
(2009) 09 OHC CK 0049
In the Orissa High Court

Citi Financials Consumer Finance India Ltd.

APPELLANT

Vs

Rabindra Nayak

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 8(2)

Citation : (2010) 109 CLT 183 : (2010) 1 OLR 739 Supp

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This civil revision is directed against the Order Dated 25.03.2006 passed by the Learned Civil Judge (Junior Division), 1st Court, Cuttack in C.S. No. 161 of 2005 rejecting an application u/s 8 of the Arbitration & Conciliation Act, 1996.

2. The brief facts of the case are that the Opposite Party/Plaintiff filed a suit in the Court of Civil Judge (Junior Division), 1st Court, Cuttack registered as C.S. No. 161 of 2005 praying therein to declare that Defendant/Petitioner in this case is not entitled to lend money to public by way of loan charging high rate of interest & further praying to injunct the Petitioner from collecting the alleged high rate of interest from the house of the O.P. till the interest is calculated & adjusted by the Court. Before filing the written statement, the Petitioner/Defendant filed a petition u/s 8 of the Arbitration & Conciliation act, 1996 with a prayer to refer the matter to an arbitrator. The Trial Court, however, rejected the application on 25.03.2006 on the ground that the Petitioner had not complied with the provisions of Section 8 (2) of the Arbitration & Conciliation Act & that the suit filed by the Opposite Party/ Plaintiff involves mixed questions of facts & law. Against that order, the Petitioner/Defendant preferred this revision.

3. Mr. Pattnaik, Learned Counsel for the Petitioner contended that the subject matter of the suit is an arbitration agreement between the parties, in Clause 30

whereof no specific Court at Delhi has been mentioned who has got the exclusive jurisdiction over the matters in dispute. The arbitration agreement was filed on 24.01.2006 before the Court below along with the application. But, without adjudicating the same on the merits, it rejected the same. It is the settled principle of law that the Defendant at the first instance had the option of filing a petition u/s 8 of the Arbitration Act before the Court below. Against rejection of that application, civil revision will lie. In support of his submission, he has relied upon the decision in the case of Tulsi Ram and Others Vs. Mathura Sagar Pan Tatha Krishi and Another, He also submitted that the Court below should have referred the matter for arbitration in consonance with the arbitration agreement.

4. Learned Counsel for the Opposite Party submitted that the civil revision which arises out of an interlocutory order, is not maintainable in view of the ratio in Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, . Moreover, the suit filed by the Opposite Party in the Court of Civil Judge (Junior division) is valued at Rs. 500 for declaration & Rs. 100 for injunction. Therefore, the civil revision should have been filed before the Learned District Judge, Cuttack. He submitted that there is no illegality committed by the Court below in rejecting the petition u/s 8 of the Arbitration & Conciliation Act. Section 8 of Arbitration & Conciliation Act is very clear that a judicial authority shall entertain such an application after compliance of provisions of Section 8(2) of the Arbitration & Conciliation Act. In Clause 30 of the arbitration agreement, no specific Court or authority has been mentioned before whom the parties to the agreement should approach in case any dispute arises between them. Therefore, the Learned Civil Judge (Junior Division) has rightly rejected the application.

5. Perused the record. Considered the submissions made by the parties. There is no dispute that the suit is valued at Rs. 500 & is pending before the Civil Judge (Junior Division), 1st Court, Cuttack. The suit is for declaration. Therefore, the Civil revision petition is not maintainable before this Court. It ought to have been filed before the District Judge but not before this Court.

The Civil revision is accordingly dismissed.