
Metso Minerals (India) Pvt. Ltd. Vs Shivgiri Associates and Others

CS(OS) No. 3152 of 2011

Court: Delhi High Court

Date of Decision: Nov. 5, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 37 Rule 37#Evidence Act, 1872 - Section 21#Specific Relief Act, 1963 - Section 14(2)

Citation: (2015) 224 DLT 578 : (2015) 4 JCC 2795

Hon'ble Judges: Valmiki J. Mehta, J.

Bench: Single Bench

Advocate: Gaurav Bhardwaj, Advocate, for the Appellant; Madhav Khurana and Foram Kamdar, Advocates, for the Respondent

Judgement

Valmiki J. Mehta, J.

I.A. No. 5033/2012 (by defendants for condonation of delay of 17 days)

1. In this suit which is under Order 37 of the Code of Civil Procedure, 1908, the defendants did not file a formal appearance but filed vakalatnama

of their Advocate, with an admitted delay of 17 days. It is a settled law that filing of Vakalatnama will amount to appearance inasmuch as there is

no mandate and compulsory form which must be filed as an appearance in the suit. Accordingly, appearance of the defendants through their

Counsel by filing Vakalatnama along with a delay of 17 days is taken as an appearance in the suit, with consent of the plaintiff, but subject to

payment of costs of Rs. 15,000/- to the plaintiff to be paid within a period of two weeks from today. In case costs are not paid within two weeks

thereafter costs of Rs. 20,000/- will be paid.

I.A. stands disposed of accordingly.

I.A. No. 5037/2012 (by defendants under Order 8 Rule 1 of the Arbitration and Conciliation Act. 1996) & CS(OS) No. 3152/2011

This is an application filed by the defendants that the disputes in the present suit cannot be tried by this Court and have to be referred to Arbitration

in terms of the Arbitration Clauses in the two Agreements dated 1.3.2009. Admittedly, in the Agreements dated 1.3.2009, and which are referred

by the plaintiff in the plaint itself and which Agreements are filed by the plaintiff itself, there is a Clause (10) which provides for disputes between

the parties which are the subject matter of the two Agreements to be decided by the Arbitration.

2. Admittedly, the disputes in the present suit arise with respect to cheques issued by the defendants for payments claimed to be due to the plaintiff

under the subject contracts dated 1.3.2009, and therefore, disputes in the present suit would be covered by the Arbitration Clause.

3. Counsel for the plaintiff sought to argue that there is no dispute which is required to be referred to the Arbitration as defendants have admitted

payment of the dues of the plaintiff in terms of the letter of the defendants dated 13.5.2010, however, this argument does not impress this Court

inasmuch as the defendants are contesting the territorial jurisdiction of this Court as also the claim on merits. Once this Court has no territorial

jurisdiction, there does not arise any issue of holding that there are no disputes capable of being referred to Arbitration. Also, the letter dated

13.5.2010 is only an evidentiary admission and is not final in view of Section 21 of the Evidence Act, 1872 and the defendants are entitled by filing

their defences in the Arbitration proceedings to show other facts and circumstances that they are not liable in spite of what is stated by the plaintiff

to be admission of liability by the letter dated 13.5.2010. Issues of merits have to be decided in the competent forum and not by this Court once

there is an Arbitration Clause which requires parties to get their disputes decided by Arbitration. Section 14(2) of the Specific Relief Act, 1963

specifically bars filing of a suit which is the subject matter of the Arbitration Agreement. Section 14(2) of the Specific Relief Act reads as under--

14. Contracts not specifically enforceable.--

(1) XXX XXX XXX

(2) Save as provided by the Arbitration Act, 1940 (10 of 1940), no contract to refer present or future differences to arbitration shall be specifically

enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and

has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

xxx xxx xxx

4. In view of the above, since there is an admitted Arbitration Clause in the Agreement between the parties, this suit is not maintainable in view of

Section 14(2) of the Specific Relief Act. Parties are directed to get their disputes resolved through Arbitration. Suit is dismissed. Parties are left to

bear their own costs.