
(2015) 11 GAU CK 0005
In the Gauhati High Court
Case No : CRP No. 312 of 2015

Indian National Trade Union Congress and Others	APPELLANT
Vs	
Hiranya Bora	RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 8(1)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151, 9
Constitution of India, 1950 — Article 227

Citation : (2015) 11 GAU CK 0005

Hon'ble Judges : Suman Shyam, J.

Bench : Single Bench

Advocate : N. Dhar, Advocate, for the Appellant; D. Baruah, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J.—Being aggrieved by the order dated 06.06.2015 passed by the learned Civil Judge No. 3, Kamrup(M), Guwahati rejecting the application filed under Order VII Rule 11 CPC praying for rejection of the plaint, the petitioners/defendants have approached this Court by filing the instant revision petition invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

2. The respondent as plaintiff had instituted Title Suit No. 77/2014, inter alia, seeking a declaration that the petitioner No. 1, Indian National Trade Union Congress, Assam Branch and its President as well as the President of the reception committee viz., respondent Nos. 2 and 3 herein, did not have the jurisdiction to call for the triennial session of the said body on 8th of March, 2014. The petitioner Nos. 1, 2 and 3 herein had been impleaded as the defendant Nos. 1, 2 and 3 respectively in the said Title Suit.

3. On receipt of summons the defendants had appeared and contested the suit by filing their written statement on 26.03.2014. Thereafter, on 10.09.2014 an

application was filed by and on behalf of the defendant No. 1/petitioner No. 1 under Order VII Rule 11 CPC praying for rejection of the plaint on the ground that the suit was barred under Section 8 of the Arbitration and Conciliation Act, 1996 due to existence of Clause 17(ix) in the constitution of the petitioner No. 1 which mandated resolution of any dispute of the present nature by arbitration by referring the same to the working committee.

4. The respondent/plaintiff had filed written objection against the said application contending, inter alia, that Clause 17(b)(ix) pertains to rule making power of the working committee to be carried out with the approval of the general council and the same by itself does not constitute an arbitration agreement for reference of dispute to the arbitrator. It was further contended that once the defendants have filed their written statement on the substance of the dispute submitting themselves to the jurisdiction of the Court, Section 8 of the Arbitration and Conciliation Act would cease to have any application in the matter.

5. After hearing the learned counsels for the parties and on consideration of the objection raised by the petitioner No. 1/defendant No. 1 the learned trial Court had rejected the said application by holding that the application filed under Order VII Rule 11 CPC praying for rejection of the plaint on the ground of same being barred under Section 8 of the Arbitration and Conciliation Act, 1996 having been filed subsequent to filing of the written statement the same was not maintainable in the eye of law. The learned Court below was of the view that such an application is required to be filed before submitting the first statement on the substance of the dispute.

6. I have heard Mr. N. Dhar, learned counsel for the petitioners. Also heard Mr. D. Baruah, learned counsel representing the respondent.

7. Drawing the attention of this Court to the decisions of the Hon'ble Supreme Court rendered in the case of *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, as well as *The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponniannan Educational Trust represented by its Chairperson/Managing Trustee*, Mr. Dhar submits that the Court is required to exercise the power under Order VII Rule 11 by reading the averments made in the plaint. In the present case, once the petitioner No. 1 has filed an application under Order VII Rule 11 CPC, it was incumbent upon the trial Court to go through the averments made in the plaint and decide as to whether the suit is barred by clause 17(ix) of the constitution of the petitioner No. 1. Mr. Dhar submits that since the said clause in the constitution requires a member to submit such dispute for settlement through arbitration, hence, the Civil Court clearly did not have jurisdiction to entertain the suit filed by the plaintiff. On such count, submits Mr. Dhar, the learned Court below has committed manifest illegality in rejecting the application filed under Order VII Rule 11 CPC by the petitioner No. 1. He submits that it is a clear case of error in exercising jurisdiction by the Court below and hence calls for interference by this Court.

8. Mr. D. Baruah, learned counsel for the respondent, on the other hand, contends that clause 17(ix) has to be read and understood in the context of Clause 17(b)(ix) which provision makes it clear that the power under sub-clause (ix) of Clause 17 pertains to rule making function of the working committee. He submits that there is no arbitration agreement warranting reference of the dispute involved in the present suit for settlement by arbitration in accordance with the provision of Arbitration and Conciliation Act, 1996. That apart, submits Mr. Baruah, the petitioner No. 1 having failed to make any application for reference to arbitration as per Section 8(1) of the Act of 1996 before submitting the written statement, the provision of Section 8(1) would cease to have any application in the matter inasmuch as having subjected to the jurisdiction of the Civil Court the petitioner would be debarred from making a request for reference of dispute to arbitration even if there is a valid arbitration agreement governing the rights and interest of the parties. In support of his aforesaid argument Mr. Baruah placed reliance upon a decision of this Court reported in *West Bengal State Electricity Board and Others Vs. Shanti Conductors Private Ltd.*, to contend that the objection raised by the petitioner No. 1 under Order VII Rule 11 CPC was not maintainable in the eye of law. In such view of the matter, submits Mr. Baruah, there is no illegality or infirmity in the impugned order passed by the Court below and the revision petition deserves to be dismissed.

