

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6878 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
	Yes	

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M/S TECHTIX ENGINEERS
Versus
MEGASTONE LOGIPARK PVT. LTD. & ORS.

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Appearance:

MR RASESH H PARIKH(3862) for the Petitioner(s) No. 1
MR.HEMANG H PARIKH(2628) for the Petitioner(s) No. 1
MR MANISH J PATEL(2131) for the Respondent(s) No. 1,3
NOTICE SERVED for the Respondent(s) No. 2,4

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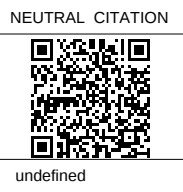
CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 07/10/2025

ORAL JUDGMENT

1. At the outset, learned advocate Mr. Manish Patel appearing for respondent Nos. 1 & 3 pointed out that during the pendency of the present writ application, respondent No.2 died, who happens to be one of the Director of respondent No.1-Company.

2. As such there is no need to bring legal heirs of deceased – respondent No.2, inasmuch as, he being only



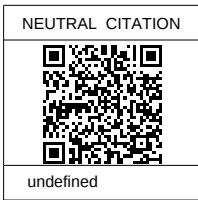
director of the respondent No.1-company and during his life time, though respondent No.2 being served in the present proceeding, he never appeared and contested the matter. So, placing reliance upon the provisions of Order 22 rule 4(4) of CPC, this writ application can be proceeded on merit, in absence of his legal heirs.

3. **Rule** returnable forthwith. Learned advocate Mr. Manish Patel waives service of notice of rule on behalf of respondents No.1 & 3. Though served, none appeared on behalf of respondent No.4. With the consent of the parties, the matter is taken up for final hearing.

4. The present writ application is filed under Article 227 of the Constitution of India seeking following relief :-

“(A) YOUR LORDSHIPS be pleased to issue a writ of certiorari or any other appropriate writ, order or directions directing quashing and setting aside the order dated 10.02.2023 passed below Exh.19 in Special Civil Suit No. 20 of 2020 by the learned Senior Civil Judge, Kheda (Annexure I) and restore the Special Civil Suit No. 20 of 2020 in the interest of justice.

“(B) YOUR LORDSHIPS be pleased to pass necessary order/ direction under the Indian Penal Code, 1860 against the Respondents for committing fraud with the Hon'ble Court and misguiding the Hon'ble Civil Court, Kheda by submitting an application wherein Respondent No.1 and 2 had not signed application below Exh. 19 and Respondent No.3 had submitted affidavit prior preparation of the application below Exh. 19 in Special Civil Suit no. 20 of 2020 in the interest of justice;



(C) Pending the admission, hearing and final disposal of this petition, YOUR LORDSHIPS be pleased to stay the implementation, execution and operation of the impugned order dated 10.02.2023 passed below Exh.19 in Special Civil Suit No. 20 of 2020 by the learned Senior Civil Judge, Kheda (Annexure I) in the interest of justice;

(D) Pending the admission, hearing and final disposal of this petition, YOUR LORDSHIPS be pleased to direct respondents not to damage and transfer the goods and material lying on the site in question in the interest of justice;

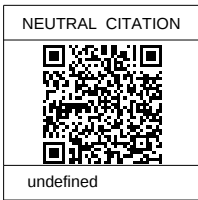
(E) YOUR LORDSHIPS be pleased to grant such other and further reliefs as deemed fit, just and proper in favour of the petitioner, in the interest of Justice."

Short Facts of the case.

5. The petitioner herein is original plaintiff, whereas respondents are original defendants of Special Civil Suit No. 20 of 2020 instituted before the Principal Senior Civil Judge, Kheda.

5.1 It is the case of the plaintiff that there was a construction agreement in form of work contract executed between the plaintiff and defendants and despite fulfilled its obligation, the amount claimed in the suit remain due and payable by the defendants.

