

(1999) 08 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : F.A. F.O. No. 2288 of 1998 (Against Order of G. S. Matharoo, P.C.S. Addl. Civil Judge, (Sr. Division) , Phul, dated 14-10-1998)

Parampal Singh and others

APPELLANT

Vs

Punjab State Ware House Corpn., Chandigarh and others

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : AIR 2000 P&H 53 : (1999) 3 CivCC 499 : (2000) 1 ILR (P&H) 220 : (2000) 124 PLR 347 : (1999) 4 RCR(Civil) 219

Hon'ble Judges : S.S. Sudhalkar, J

Bench : Single Bench

Advocate : Sh. Sarjit Singh and Sh. Jagder Singh, for the Appellant; Sh. N.S. Boparai, for the Respondent

Judgement

S.S. Sudhalkar, J.—By the impugned order, learned Additional Civil Judge (Senior Division) Phul stayed the suit filed by the appellants and the matter was ordered to be referred to the Arbitrator for adjudication. Being dissatisfied with the order, this appeal has been filed.

2. The first contention of the learned counsel for the appellants is that the certified copy of the Arbitration agreement was not produced by the respondents along with the application for referring the matter to the Arbitrator. It is the contention of both the learned counsel for the parties that the provisions of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "1996" Act) apply to the present case. Section 8 of the 1996 Act reads as under :

"8. Power upto 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.

(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.

(3) Notwithstanding that an application has been made 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."

3. Learned counsel for the appellants has stated that 2/3 dates were taken for filing written statement and then an application for referring the case to the Arbitrator was given. The first contention of learned counsel for the appellants, as mentioned above, is that because the application of the respondents for referring the matter to the Arbitrator was not accompanied by original arbitration agreement or duly certified copy thereof, the same should not have been entertained. As against this learned counsel for the respondents has pointed out that a copy of the very agreement has been produced by the appellants themselves along with the plaint and that is a Ex. P1 on the record. This fact is also verified from the record of the trial Court. Of course, it is also apparent from the record that though an application for referring the matter of the Arbitrator was given earlier, copy of the agreement was produced by the respondents later on. The question now is whether the impugned order should be set aside holding that it did not comply with the provision of sub-section (2) of Section 8 of 1996 Act. The provision of the 1996 Act that the copy of the Arbitration agreement or duly certified copy thereof should be produced along with the application for referring the matter to the Arbitrator cannot be interpreted to mean that if the copy of the same was produced earlier though by the other party, the application should be dismissed. Take for instance, a case where such copy of the arbitration agreement is produced earlier and the application to refer to the matter to the Arbitrator has been filed later on, by the same party viz., the defendant, then it cannot be said that the provision of sub-section (2) of Section 8 of the 1996 Act was not complied with. This is because the copy of the arbitration agreement was already produced on record by the defendant in the given case. Similarity, in this case also a copy of the arbitration agreement Ex. P1 has been produced on record by the plaintiffs themselves and the application for referring the matter to the Arbitrator was filed by respondent defendant. This being the position the appellants cannot be allowed to raise this technical plea of non-compliance of provision of sub-section (2) of Section 8 of the 1996 Act.

4. At this stage of dictation, learned counsel for the appellants does not press for other contentions raised by him. In view of the above, this appeal is without merit and deserves to be dismissed.

5. In the result, this appeal is dismissed.

6. Appeal dismissed.