

(2007) 07 P&H CK 0060

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Krishan Kumar Goel

APPELLANT

Vs

National Institute of Technology

RESPONDENT

Date of Decision: July 6, 2007

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 8
- Constitution of India, 1950 - Article 227

Citation: (2008) 1 CivCC 150 : (2007) 4 PLR 695 : (2007) 4 RCR(Civil) 249

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Judgement

Permod Kohli, J.

By invoking the jurisdiction of this Court under Article 227 of the Constitution of India, legality and validity of the order dated 16.4.2007 passed by the Civil Judge (Senior Division), Kurudshetra, has been challenged.

2. In a suit for declaration filed by the petitioner, the consequential relief of permanent injunction has also been sought. The respondents filed: an application allegedly under Order 7 Rule 11, of the Code of Civil Procedure, seeking rejection of the plaint on the plea that there exists an Arbitration Agreement between the parties and the matter needs to be referred to and adjudicated upon by the Arbitrator in accordance with the Arbitration Agreement.

3. The trial Court has decided this application vide the Impugned order and directed the return of the plaint to the plaintiff-petitioner allegedly in terms of Order 7 Rule 10 the CPC having been filed in the Court without jurisdiction.

4. I have perused the impugned order and heard learned Counsel for the parties. The impugned order is totally misconceived and based upon misconstruction and mis-interpretation of the provisions of the CPC as also the Arbitration and

Conciliation Act.

5. Impugned order is sought to be defended by the learned Counsel for the respondents. It is contended that in view of Arbitration Agreement between the parties Civil Court had no jurisdiction and thus either the plaint is required to be rejected under Order 7 Rule 11(d) or returned to be referred to Arbitrator.

Order 7 Rule 11(d) is noticed hereunder:

11. Rejection of plaint.- The plaint shall be rejected in the following cases:

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) where the suit appears from the statement in the plaint to be barred by any law.

In terms of above provision plaint is liable to be rejected only if from the statement made in the plaint itself suit appears to be barred by any law.

6. It is not the case of respondents-defendants that from any averment made in the plaint the suit appears to be barred by any law, nor is this the opinion of the Court below. Defendant raised a plea of alternate dispute resolution forum (Arbitration) in view of mutual agreement between the parties.

7. Existence of Arbitration Agreement cannot be a ground of rejection of the plaint in terms of Order 7, Rule 11, C.P.C. Rejection is permissible only if the suit is barred by any Law. Law means an enacted law by competent legislature and Arbitration Agreement by no stretch of imagination, can be termed to be law so as to invoke the provisions of under Order 7 Rule 11 C.P.C. Similarly, the provisions of Order 7 Rule 10 C.P.C. have no application. Return of the plaint is permissible, if the Court where the plaint is presented does not have territorial and pecuniary jurisdiction. There was no such plea enabling the court to invoke Order 7 Rule 10 C.P.C. When any party to the suit pending before a judicial authority raises a plea of existence of alternate redressal forum by way of Arbitration on the basis of alleged agreement in this regard, the remedy is in terms of Section 8 of Arbitration and Conciliation Act. The order impugned is patently illegal and is hereby set aside.

8. Learned Counsel for the respondents seeks liberty to take appropriate remedy. Needless to say this order will not come in the way of respondents, if they choose to make an application in terms of Section 8 of the Arbitration and Conciliation Act, in accordance with law.

9. Parties shall cause their appearance before the trial Court for further proceedings in the matter.