Nicholas Piramal India Ltd. Vs Zenith Drugs and Allied Agencies Pvt. Ltd.

Court: Gauhati High Court

Date of Decision: March 26, 2007

Acts Referred: Arbitration and Conciliation Act, 1996 â€" Section 16, 34, 5, 8
Civil Procedure Code, 1908 (CPC) â€" Section 115, 151

Citation: (2007) 4 ARBLR 372 : (2007) 3 GLT 70

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Judgement

I.A. Ansari, J.
By the present revision petition, the petitioner, who is defendant in Money Suit No. 73/2003, has challenged the legality of

the order dated 19.02.2005, passed in Misc. (J) Case No. 70/2004 (Arising Out of Money Suit No. 73/2003 aforementioned) by the learned

Civil Judge (Sr. Divn.), Kamrup, Guwahati, whereby the learned trial court has rejected the defendant-petitioner''s application, made u/s 8 of the

Arbitration and Conciliation Act, 1996 (hereinafter referred to as ""the said Act"") seeking to get referred the dispute, raised in the said suit, to

arbitration.

2. The moot question, which has been raised in the present revision, is this--When existence of an arbitration clause in an agreement arrived at

between the parties to a suit is admitted, whether the applicability of the arbitration clause to the dispute, raised in the suit, is determinable by the

arbitrator in terms of the relevant arbitration agreement or is it for the civil court to decide as to whether the provisions for arbitration, appearing in

the agreement between the parties concerned, are attracted to the dispute or not? Yet another important question, which the present revision

petition has raised, is this--Can a civil court decline to refer a dispute, raised in a suit, for arbitration despite existence of the provisions for

arbitration contained in the agreement between the parties concerned and, if so, when can the civil court decline to refer the dispute to arbitration?

3. Before answering the questions, which have been raised in the present revision, the material facts, which are not in dispute and various stages,

which have led to the present revision, need to be noted and are, therefore set out, in brief, as follows:

(i) An agreement was arrived at, with effect from. 01.05.1997, between the plaintiff-opposite party herein, which was a company registered under

the Companies Registration Act, and Rhone Poulenc India Limited (hereinafter referred to as ""RPIL""), which was also, at the relevant point of

time, a company registered under the Companies Act. Under this agreement, the opposite party herein (which is hereinafter referred to as the

plaintiff company"") was appointed as the clearing and forwarding agent of RPIL for entire North Eastern Region.

(ii) Clause 17 of this agreement had made provisions of arbitration and reads as follows:

In the event of any dispute arising between the parties out of the subject contained herein or touching upon these presents during the pendency of

this agreement or thereafter the same shall be referred to arbitration as provided under the rules and regulations on the subject of arbitration framed

by the Bombay Chambers of Commerce and the competent court in Mumbai alone shall have jurisdiction in the matter.

(iii) The above agreement was renewed for a further period from 01.04.2001 to 31.03.2002. Before the said agreement was renewed, w.e.f.

01.04.2001, the petitioner herein (which is hereinafter referred to as ""the defendant company"") got 40% share of the RPIL by an agreement, dated

22.12.2000. The defendant company, then, made a public offer of the shares as required under the Security and Exchange Board of India

(Substantial Acquication of Shares and Takeover) Regulations, 1997, and acquired a further 20% equity of the RPIL. The defendant company,

thereafter, made an application, in the Bombay High Court, seeking permission for amalgamation of the RPIL into the defendant company. When

the matter stood so poised, RPIL served a letter, dated 27.01.2001, on the plaintiff company informing the latter that the RPIL was getting merged

into M/s. Nicholas Piramal India Ltd. (i.e. the defendant company), that the said merger had been approved by the shareholders of both the

companies and that the matter was pending in the Bombay High Court for its approval. By their letter, dated 20.07.2001, aforementioned, RPIL

clarified that on receipt of the order from the Bombay High Court approving the merger as had been sought for, the RPIL would become M/s.