5.2 The summons of suit came to be served upon defendants whereby, on appearing in the suit, defendants



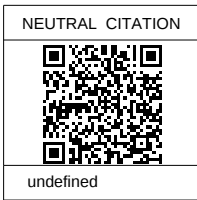
appear to have filed an application under Order VII rule 11 of CPC read with Section 8 (2) of Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the Act, 1996") contending inter-alia that agreement executed between the parties contained arbitration clause and also pleaded that as agreed between the parties, Bombay Court has jurisdiction.

5.3 The aforesaid application contested by the plaintiff having filed its reply, whereby, contending inter-alia would contend that such application is not maintainable in law, inasmuch as, the claim cannot be rejected under Order VII rule 11 of CPC and having not filed any certified copy of the arbitration agreement which is mandatory requirement under Section 8 (2) of the Act, 1996, the impugned application requires to be rejected.

5.4 After hearing the parties, having so found that there is an arbitration agreement, the trial Court vide its order dated 10.02.2023, allowed the impugned application, whereby, relegated plaintiff to arbitration, to resolve the dispute,. Hence, the present writ application.

Submission of the petitioner- original plaintiff

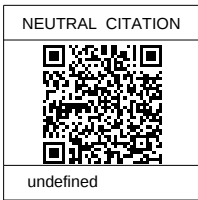
6. Learned advocate Mr. Parikh would submit that the



impugned order passed by the trial Court is ex-facie bad in law and without jurisdiction, requires to be interfered with by this Court while exercising its power under Article 227 of the Constitution of India. It is submitted that as such the impugned application is not maintainable in law having filed under Order VII rule 11 of CPC read with Section 8 of the Act, 1996.

6.1 Learned advocate Mr. Parikh would further submit that there is no bar under the Act, 1996 to file a suit for recovery by plaintiff against defendants, thereby, ingredients of Order VII rule 11 (d) of CPC is not made out. It is submitted that unless there is an express bar under any special statute, Civil Court is always have a jurisdiction to decide civil dispute between the parties. It is respectfully submitted that in absence of any express bar under the Act, 1996, Civil Court always can decide the lis between the parties, arising out of any contract, may contain the arbitration clause.

6.2 Learned advocate Mr. Parikh would further submit that undisputedly, the defendants have failed to submit certified copy of the arbitration agreement executed between the parties along with the impugned application, which is mandatory requirement of the Act, 1996 to maintain an application under Section 8 of the Act, 1996. It is submitted



that in absence of such certified copy of such arbitration agreement, the trial Court committed serious error of law in entertaining the impugned application, whereby committed jurisdictional error.

6.3 To buttress his argument, learned advocate Mr. Parikh would refer and rely upon the following decisions.

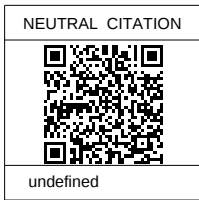
(i) Marvadi Shares and Finance Pvt. Ltd. Company Vs. Kishorkumar Nagjibhai Mavani reported in AIR 2009 Guj. 81.

(ii) Devshibhai Govindbhai Limbani Vs. Dhavalbhai Bhogilal Vyas reported in 2024 (0) AIJEL-HC 249620.

6.4 Making the above submission, learned advocate Mr. Parikh would request this Court to allow the present writ application.

Submission of the respondents - defendants

7. Per contra Learned advocate Mr. Manish Patel would submit that there is no error much less any gross error of law and or jurisdictional error committed by the trial Court while allowing the impugned application. It is submitted that the agreement executed between the parties contained an arbitration clause whereby, as per Section 8 of the Act, 1996,

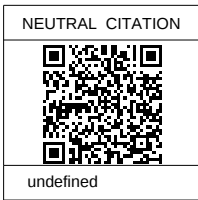


the trial Court has correctly relegated the plaintiff to the arbitration.

7.1 Learned advocate Mr. Patel would further submit that as such there is no requirement under law to submit a certified copy of an arbitration agreement especially when the copy of such agreement, which is relied upon by the defendants having submitted impugned application, is already submitted by the plaintiff on record of the suit.

