

**(2012) 03 DEL CK 0460**

**Delhi High Court**

**Case No:** CM (M) 1277 of 2011 and CM No. 19890 of 2011

Dishant Malhotra

APPELLANT

Vs

Sandeep Kumar

RESPONDENT

**Date of Decision:** March 12, 2012

**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 8

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** Gaurav Gandhi, for the Appellant; R.K. Beri, for the Respondent

### **Judgement**

Indermeet Kaur, J.

1 Order impugned is dated 27.07.2011; the application filed by the defendant u/s 8 of the Arbitration and Conciliation Act, 1996 had been dismissed. The petitioner is aggrieved by this finding. Record shows that the present suit is a suit filed by the plaintiff seeking recovery of Rs. 40,000/; contention was that the balance amount which is due from the defendant on the bill dated 03.06.2010 has not been paid. Admittedly there was an agreement entered into between the parties which is dated 03.06.2010. There are 16 clauses in the said agreement and the arbitration clause is contained in para 15 which reads herein as under:-

That any dispute arising out of the aforesaid agreement shall be settled through the arbitration as per the provisions of Indian Arbitration Reconciliation Act, 1996, the both party have the absolute power to appoint the sole arbitrator whose award shall be binding on both the parties.

2. From this arbitration clause, it is clear that any dispute arising out of the aforesaid agreement shall be settled through arbitration; both party shall have the absolute power to appoint the sole arbitrator whose Award shall be binding on both them.

3. It is also not in dispute that this claim which has been filed by the plaintiff against the defendant is a claim arising out of a bill in terms of the aforesaid agreement. As such the contention of the defendant that the parties were governed by the arbitration clause carries force and the impugned order dismissing the application u/s 8 of the Arbitration and Conciliation Act, 1996 on the premise that the original arbitration agreement has not been filed (when admittedly arbitration agreement is the foundation of the case and is an admitted document) was clearly an illegality; the parties were governed by this arbitration clause contained in the agreement dated 03.06.2010. All the ingredients necessary for the applicability of the provisions of Section 8 of the said Act stood attracted. In terms of the arbitration clause, the dispute which has been arisen is accordingly referred to the arbitration in terms of the arbitration agreement. Petition disposed of in the above terms.