Nicholas Piramal India Ltd. By this letter, dated 20.07.2001, RPIL also informed the plaintiff company that once the merger was approved, it

would not be possible for them to continue to maintain the appointment of the plaintiff company as the clearing and forwarding agent, for, with the

approval of the merger by the Bombay High Court, the RPIL would cease to have any legal existence inasmuch as it would stand merged into M/s.

Nicholas Piramal India Ltd. By this letter, dated 20.07.2001, the RPIL further informed the plaintiff company that with effect from three months

from the date of the said letter, or the date of the order of the Bombay High Court, whichever is earlier, the contract agreement existing between

the plaintiff company and the RPIL, appointing the former as the clearing and forwarding agent of the latter, would stand terminated and that all the

dues, thereafter, would be settled by M/s. Nicholas Piramal India Ltd. (i.e. the defendant company) on receiving possession of the stock and

relevant records from the plaintiff company. When the arrangement for merger, as indicated hereinbefore, was pending in the Bombay High Court,

the plaintiff company raised its objection to the said merger by filing affidavit. However, by an order, dated 27.09.2001, the Bombay High Court,

in Company Petition No. 685/2001, which arose out of Company Application No. 252/2001, passed an order approving, inter alia, amalgamation

of the RPIL into the defendant company. The relevant part of the order, dated 27.09.2001, aforementioned reads as follows:

(8) The affidavit of Mr. Uday Krishna Paul, Managing Director of Zenith Drugs & Allied Agencies Pvt. Ltd., the objector opposing the petition,

dated 21st day of September, 2001 in support of Company Application Lodging No. 670 of 2001.

This Court doth hereby sanction with effect from 1st day of April, 2001 the arrangement embodied in the Scheme of Arrangement between the

Rhone Poulenc India Ltd. (""the 1st Transferor Company""), NPIL Fininvest Limited (""the 2nd Transferor Company""), Super Pharma Limited (""the

3rd Transferor Company"") and Nicholas Piramal India Limited (""the Transferee Company"") as set out in Exhibit ""A"" to the petition and also in the

Schedule hereto subject to the Transferee Company affirms that all the liabilities and obligations of RPIL prior to and on or after the appointed

date, under the respective C & F Agency Agreement between RPIL and the respective objectors are hereby assumed by NPIL and the

undertaking by NPIL that upon sanction and scheme taking effect NPIL will abide by the arbitration agreements with the objectors under the

respective agreements and that it will not contend that there is no arbitration agreement between it and the respective objectors.

(iv) With the passing of the order, dated 27.09.2001, aforementioned permitting the arrangement of merger, all assets and liabilities of the RPIL

became the assets and liabilities of the defendant company. Clauses 7.1 and 7.2 of the Scheme of Arrangement, sanctioned by the Bombay High

Court, read as follows:

7.1. Subject to the provisions of the scheme, all contracts, deeds, bonds, agreements, arrangements, insurance policies and other instruments pf

whatsoever nature of which RPIL/NFL/SPL as the case may be, is a party, or to the benefit of which RPIL/NFL/SPL may be eligible, and which

are subsisting or operative or having effect immediately on or before the effective date, shall be in full force and effect in favour of or against NPIL

and may be enforced as fully and effectively as it instead of RPIL/NFL/SPL as the case may be, NPIL had been a party or beneficiary thereto.

7.2. All agreements entered into by RPIL, NFL and SPL with their respective bankers, distributors, stockists, agents, etc. if any, shall continue to

be in full force and effect and may be enforced by or against NPIL.

(v) In terms of the arrangement for merger, which was sanctioned by the Bombay High Court by its order, dated 27.09.2001, aforementioned, not

only the assets and liabilities of the erstwhile RPIL came to be vested in the defendant company, but even the arbitration clause, which existed

between the plaintiff company and the RPIL became, under the said sanctioned arrangement of merger, an agreement between the plaintiff

company, on the one hand, and the defendant company, on the other.