7.2 Learned advocate Mr. Patel would further submit that when there is no dispute as such about an existence of an arbitration agreement between the parties, the trial Court well within its right to adjudicate the impugned application on its merit and correctly came to the conclusion that to resolve the dispute between the parties, it requires to be resolved through arbitration as agreed between the parties.

7.3 Learned advocate Mr. Patel would further submit that as per settled legal position of law, once there is an arbitration agreement between the parties, jurisdiction of Civil Court is ousted. It is submitted that the trial Court has considered the case law and decisions of this Court while allowing the impugned application. It is further submitted that such position of law is not disturbed and as such, prevailing as on date also. Thus, the certified copy of an



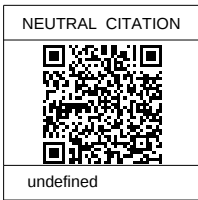
undisputed arbitration agreement having not produced on record, it would not be a ground to reject the impugned application.

7.4 Learned advocate Mr. Patel would further submit that the impugned application not only filed under Order VII rule 11 of CPC, inasmuch as, the prayers made in the application requires to be considered by Court. It is submitted that prayer made in Para-15(c) of the impugned application, would clearly shows that the impugned application also filed under Section 8 of the Act, 1996. It is respectfully submitted that as per settled legal position of law, once it is pointed out to the civil court that there is an arbitration clause executed by plaintiff, it would be incumbent upon the Court to relegate plaintiff to arbitration.

7.5 To buttress his argument, learned advocate Mr. Patel would refer and rely upon the decisions of this Court in the case of ***K. Mangayarkarasi and another Vs. N.J. Sundaresan and another reported in 2025 (2) GLH 783.***

Points for determination

8. *The short question falls for my consideration as to whether-*



(I) Whether impugned application filed by defendant under Order VII rule 11 of CPC read with Section 8 of the Act, 1996, maintainable in law ?

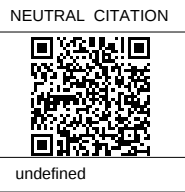
(ii) Is there any gross error of law or any jurisdictional error committed by the trial Court while allowing the impugned application filed Section 8 of the Act, 1996 by the defendants without submitting the certified copy of the arbitration agreement?

Analysis

Point No.-I

9. The facts which are narrated hereinabove are not in dispute. The suit is filed seeking recovery of amount for the work done by the plaintiff pursuance to the agreement executed between the parties to the suit. The cause of action to file suit clearly referred such work contract wherein undisputedly, there is an arbitration clause. To have a better clarity and to resolve the dispute germane in the present writ application, such clause requires to be reproduced :-

“59. In the event a dispute the Parties shall have a period of thirty (30) days after notice date to resolve the dispute amicably. If such dispute is not resolved then matter, shall be referred to Arbitration. The arbitration shall take place in



*Mumbai. There shall be one arbitrator appointed mutually.
The arbitral award shall be final and binding on the Parties.”*

10. The defendants having appeared in the suit, filed impugned application both under Order 7 rule 11 of CPC read with Section 8 of the Act, 1996. The prayers made in the impugned application reads as under:-

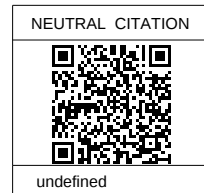
“(a) Hon'ble Court be pleased to reject the plaint of plaintiffs under 0.7 R.11(d) as it is barred by jurisdiction and law of arbitration.

(b) Hon'ble Court be pleased to reject the plaint of the plaintiffs as they have made active suppression of material facts and documents and as they have not come with clean hands.

(c) Hon'ble Court be pleased to refer the matter in arbitration at Mumbai as per S.8 of the Arbitration and Conciliation Act 1996.

