

(2016) 03 MP CK 0037
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2339 of 2015

Gail Gas Limited & another	Vs	APPELLANT
M.P. Agro BRK Energy Foods Ltd and another		RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2016) 1 MPWN 351

Hon'ble Judges : Prakash Shrivastava, J.

Bench : Single Bench

Advocate : N.L. Ganapatti and G.S. Chouhan, Advocates, for the Appellant; R.S. Laad, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Prakash Shrivastava, J.—This writ petition under Article 227 of the Constitution of India is at the instance of the defendant in the suit challenging the order of trial court dated 21/1/2015 rejecting the petitioner's application under Section 8 of Arbitration & Conciliation Act, 1996 (for short Act of 1996).

2. In brief in a suit filed by respondent/plaintiff an application under Section 8 of Act 1996 was filed by petitioner for invoking the arbitration clause contained in the agreement with a prayer to refer the dispute to arbitration in terms of Section 8 of Act of 1996. The said prayer was opposed by respondent and the trial court by the impugned order has rejected the application.

3. Learned counsel for petitioner submits that the trial court has committed an error in rejecting the application under Section 8 of Act of 1996 without appreciating that the conditions mentioned therein are satisfied and in terms of the arbitration agreement, the dispute is required to be referred for arbitration.

4. Learned counsel for respondent has opposed the writ petition.

5. Having heard the learned counsel for the parties and on perusal of the record,

it is noticed that the trial court has rejected the petitioner's application under Section 8 of the Act 1996 on the ground that very arbitration agreement is under challenge in the suit, hence Section 8 cannot be invoked.

6. On perusal of the plaint, it is noticed that respondent/plaintiff has raised the plea in the suit that agreement dated 24/2/11 is one sided proforma which is not binding on the respondent. The main relief claimed in the plaint is to declare that agreement dated 24/2/11 is not binding on the respondent and is void.

7. Under Section 8 of the Act 1996 a matter which is subject matter of arbitration agreement can be referred to arbitration therefore Section 8 presupposes the existence of valid arbitration agreement. In a suit where very existence and validity of arbitration agreement is under challenge, Section 8 of Arbitration Act cannot be invoked.

8. Supreme court in the matter of Booz Allen And Hamilton INC. v. SBI Home Finance Ltd. And others reported in 2011(3) MPLJ 625 has held that while deciding the application under Section 8 of Act all aspects of the arbitrability will have to be decided by the court seized of the suit and they cannot be left to the decision of the arbitrator. It has further been held that if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special Court or Tribunal, the court will refuse an application under Section 8 of Act. Same is the view taken by this Court in the matter of Mukesh Singh Tomar and another v. Rakesh s/o Amrish Sharma and others reported in 2013(1) MPLJ 233.

9. While granting the prayer under Section 8 of the Act, the court is required to see whether there exists an agreement and such an agreement contains the arbitration clause and the dispute sought to be raised in the suit is covered by the agreement (See: The Branch Manager Magma Leasing and Finance Ltd. And another v. Potluri Madhavilata and another reported in AIR 2010 SC 488; Birla Global Finance Ltd. v. Gajra Bevel Gears Ltd. Reported in 2006(4) MPLJ 566.

10. Under the amended Section 8 of the Act 1996 also the court is required to reach to the conclusion about existence of valid arbitration agreement while deciding the application under Section 8 of the Act.

11. Since in the present matter, the suit itself is for declaring the agreement as null and void and such an issue can only be decided by the trial court and not by the arbitrator, hence the trial court has not committed any error in rejecting the petitioner's application under Section 8 of the Act of 1996. The order passed by the trial court does not suffer from any patent illegality.

12. Hence no case for interference in the impugned order of trial court is made out. The writ petition is accordingly dismissed.