(vi) Before, however, the merger was sanctioned on 27.09.2001, the plaintiff company instituted Title Suit No. 241 /2001, in the Court of the Civil

Judge (Sr. Divn. No. 2), Guwahati, against the RPIL, contending, inter alia, that the letter/notice, dated 20.07.2001, aforementioned issued by the

RPIL informing the plaintiff company that the agreement existing between them, whereunder the plaintiff company had been appointed as clearing

and forwarding agent of the RPIL, would cease to exist, with effect from three months from the date of the said letter or the date of the order of

the Bombay High Court sanctioning the arrangement of merger, whichever was earlier, was illegal. By this suit, the plaintiff company sought for,

inter alia, a decree declaring that appointment of the plaintiff company by the RPIL as their clearing and forwarding agent was valid, subsisting and

legal and also for an injunction restraining the RPIL from taking any action on the basis of the letter, dated 20.07.2001, aforementioned or, in any

manner, terminating the plaintiff company"s appointment as their clearing and forwarding agent.

A petition was also filed, in the said suit, seeking temporary injunction in terms of the prayers made in the suit as indicated hereinbefore. This

application for injunction gave rise to Misc. Case No. 111/2001. The said suit ended, on 24.12.2001, in a compromise decree, on the basis of a

compromise petition filed by the plaintiff company and the defendant company. Following the compromise decree, so granted, the defendant

company paid to the plaintiff company a sum of Rs. 23,50,000, which included security deposit with interest accrued thereon.

(vii) Alleging that the said compromise decree had not been fully acted upon, the plaintiff company sought for execution of the compromise decree

aforementioned. This petition for execution of the compromise decree gave rise to Title Execution Case Ho. 04/2002. In this execution

proceeding, the defendant company filed a petition, u/s 151, CPC, seeking, inter alia, recall of the said compromise decree on the ground of fraud

having been played on them by the plaintiff company.

(viii) While the said execution proceeding was still pending, the plaintiff company instituted Money Suit No. 73/2003 aforementioned, the case of

the plaintiff company, in this suit, being, in brief, thus: In violation of the compromise decree, the defendant company has not appointed the plaintiff

company as their stockist for Guwahati and Agartala and no goods had been delivered to the plaintiff company. This apart, due to premature

termination of the agreement existing between the parties, the plaintiff company has sustained loss to the tune of Rs. 1.26 crores. The defendant

company has also harassed the plaintiff company and their functionaries by dragging them to criminal cases and also making the plaintiff company

sustain thereby loss of goodwill. With the allegations so made against the defendant company, the plaintiff company sought for, inter alia, a decree

for Rs. 20 crores, against the defendant company, as compensation with interest.

(ix) The defendant company appeared in the Money Suit No. 73/2003 and filed a petition therein setting out the facts, which had led to the merger

of the RPIL into the defendant company and further indicating therein that in terms of Clause 17 of the agreement, dated 01.05.1997, there exists

an arbitration clause between the parties and, hence, the dispute, raised in the suit, needs to be referred to arbitration in terms of Section 8 of the

said Act. This application gave rise to Misc. (J)) Case No. 70/2004. Objection to the prayer for referring the dispute to arbitration was raised by

the plaintiff company and after hearing the learned Counsel for the parties concerned, the learned court below passed the impugned order, dated

19.2.2005, whereby the defendant company''s petition for referring the dispute to arbitration was dismissed. The defendant company is, now,

before this Court with the help of the present revision petition.

4. I have heard Mr. D. Barua, learned Counsel for the defendant company-petitioner, and Mr. R.L. Yadav, learned Counsel for the plaintiff

company-opposite party.

5. Let me, now, turn to the question as to whether the impugned order is sustainable in law. While considering this aspect of the case, one has to

take note of the provisions of Section 8 and Section 16 of the said Act, which read as under:

8. Power to 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.

16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration

agreement, and for that purpose,--

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal dose not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a

party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator,

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its

authority is raised, during, the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in Sub-section (2) of Sub-section (3), admit a later plea if it considers the delay

justified.

(5) The arbitral tribunal shall decide on a plea referred to in Sub-section (2) or Sub-section (3) and, where the arbitral tribunal takes a decision

rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with Section 34.