(d) Hon'ble Court be pleased to grant such other and further relief as may be found just and proper in the facts and circumstances of the case. “

11. True, there is no express bar under the provisions of the Act, 1996, thereby jurisdiction of the Civil Court is completely ousted. In absence of any express or implied bar under the Act, 1996, the Civil Court can have jurisdiction to decide the lis between the parties arising out of the contract. To that extent, the submission made by the learned advocate Mr. Parikh for the petitioner that the impugned

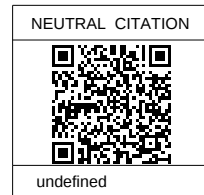


application filed under Order VII rule 11 of CPC, could not have been entertained can be accepted.

12. Nonetheless, fact remains that impugned application not only filed under Order VII rule 11 of CPC but also filed under S.8 of the Act, 1996. Furthermore, the trial Court has not exercised its power under Order VII rule 11(d) of CPC, having not rejected the plaint by holding it barred by law i.e. Act, 1996. But entertained it by treating it as filed under S.8 of the Act, 1996. If it be so, I do not find any error much less any gross error of law / jurisdictional error on the part of the trial Court while entertaining the impugned application treated also to be filed under Section 8 of the Act, 1996. According to my view, the impugned application maintainable under law. Point No.I answered accordingly.

Point No.II

13. So far as argument made by the learned advocate Mr. Parikh for the petitioner that in absence of certified copy of an arbitration agreement, having not accompanied with the impugned application, the trial Court required to reject the impugned application. He emphasised on Section 8(2) of the Act, 1996, would submit that it is mandatory requirement to file certified copy of an arbitration agreement whenever an



application filed under Section 8 of the Act, 1996.

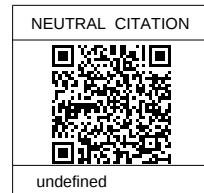
14. At first blush, argument looks attractive, but on scrutiny, such argument requires to be rejected due to following undisputed facts and reasons :-

(i) The facts remains that the suit is filed by the plaintiff on the basis of an agreement executed between the parties which is already submitted by the plaintiff itself along with the plaint.

(ii) Such agreement, would contained an arbitration clause, which is referred and reproduced hereinabove.

(iii) The copy of the very same agreement is submitted by the defendant along with impugned application filed under Section 8 of the Act, 1996.

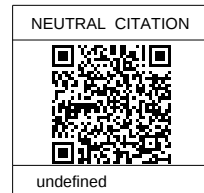
15. This Court is not oblivious of the fact having so recorded hereinabove, that an agreement executed between the parties would contain an arbitration clause to resolve the dispute between the parties. The fact remain that an agreement which is produced by the plaintiff and defendants is one and the same, wherein the aforesaid arbitration clause is clearly spelt out.



16. When the Court confronted with said facts and in such situation, when pointed out to the trial Court by the party especially defendant before submitting his first statement on substance of dispute, that there is an arbitration agreement, no choice left to trial Court, but to refer the party to the Arbitration.

17. According to my view, once by any form of application, it brought to notice of the Court that the arbitration agreement exists between the parties, approach of the Court would only to see that in view of such arbitration agreement, still the Court has jurisdiction to decide lis between parties.

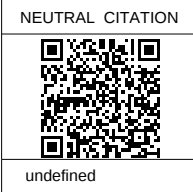
18. It further appears from the record and so also from bare reading of the impugned order that copy of an agreement produced by the defendant along with an application under Section 8 of the Act, 1996 is not disputed by the plaintiff. So, fact remains that the copy of arbitration agreement submitted on record either by plaintiff or defendant being same than according to my view, there is as such no mandatory requirement to have its certified copy on record, when party filed an application under Section 8 of the Act, 1996.



19. What is required under the law that there should be a valid and effective arbitration agreement executed between the parties, if the copy of such arbitration agreement produced by the parties and having no dispute on such agreement, there is nothing wrong, if trial Court entertained an application filed under Section 8 of the Act, 1996. In view of aforesaid, according to my view, as such due compliance of Section 8(2) of the Act, 1996 meet in present case.

