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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) 148/2024 & C.M.Nos.61069-61070/2024

M/S SULTAN CHAND AND SONS PVT. LTD .....Appellant

Through: Mr.Kunal Tandon with Mr.Saurabh D.Karan Singh, Ms.Natasha, Mr.Sanjay Shisodia and Ms.Neha Arya, Advocates.

versus

KARTIK SHARMA .....Respondent

Through: Mr.Chandra Prakash, Advocate (Through VC)

% Date of Decision: 18th October, 2024

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present petition has been filed challenging the order dated 19th September, 2024 passed by the learned Single Judge in CS (OS) No.227/2023, whereby learned Single Judge has allowed the Respondent-Defendant to withdraw his application, being I.A. No. 36049/2024, filed under Section 8 of the of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking reference of the disputes in the suit for damages to an Arbitral Tribunal. The Appellant further seeks directions to consequently refer the parties to arbitration, in terms of the mandatory nature of Section 8 of the Act.

2. Learned counsel for the Appellant states that the Respondent-Defendant approached the Appellant with certain literary content claiming that the same has been authored by him. Believing the assertions of the Respondent-Defendant, the Appellant as well as certain authors associated with the Appellant invested time, money and resources to give the literary content a shape of a book.

3. He states that the Appellant and the Respondent-Defendant entered into a publication/ copyright sharing agreement dated 01st March, 2020, which incorporated an arbitration clause, in respect of two books namely (i) Essentials of Artificial Intelligence – Class VIII and (ii) Essentials of Artificial Intelligence – Class IX. He states that additionally, the Appellant also published a third book i.e. 'Essential of Artificial Intelligence – Class X' in respect of which no formal written agreement was entered into by the parties. He states that in 2020 – 2021, Appellant used its resources to market the books.

4. However, Appellant received several queries in 2022 that the books published by the Appellant were plagiarized and the material in the books was rampantly copied from various sources. He states that in April, 2023 Appellant was constrained to withdraw all books purportedly authored by the Respondent-Defendant from the market owing to the content being plagiarized.

5. He states that owing to the breach of the warranties/representations and the losses/damages suffered due to the Respondent-Defendant's misrepresentation, the Appellant filed the subject suit for damages against the Respondent-Defendant on 08th April, 2023. He states that the Appellant *inter alia* sought damages to the tune of Rs.2.25 Crores from the Respondent-Defendant on account of fraud committed by him by claiming

that he is the original author in respect of the books.

6. He states that on 11th April, 2023, Respondent-Defendant filed a criminal complaint under Section 63 of the Copyright Act, 1957 against the Appellant and also instituted a suit alleging copyright violation against the Appellant as well as certain authors being C. S. (Comm.) No.344/2023.

7. He states that on 10th May, 2023, Respondent-Defendant filed his written statement in the suit for damages and took the objection under Section 8 of the Act. He states that subsequently on 06th August, 2024, Respondent-Defendant filed I.A. No.36049 / 2024 under Section 8 of the Act for dismissal of the suit for damages and for reference of the disputes to arbitration wherein the Respondent-Defendant took a categorical plea that all disputes raised in the suit for damages are covered under the arbitration agreement without making any distinction in respect of the book for which there was no agreement.

8. He states that since the Respondent-Defendant had agreed for the composite suit to be referred to arbitration, the Appellant conceded and also filed an application i.e. I.A. No.38663/2024 agreeing to the request of reference to arbitration.

9. He, however, states that thereafter the Respondent-Defendant withdrew his application under Section 8 of the Act.

10. Learned counsel for the Appellant states that the amendment brought in Section 8 of the Act in the year 2015 makes it obligatory for the Court to refer the dispute to arbitration. In support of his submission, he relies upon the following judgments:-

(a) ***Hindustan Petroleum Corpn. Ltd. vs. Pinkcity Midway Petroleums (2003) 6 SCC 503;***

> *"15. The question then would arise: what would be the role of the Civil Court when an argument is raised that such an arbitration clause does not apply to the*

facts of the case in hand? Learned counsel for the appellant contends that it is a matter which should be raised before the arbitrator who is competent to adjudicate upon the same and the Civil Court should not embark upon an inquiry in regard to the applicability of the arbitration clause to the facts of the case. While learned counsel appearing for the respondent contends that since the applicability of the arbitration clause to the facts of the case goes to the very root of the jurisdiction of the reference to arbitration, this question will have to be decided by the Civil Court before referring the matter to arbitration even in cases where there is admittedly an arbitration clause. The answer to this argument, in our opinion, is found in Section 16 of the Act itself. It has empowered the Arbitral Tribunal to rule on its own jurisdiction including rule on any objection with respect to the existence or validity of the arbitration agreement...."