6. While considering the question as to whether the impugned order is sustainable it is important to note that in paragraph Nos. 4 and 5 of their

objection, raised against the defendant company''s prayer to refer the dispute tp arbitration, the defendant company averred as under;

4. That the statements made in para 4 are not correct, they are not admitted. Clause 17 of the agreement dated 01.05.1997 is irrelevant for

deciding the present suit and the said clause cannot be invoked in deciding the present suit. The subject matter of the suit cannot be said to be the

subject matter of Clause 17 of the agreement dated 01.05.1997.

5. That regarding the statement made in paragraph 5 it is stated that the willingness of the defendant cannot be a ground to invoke Clause 17 of the

alleged agreement. The subject matter of the suit will only be decided by court of civil nature and so the matter cannot be referred to arbitration.

7. From a careful reading of what the plaintiff company has stated, in their said objection petition, it becomes transparent that the plaintiff company

admits existence of an arbitration clause in the agreement, which had been arrived at by the parties. If, in the backdrop of the above fact, Sections

8 and 16 are read together, it becomes clear that when an action brought in a matter before a judicial authority is found to be subject to an

arbitration agreement, it is obligatory, on the part of the judicial authority, to refer the parties to arbitration provided that before filing its written

statement, the party, applying for referring the dispute to arbitration, has so applied.

8. In the case at hand, it is not in dispute that the defendant company had applied for referring the parties to arbitration before they (i.e. the

defendant company) had actually filed their written statement. The language of Section 8 is peremptory in nature. When the existence of an

arbitration agreement is proved, the question as to whether the arbitration agreement is attracted to the facts of a given case is a question, which

has to be decided not by the civil court, but by the arbitrator himself.

9. This position of law is no longer res Integra, for, the Apex Court, in Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, , has

made it clear that once there exists an arbitration clause, the judicial authority, u/s 8, has no jurisdiction to go into the question of applicability of the

arbitration clause to the facts of the case and it is the arbitral tribunal, which has the jurisdiction, u/s 16, to decide as to whether the arbitration

agreement is applicable to the dispute raised by the parties to the agreement or not. The relevant observations made by the Apex Court, in Pinkcity

Midway Petroleums in this regard, read as under:

14. This Court in the case of P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, has held that the language of Section 8 is

peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to

arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except

to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court,

there is a clause for arbitration, it is mandatory for the civil court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral

clause in the agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the respondent and

the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration

clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to

arbitration.

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 dose 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 of validity of the arbitration agreement. That apart, a Constitution Bench of this Court in Konkan Railway with reference to

the power of the arbitrator u/s 16 has laid down thus:

21. It might also be that in a given case the Chief Justice or his designate may have nominated an arbitrator although the period of thirty days had

not expired. If so, the arbitral tribunal would have been improperly constituted and be without jurisdiction. It would then be open to the aggrieved

party to require the arbitral tribunal to rule on its jurisdiction. Section 16 provides for this. It states that the arbitral tribunal may rule on its own

jurisdiction. That the arbitral tribunal may rule ''on any objections with respect to the existence or validity of the arbitration agreement'' shows that

the arbitral tribunal''s authority u/s 16 is not confined to the width of its jurisdiction, as was submitted by learned Counsel for the appellants, but

goes to the very root of its jurisdiction. There would, therefore, be no impediment in contending before the arbitral tribunal that it had been wrongly

constituted by reason of the fact that the Chief Justice or his designate had nominated an arbitrator although the period of thirty days had not

expired and that, therefore, it had no jurisdiction.

16. It is clear from the language of the section, as interpreted by the Constitution Bench judgment in Konkan Railway that if there is any objection

as to the applicability of the arbitration clause to the facts of the case, the same will have to be raised before the arbitral tribunal concerned.

Therefore, in our opinion, in this case the courts below ought not to have proceeded to examine the applicability of the arbitration clause to the

facts of the case in hand but ought to have left that issue to be determined by the arbitral tribunal as contemplated in Clause 40 of the Dealership

Agreement and as required under Sections 8 and 16 of the Act.