20. At this stage, it would be apt to place reliance upon the decision passed by the Co-ordinate Bench of this Court in the case of ***Rupal Textile and Partners of Partnership Firm Madhubhai G. and another Vs. Partners of Partnership Firm M/s. Rupal Textile Mahendra H. and another reported in 2012 (2) GLH 86***, wherein similar issue arose and answered in favour of the applicant who filed the application under section 8 of the Act, 1996. In fact, the trial Court while allowing the impugned application observed and placed reliance upon such decision. The relevant para of the aforesaid decisions and other decisions on similar fact and line of Para-7 of the impugned order requires to be reproduced herein.

“7. So far as, compliance or non compliance of the provisions of Section 8(2) of the Act is concerned, this Court would like to rely upon some decisions as under:

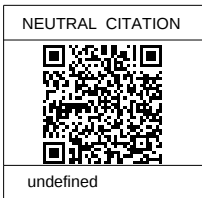


*In the case of **Rupal Textile and Partners of Partnership Firm Madhubhai G. & Anr. Vs. Partners of Partnership Firm M/s. Rupal Textile Mahendra H. & Anr. Special Civil Application No. 11605 /2011** wherein our Hon'ble High Court has held in para-8 as under:*

8. "In the instant case as has been correctly pointed out from the beginning original plaintiffs (respondents herein) had produced the copy of partnership deed which contained arbitration clause for appointing the Arbitrators by the partners of the firm. And thus, the copy of such deed continued to be the part of the record for having been initially produced with the plaint and both the parties had relied upon such partnership agreement for their rival claims which was already on record. Thus, the original plaintiff (Present respondent) has filed the: suit based on such partnership agreement which has not been challenged by the either side and on the basis thereof, when respondent had made an application below Exh.-15 in such premise, if such a partnership deed or certified copy thereof had not accompanied the application, it would be too technical an approach on the part of the Court to hold it against the petitioners herein and that would mar the very object and spirit of such Revision and the Act."

*8. In the case of **Comed Pharmaceuticals Ltd. Vs. Blue Star Limited reported in 2011(3) GLH 548** in para 18 held as under:*

18. "In the facts of the present case, it is an admitted position that the respondent-plaintiff had along with the plaint, submitted a copy of a tender agreement containing the arbitration clause. Before the Ld. Judge, during the course of hearing of the application under Sub-Section (1) of Section 8 of the Act, the respondent-plaintiff did not dispute the existence of the arbitration clause. In the circumstances, when the plaintiff had already produced a copy of a tender document along with the arbitration clause and did not dispute the existence of arbitration agreement, the Ld. Judge was not justified in rejecting the application solely on the ground that the application under Section 8 of the Act was not accompanied by the arbitration agreement in original or by a certified copy thereof. Once, the document containing the arbitration clause was produced on record by either parties, and neither of the

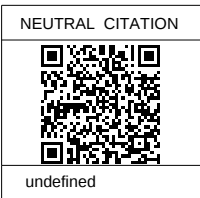


parties had disputed the existence thereof, the Ld. Judge ought to have referred the matter for arbitration in terms of the arbitration clause."

9. *In the case of NIIT Ltd. Vs. Manoharan reported in 2006(1) Arb. LR 69 (Kerala) in para 10 held as under:*

10. "The second ground on which the Court below rejected the application is that the petitioner did not produce the original or "certified copy" of the arbitration agreement. It is not disputed that the arbitration agreement was produced before court by the plaintiff himself. The plaintiff relied on the agreement dated 27.2.1995 and on two other subsequent agreements. The originals of the three agreements were produced by the plaintiff along with the plaint. The requirement of Section 8(2) for the production of the original arbitration agreement or duly certified copy thereof is only to ensure that there is an arbitration clause and to ascertain whether the Arbitrator is named and other allied matters. The requirement would be satisfied if the agreement is before court. It is not relevant whether the plaintiff produced it or the defendant produced it. Whoever produced the document, the fact remains that the document is before Court. When the original document is before Court, the Court below was not justified in dismissing the application on the ground that the defendant who made the application for reference did not produce the original or certified copy of the agreement. Such a stand would be too technical and it would tend to defeat 'the very purpose of the Act. In I.T.C. Classic Finance Ltd. v. Grapco Mining and Co. Ltd. and Anr. , xerox copies of the agreements were produced before Court. The agreements were relied upon by the plaintiff as well as the defendants. It was also not in dispute that the copies were true copies of their originals. The Calcutta High Court held that production of xerox copies of the agreement containing the arbitration clause would constitute sufficient compliance of the requirement of Section 8(2) of the Act."