9. I have considered the submissions made by and on behalf of the parties and have also perused the record. From a reading of the application filed by the petitioner No. 1 on 10.09.2014 what is apparent is that although the said application has been filed under Order VII Rule 11 read with Section 151 CPC, yet, the said application does not refer to any of the sub-clause of Order VII Rule 11 CPC nor portrays even a remote reference to any of the grounds under which the Court has the power to reject a plaint. On the contrary, the only ground taken by the petitioner No. 1 in the said application is that the suit being barred under Section 8 of the Arbitration and Conciliation Act, 1996.

10. On a threadbare consideration of the materials on record as well as a number of judicial pronouncements concerning the subject the learned trial Court had rejected the said application by holding that the petitioner No. 1/defendant No. 1 having submitted to the jurisdiction of the trial Court by submitting the written statement, an application filed under Section 8(1) of the Act of 1996 would not be maintainable at a subsequent stage due to the express bar provided by the Act itself. What is noticeable is that nowhere in the said application or in the written statement filed by the petitioners has any prayer been made for reference of the dispute to arbitration.

11. There can be no manner of doubt about the fact that a defendant would be entitled to file an application under Order VII Rule 11 CPC praying for rejection of the plaint on any of the grounds mentioned therein. On such an application if the Court is satisfied regarding existence of any one or more of the grounds mentioned in Order VII Rule 11 CPC, then the Court would be duty bound to

reject the plaint. In the present case, as has been pointed out herein before, no ground has been mentioned in the application inviting the attention of the Court to any of the provisions of Order VII Rule 11 CPC. At the stage of argument Mr. Dhar, learned counsel for the petitioners, has tried to impress upon the Court that the jurisdiction of the Civil Court was barred due to the existence of Clause 17(ix) in the constitution of the petitioner No. 1 and to such extent the Civil Court cannot entertain the dispute raised in the plaint.

12. It is trite law that the Civil Court would have the jurisdiction to entertain all disputes save and except those which are expressly or by necessary implication, bared by any law. The constitution of the petitioner No. 1 may be binding upon the members of the Association in certain regards. However, the said provision contained in the constitution of the petitioner No. 1 cannot by any stretch of imagination be construed as a statutory provision ousting the jurisdiction of the Civil Court within the meaning of Section 9 of the CPC. Moreover, it is also not the case of the petitioner that the dispute raised in the plaint is required to be referred to Arbitration of the working committee. In such view of the matter the said argument of Mr. Dhar does not merit acceptance in the opinion of this Court.

13. Coming to the next question of the suit being barred under Section 8 of the Arbitration and Conciliation Act, as has been pointed out herein before, the petitioner has not made any application till date for reference of the dispute to arbitration. The provisions of Section 8(1) of the Act of 1996 would come into play if and only if an application is made by any of the parties to an arbitral agreement requesting for reference of the dispute to arbitration not later than submitting the first statement on the substance of the dispute.

14. In the reported case of West Bengal State Electricity Board and Others Vs. Shanti Conductors Private Ltd., , this Court has observed in paragraph 9 as follows:--

"9. In the case at hand, the application under Section 8 was made by the defendants after the written statement stood submitted. Hence, this application was not maintainable. The fact that the existence of the arbitration clause was admitted in the pliant or asserted in the written statement is immaterial inasmuch as the Court, under Section 8 , can refer for arbitration a dispute pending in a civil suit only when the party or parties concerned make application for getting the dispute referred to arbitration. If despite existence of arbitration clause, the parties choose to contest the suit, the powers under Section 8 cannot be invoked."

15. From the above it is, therefore, apparent that the bar of jurisdiction of Civil Court under Section 8(1) of the Act of 1996 would come into play if and only if the application for referring the dispute to arbitration is made by any of the parties to the arbitration agreement and in accordance with the procedure prescribed therein. There is hardly any doubt that in the present case the application filed under Order VII Rule 11 CPC viewed from any angle does not

conform to the requirement of Section 8(1) of the Act of 1996. In that view of the matter, there is no illegality or infirmity in the impugned order passed by the learned trial Court rejecting the application under Order VII Rule 11 CPC inasmuch as I do not find any cogent ground to interfere with the impugned order in exercise of jurisdiction conferred on this Court under Article 227 of the Constitution of India.

16. In view of the above, this revision must fail and is hereby dismissed. However, there would be no order as to cost.

The parties would now appear before the trial Court on 14th December, 2015 for further proceeding in the matter.