(emphasis supplied)

10. In the background of the fact that in the present case, the existence of arbitration clause has been admitted by the plaintiff company, the learned

trial court, in the face of the authoritative pronouncements in Konkan Railway Corporation Ltd. and Another Vs. Rani Construction Pvt. Ltd.,

coupled with what has been held in Pinkcity Midway Petroleums, had no jurisdiction to decide whether the subject matter of the suit attracted the

arbitration clause or not. To put it differently, it is really for the arbitrator to decide whether the arbitration clause applies to the subject matter of

the suit or not. Unless, therefore, the plaintiff company could show that the decisions, in Konkan Railway and Pinkcity Midway Petroleums, were

not applicable to the facts of the case at hand, the learned trial court had no option, but to refer the parties to arbitration.

11. Contending that to the facts of the case at hand, the decisions in Pinkcity Midway Petroleums and Konkan Railway, are not attracted, Mr.

Yadav has referred this Court to the case of Nathani Steels Ltd. v. Associated Constructions reported in 1995 Suppl. (3) SCC 324.

12. While considering the case of Nathani Steels Limited, it needs to be noted that in Nathani Steels Limited, after the dispute between the parties

had been settled, an allegation was made that while making the calculation, there was a mistake. It is in such circumstances that the Apex Court

held that once the dispute and difference between the parties had been finally and amicably settled, it was not open to one of the parties to seek

recourse to arbitration clause as if the dispute still survived without, first, having the settlement set aside on the ground of mistake as permissible in

law.

13. In the present case, the dispute, which had been raised in Money Suit No. 241/2001, was, eventually, resolved by way of a compromise

decree. It was the compromise decree, which had finally settled the disputes and differences raised in the said title suit. So long as the compromise

decree exists, the parties are bound by the compromise decree. If the terms of the compromise have not yet been acted upon, the remedy lies in

execution of the decree. No wonder, therefore, that the plaintiff company has already sought for execution of the decree for the purpose of

enforcing the terms of the compromise decree. The money suit, which has, now, been filed by the plaintiff company, is not for enforcing the

compromise decree, but on the ground that on account of illegal termination of their appointment as clearing and forwarding agent and/or as a

consequence of criminal prosecution, which has been launched by the defendant company, the plaintiff company has sustained loss to the tune of

Rs. 20 lakhs.

14. All these disputes do not fall within the realm of the said compromise decree. Had it been the case, in the said money suit, that the compromise

decree had not been acted upon, the remedy lied in executing the decree and not in instituting a fresh suit. When the plaintiff company has itself

instituted the suit, it cannot, in the same breath, contend that the disputes and differences between the parties have been fully and finally settled.

Logically, therefore, one has no option but to hold that the dispute raised in the present money suit, is not covered by the compromise decree and

since the dispute is not covered by the terms of decree, and there is an arbitration clause, it is not the civil court, which can decide as to whether

the arbitration clause is applicable to the disputes raised in the suit or not. The jurisdiction for determination of such a question lies with the

arbitrator, for, it is the arbitrator, Who can decide applicability of the arbitration agreement to the facts of a given case.

15. Situated thus, it is clear that the learned trial court committed serious error of jurisdiction in declining to refer the parties to arbitration. Such an

order is not only without jurisdiction but shall, if allowed to survive, cause Section miscarriage of justice.

16. It has also been contended by Mr. R.L. Yadav that even if a part of the dispute is triable by a civil court, such a dispute cannot be referred to

arbitration. The proposition of law so put forward cannot be doubted. In the present case, however, it is crystal clear that no part of the dispute,

raised in the suit, is exclusively determinable by the civil court and/or not covered by the arbitration clause. In such circumstances, particularly,

when the existence of the arbitration clause has been admitted, the learned trial court had no option, but to refer the parties to arbitration in terms

of the provisions of Section 8 of the said Act.

