
(2003) 02 P&H CK 0209
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5470 of 2001

Union of India (UOI)

APPELLANT

Vs

Smt. Lajwant Kaur

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8

Citation : (2003) 2 ARBLR 539 : (2003) 134 PLR 324 : (2003) 2 RCR(Civil) 124

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Hari Om, for the Appellant; M.M. Monga, for the Respondent

Final Decision : Allowed

Judgement

V.M. Jain, J.—This revision petition has been filed against the order dated 11.9.2001, passed by the trial court, dismissing the application of petitioners for referring the dispute to the Arbitrator.

2. A perusal of the order dated 11.9.2001, passed by the trial court, would show that the trial court dismissed the said application of the petitioners only on the ground that defendants having taken steps for filing of their first statement on the substance of dispute, they cannot be allowed to seek referring of the dispute to the Arbitrator.

3. After hearing the representative of the petitioners and the counsel for the respondent and after perusing the record, in my opinion, order dated 11.9.2001 passed by the trial court must be set aside. I am further of the opinion that it is a fit case where the trial court may be directed to decide the matter afresh in accordance with law.

4. Section 8 of the Arbitration and Conciliation Act, 1996 reads as under:-

"Power to refer parties to arbitration where there is an arbitration agreement:-

(1) A judicial authority before which an action is brought in 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".

A perusal of the above would show that trial court was competent to refer the dispute to arbitration if the defendants petitioners had made a prayer in this regard before filing written statement. Admittedly, no written statement has so far been filed. In this view of the matter, trial court was not competent to refuse to refer to the arbitration only on the ground that the defendants had not taken steps for filing their first statement on the substance of the dispute. Admittedly, first statement on the substance of the dispute has not been filed. Merely taking step in this regard would not be enough to bar the defendants from seeking reference to arbitration. Learned counsel for the respondent has submitted that u/s 8(2) of the Act, reference to the Arbitrator could still be refused if the application was not accompanied by original arbitration agreement or a duly certified copy thereof. It has been submitted that in fact the application filed by the applicants was not accompanied by the arbitration agreement. Be that as it may, so far as order dated 11.9.2001 is concerned, no reference in this regard has been made by the trial court. The only ground on which the application for reference to arbitration has been dismissed is that the defendants had taken steps for filing of their first statement on the substance of the dispute, as referred to above. This could not be taken as a ground for refusing the referring of the matter to the Arbitrator.

5. In view of the above, present revision petition is allowed, order dated 11.9.2001 passed by the trial court is set aside and the trial court is directed to decide the application afresh in accordance with law keeping in view the provisions of Section 8 of the aforesaid Act.

6. Since the proceedings were stayed by this court, parties are directed to appear before the trial Court on 5.3.2003 for further proceedings in accordance with law.