



ARBITRATION AND CONCILIATION

No Separate application is required, when the jurisdiction of the court is questioned on the ground of arbitration clause: Delhi HC

AUTHOR Arundhati Sukhtankar

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The Delhi High Court (“High Court”) in its recent judgment in *Parasramka Holding Pvt. Ltd. and Ors. Vs. Ambience Pvt. Ltd. and Anr.*^[1] held that formal application under section 8 of the Arbitration and Conciliation Act, 1996 (“A&C Act”) for referring a dispute to arbitration is not required, if defendant raises an objection on maintainability of suit due to existence of arbitration clause in written statement. The High Court also held that mere reference to an arbitration agreement is sufficient and need not be coupled with a specific prayer for reference to arbitration.

Facts

The parties to the suit executed an Apartment Buyer’s Agreement, which provided for arbitration in the event of any dispute between the parties. When the dispute arose, Parasamkara Holding filed a suit against Ambience before the Delhi High Court. The defendant first filed an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. The application didn’t have any reference of arbitration agreement. When the application was dismissed, the defendant filed written statement in which they had referred the existence of arbitration agreement. Thereafter, the defendant filed application under section 8 of the A&C Act for referring the dispute to arbitration.

Issues

- Whether application under section 8 of A&C Act is maintainable after filing written statement?
- Whether a mere reference to an arbitration agreement without specific prayer for referring the matter to arbitration would qualify the conditions under section 8 of A&C Act?

Submissions

The counsel on behalf of the plaintiff argued that an application under section 8 of the A&C Act couldn’t be filed after filing the written statement. It was also argued that a reference in the written statement about an arbitration agreement between the parties, without any specific prayer for referring the dispute to arbitration, is not sufficient.

The counsel for the defendant argued that as long as a party draws the court’s attention to the arbitration agreement, no later than the first statement on the substance of the dispute, the jurisdiction of the court ceases and there is no requirement to seek specific reference to arbitration.

Judgment

The High Court held that a reference in the written statement as to the existence of an arbitration clause could be treated as an application under section 8 of the A&C Act. The Court was of the opinion that there was no requirement of filing a formal application seeking specific prayer for reference to arbitration as long as the party raised an objection on maintainability of the suit in light of the arbitration clause in the written statement. The objection raised by the defendants in the written statement can be treated as an application under section 8 of the Act. The High Court allowed the application of the defendants and the parties were referred to arbitration in accordance with section 8(1) of the A&C Act.

^[1] CS(OS) 125/2017