17. I may also point out that objection to the maintainability of the revision has been raised by Mr. Yadav on the ground that against the impugned

order, dated 19.02.2005, no revision can be entertained u/s 115 of the CFC. While considering the objection, so raised, it heeds to be noted that

before the CPC (Amendment) Act, 2002, came into force, an order, which suffered from jurisdictional error, could have been interfered with by

the High Court in exercise of its revisional jurisdiction u/s 115 if the order, under challenge, was likely to cause failure of justice or irreparable loss

or injury to the party approaching the revisional court, but with Clause (b) of the proviso to Section 115(1) having been deleted under the new

Act, the implication is that even if ah order suffers from jurisdictional error or causes failure of justice or irreparable injury to a party, who

approaches the court, the order will not be interfered with in revision unless the order, which is sought to get revised, is such that had the order

been made in favour of the party applying for revision, it would have terminated the suit or the proceeding.

18. On reverting to the case at hand, what attracts the eyes, most prominently, is that by the impugned order, dated 19.02.2005, the learned court

below has declined to refer the subject matter of dispute to arbitration. Had the application filed by the defendant company been allowed, the suit

would have ended. Viewed thus, it is clear that though the impugned order was passed at an interlocutory stage of the progress of the suit, this

order, had it been made in favour of the defendant company, would have brought to an end the suit.

19. Coupled with the above, it is worth noticing that by the petition made u/s 8, the defendant company has contended, inter alia, that a civil court

has, in the face of the arbitration clause existing in the agreement reached by and between the parties, no jurisdiction to decide the lis. In

consequence of the dismissal of the said petition, the logical conclusion is that the learned trial court has assumed jurisdiction to try the suit, though

the defendant company contended that learned trial court had no jurisdiction to try the suit. In such circumstances, it clearly follows that since the

defendant company''s contention was legally correct, the learned trial court had no jurisdiction to deal with the suit any further. By the impugned

order, the learned court below, it is clear, has refused to exercise, though it had, jurisdiction to refer the parties to arbitration.

20. There is yet another angle from which the maintainability of the revision can be considered. When a civil court does not have jurisdiction to

entertain a suit after an application, u/s 8 of the said Act, is made for arbitration, it follows, as a corollary, that the court, which refused to refer the

parties to arbitration, has failed to exercise jurisdiction. This would amount to failure of justice and cause irreparable injury to the party concerned.

In such circumstances, one can have no escape from the conclusion that the impugned order, whereby the learned trial court has refused to refer

the parties to arbitration in terms of Section 8 is an order, which would be revisable u/s 115 of the CPC, if the impugned order is held to be

contrary to the provisions of Sections 8 and 16 of the said Act. I am guided to adopt these views from the observations made in Pinkcity Midway

Petroleums, whereby the Apex Court while dealing with such an aspect of the case, observed, at para 24, thus:

24. This brings us to consider the last question involved in this appeal, namely, the maintainability of the revision petition before the High Court u/s

115 of CPC. The High Court by the impugned order has come to the conclusion that its jurisdiction to entertain a revision petition would only be

available if the order impugned is such that if it is allowed to stand, it would occasion failure of justice or cause an irreparable injury to a party

against whom the said order is made. In support of this finding, the High Court has relied upon certain judgments of this Court. Having perused the

said judgments, we are of the opinion that the findings given in those judgments do not apply to the facts of this case at all. We have come to the

conclusion mat the civil court had no jurisdiction to entertain a suit after an application u/s 8 of the Act is made for arbitration. Therefore, we are of

the opinion that the trial court failed to exercise its jurisdiction vested in it u/s 115 of the CPC when it rejected the application of the appellant filed

under Sections 8 and 5 of the Act. In such a situation, refusal to refer the dispute to arbitration would amount to failure of justice as also causing

irreparable injury to the appellant. For the said reason, we are of the opinion that the High Court has erred in coming to the conclusion that the

appellant was not entitled to the relief u/s 115 of CPC.

21. In the result and for the foregoing reasons, this revision succeeds. The impugned order is set aside and the learned trial court is hereby directed

to refer the parties concerned to arbitration.

22. Considering the matter in its entirety and in the interest of justice, it is thereby directed that the parties shall appear, in Money Suit No.

73/2003, on 10.04.2007 and on that day, the learned court below shall pass appropriate orders.

23. With the above observations and directions, this revision shall stand disposed of with costs.

24. Send back the LCRs.