(b) ***Kalpana Kothari vs. Sudha Yadav & Ors. (2002) 1 SCC 203;***

"9. On the ground of estoppel and the conduct of the appellants in getting their earlier application made under Section 34 of the 1940 Act dismissed as not pressed that the applications under Section 8 of the 1996 Act were not countenanced by the High Court. The fact that the earlier application under the 1940 Act was got dismissed as not pressed in the teeth of the repeal of the said Act cannot, in our view, constitute any legal impediment for having recourse to and avail of the avenues thrown open to parties under the 1996 Act. Similarly, having regard to the distinct purposes, scope and object of the respective provisions of law in these two Acts, the plea of estoppel can have no application to deprive the appellants of the legitimate right to invoke an all comprehensive provision of mandatory character like Section 8 of the 1996 Act to have the matter relating to the disputes referred to arbitration, in terms of the arbitration agreement."

(c) ***Magma Leasing and Finance Limited and Anr. vs. Potluri Madhavilata and Anr. (2009) 10 SCC 103;***

"18. Section 8 is in the form of legislative command to the court and once the pre-requisite conditions as aforestated are satisfied, the court must refer the parties to arbitration. As a matter of fact, on fulfillment of conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration. There is nothing on record that the pre-requisite conditions of Section 8 are not fully satisfied in the present case. The trial court, in the circumstances, ought to have referred the parties to arbitration as per arbitration clause 22."

(d) **P.Anand Gajapathi Raju & Ors. vs. P.V.G. Raju & Ors. (2000) 4 SCC 539;**

"8. In the matter before us, the arbitration agreement covers all the disputes between the parties in the proceedings before us and even more than that. As already noted, the arbitration agreement satisfies the requirements of Section 7 of the new Act. The language of Section 8 is peremptory. It is, therefore,

obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement. Nothing remains to be decided in the original action or the appeal arising therefrom. There is no question of stay of the proceedings till the arbitration proceedings conclude and the Award becomes final in terms of the provisions of the new Act. All the rights, obligations and remedies of the parties would now be governed by the new Act including the right to challenge the Award. The Court to which the party shall have recourse to challenge the Award would be the Court as defined in clause (e) of Section 2 of the new Act and not the Court to which an application under Section 8 of the new Act is made. An application before a Court under Section 8 merely brings to the Courts notice that the subject matter of the action before it is the subject matter of an arbitration agreement. This would not be such an application as contemplated under Section 42 of the Act as the Court trying the action may or may not have had jurisdiction to try the suit to start with or be the competent Court within the meaning of Section 2 (e) of the new Act."

11. Having heard learned counsel for the Appellant and having perused the paper book, this Court finds that in the plaint, the Appellant-Plaintiff has taken a categorical stand that the arbitration clause in the agreement dated 01st March, 2020 does not govern the subject matter of the present dispute. The Appellant-Plaintiff has explained that the scope of the agreement is distinct and inapplicable to the subject controversy and has also categorically asserted that there is no arbitration clause *qua* the suit between the parties as there is no agreement with regard to the third book i.e. 'Essential of Artificial Intelligence – Class X'.

12. The Appellant-Plaintiff having expressly denied the existence of an arbitration clause *qua* the disputes raised in the plaint cannot seek reference of the disputes to arbitration under Clause 14 of the agreement as the Appellant-Plaintiff's own stand in the plaint does not enable him to invoke Exception 2 of Section 28 of the Indian Contract Act, 1872.

13. The right to seek a reference to Arbitral Tribunal under Section 8 of the Act is a right available solely to the defendant. This right is waivable at the instance of the Respondent-Defendant and the Respondent-Defendant

has an option to submit itself to the jurisdiction of the Civil Court.

14. In the judgments, referred to and relied upon by the learned counsel for the Appellant, the Apex Court has not stated that the defendant has no option to withdraw an application filed under Section 8 of the Act. While in ***P.Anand Gajapathi Raju*** (supra), the Supreme Court has held that the language of Section 8 of the Act is pre-emptory and it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement in the event the conditions precedent are satisfied, yet in ***Kalpana Kothari*** (supra) the Court has clarified that the plea of estoppel has no application to Section 8 of the Act.

15. Consequently, the judgments referred to and relied upon by the learned counsel for the Appellant do not advance the case of the Appellant.

16. Since the Respondent-Defendant herein has now withdrawn his application i.e. I.A.36049/2024 and does not wish to seek a reference to arbitration, the Appellant-Plaintiff has no legal right to oppose the withdrawal of the said I.A.36049/2024 and/or insists that the matter be referred to arbitration.

17. Accordingly, the present appeal along with applications is dismissed.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

OCTOBER 18, 2024
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