written statement as to jurisdiction of the Court can be construed to be an application under Section 8 of the 1996 Act. This Court is of the view that this question cannot be answered in the affirmative. Merely raising an objection as regards the existence of the arbitration clause for referring the present disputes to arbitration in the written statement cannot be construed to give such objections color of reference under Section 8 of the 1996 Act. A written statement stating that the parties had agreed to refer the disputes arising out of the contract cannot be at par with an application seeking reference to arbitration under Section 8 of the 1996 Act.

[8] In the present case, though the written statement finds mention in para 4 & 6 that the parties according to terms and conditions in the contract, mutually agreed that all disputes shall be resolved through arbitration in accordance to the 1996 Act and rules thereunder, it cannot be

held to have made 'a clear reference' to arbitration under the 1996 Act. Even assuming *arguendo* that the objections in the written statement could be construed as an application under Section 8 of the 1996 Act, in such circumstances, there has to be a clear prayer for referring the parties to arbitration in the written statement itself. Merely raising a plea in the written statement that there exists an arbitration agreement between the parties without any specific prayer for referring the dispute to arbitration is inconsequential. A perusal of written statement in the case in hand clearly shows that no such prayer has been made by the respondents-defendants.

In such circumstances, the finding that, while filing the written statement, the respondents-defendants in paragraphs 4 and 6 had clearly made reference to arbitration and that they never submitted to the jurisdiction of the trial Court; being the sole ground for allowing the application under Section 8 of the 1996 Act does not find any merit with this Court.

[9] Further, this Court needs to examine whether the application dated 06.01.2020 filed under Section 8 satisfies the statutory requirements for a valid reference to arbitration. Since the controversy in question revolves round Section 8 of the 1996 Act, it would be apt to quote the same below for the purpose of convenience:

"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 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 find that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-Section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the court to call upon the other party to produce the original arbitration agreement or its duly certified copy before the court.]

(3) Notwithstanding that an application has been mad under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

[10] From the bare reading of Section 8, it is clear that an application under Section 8 of the Arbitration & Conciliation Act cannot be filed after the date of submitting the first statement on the substance. The Hon’ble Supreme Court in ***Rashtriya Ispat Nigam Limited & Anr. (2006) 7 SCC 275*** has dealt with the question as to what constitutes the first statement on the substance of the dispute whereby it was held that the substantive pleading that addresses the merits of the dispute filed by the party would be considered as the first statement on the substance of the dispute. In the context of civil suit, such expression would mean the “written statement” required to be filed in terms of the provision contained in Order 8 Rule 1 of the Code of Civil Procedure, 1908 (CPC) or response or reply filed by the party against whom action is brought to explain his defences before other judicial authorities or forums where the Code of Civil Procedure may not strictly apply.

[11] Further, the Division Bench of Hon'ble Calcutta High Court in case of "*Gitarani Maity v. Krishna Chakraborty* reported as **2025 SCC OnLine Cal 2462**" has recently dealt with similar circumstances as the facts in the present case. Relevant paragraphs from the said decision are extracted hereunder:-

" 10. Secondly and more importantly, in the present case, the defendant/respondent took out an application under Section 8 of the 1996 Act only after filing of the written statement, thereby defying the mandate of Section 8 of the 1996 Act itself.

11. Section 8 of the of the 1996 Act is quoted below for the purpose of convenience:

.....

12. A bare perusal of the said Section clearly shows that a judicial authority can only refer the matter to arbitration in view of the existence of an arbitration agreement/clause if the party seeking such reference applies for such reference not later than the date of submitting his first written statement on the substance of the dispute. The first statement on the substance of the dispute in case of a civil suit is, without doubt, the written statement filed by the defendant.

13. It is an admitted position that in the present case, the application under Section 8 of the 1996 Act was filed after the filing of the written statement and as such, the provision of Section 8 of the 1996 Act could not have been invoked by the learned Civil Judge.

14. Another limb of argument of the defendant/respondent is that in paragraph no. 12 of the written statement, the defendant pointed out that the Civil Court has no jurisdiction to entertain the suit in view of Clause 22 of the agreement dated May 28, 1993 and, as such, the same should be dismissed.

15. It is argued by the respondent that Clause 22 was an arbitration clause and as such, paragraph no. 12 of the written statement should be construed to come within the purview of an objection taken under Section 8 of the 1996 Act.

16. *With utmost respect, we are unable to express our agreement with the view taken by the learned Single Judge of the Delhi High Court in this context.*

17. *It was specifically held by the Supreme Court in the case of Sukanya Holdings (P) Ltd. v. Jayesh H. Pandya reported at (2003) 5 SCC 531 that an application under Section 8 of the 1996 Act has to be filed before the filing of the first statement on the substance of the dispute.”*

[12] This Court is of similar view that in the present case, since, the respondents - defendants have already entered into a defence of the suit by filing a detailed written statement on 05.12.2019 that addressed the merits of dispute in detail, thus, any application subsequent thereto is clearly barred in the terms of Section 8 of the 1996 Act. In the case in hand, the application(s) in terms of Section 8 of the 1996 Act were preferred on 06.01.2020 which is after the date of filing of written statement and accordingly, the respondents-defendants have subjected themselves to the jurisdiction of the Civil Court are now estopped from relying on the arbitration clause.

[13] In the light of aforesaid circumstances, the application(s) preferred at the instance of respondents-defendants on 06.01.2020 for referring the dispute to the Arbitration being clearly barred in terms of Section 8 of the 1996 Act, was thus liable to be rejected and accordingly rejected.

[14] Accordingly, the present petitions are **allowed** and the impugned order(s) passed by the learned trial Court are hereby set aside. ***Civil Suit Nos. 76 & 78 of 2019, titled “Anil Kumar Versus Sahara Q Gold Mart Ltd; Sahara India Bhawan, 1-Kapurthala Complex, Lucknow and another”*** are ordered to be restored to their its original number before the

Court concerned. The petitioner(s)-plaintiff is directed to appear through his counsel before the learned trial Court on **04.02.2026**. The learned trial Court is also requested to issue fresh notices upon the respondents-defendants for further proceedings in the matter as per law.

[15] Pending miscellaneous application(s), if any, shall also stand disposed off.

January 19, 2026
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(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No