21. At this stage, it would also be apt to refer and rely upon the recent past decision of the Hon'ble Apex Court in the



case of ***K. Mangayarkarasi*** (supra), wherein it has been held thus :-

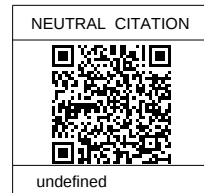
“16. Once an application in due compliance with [Section 8 of the Act of 1996](#) is filed, the approach of the civil court should be not to see whether the court has jurisdiction. It should be to see whether its jurisdiction has been ousted. There is a lot of difference between the two approaches. Once it is brought to the notice of the court that its jurisdiction has been taken away in terms of the procedure prescribed under a special statute, the civil court should first see whether there is ouster of jurisdiction in terms or compliance with the procedure under the special statute. The general law should yield to the special law – generalia specialibus non derogant. In such a situation, the approach shall not be to see whether there is still jurisdiction in the civil court under the general law. Such approaches would only delay the resolution of disputes and complicate the redressal of grievance and of course unnecessarily increase the pendency in the court.

[See:- [A. Ayyasamy](#) (supra)]

17. Once there is an arbitration agreement between the parties, a judicial authority before whom an action is brought covering the subject-matter of the arbitration agreement is under a positive obligation to refer parties to arbitration by enforcing the terms of the contract. There is no element of discretion left in the court or judicial authority to obviate the legislative mandate of compelling parties to seek recourse to arbitration.

(emphasis supplied)

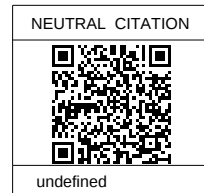
22. As far as decisions so cited by the learned advocate Mr. Parikh for the petitioner in support of his submission, would not be applicable to the facts of the present case, inasmuch as, the issue germane in those cases are not similar as the issue germane in the present writ application.



23. So far as the decision in the case of ***Marvadi Shares and Finance Pvt. Ltd. Company*** (supra) is concerned, it was a case before the learned single Judge of this Court, wherein an application filed under Order 7 ruler 11 of CPC on the basis of an arbitration agreement is rejected by the trial Court which was carried before this Court and such plea was negated. In fact while answering point No.I, I have also expressed the very same view which is so expressed in the case of ***Marvadi Shares and Finance Pvt. Ltd. Company*** (supra).

24. Thus, in view of the aforesaid facts and circumstances of the present case, and keeping in mind the ratio of ***K. Mangayarkarasi*** (supra) and ***Rupal Textile*** (supra), I am of the view that there is no error of law much less any gross error of law and/or any jurisdictional error committed by the trial Court while allowing the impugned application filed under Section 8 of the Act, 1996, in absence of the certified copy of the arbitration agreement. *Point No.II answered accordingly.*

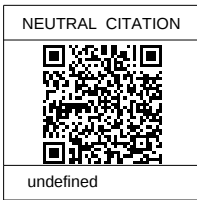
25. Before parting, I would like to observe that this Court having limited jurisdiction under Article 227 of the Constitution of India, can't interfere with the every order



passed by the trial Court as drop of a hat. Unless it has been so pointed out by the petitioner that there is a jurisdictional error and or a very gross error of law committed by the trial Court while passing the impugned order, which is in fact missing in the case on hand. **[See : Sameer Suresh Gupta TR PA Holder vs. Rahul Kumar Agarwal, reported in 2013 (9) SCC 374 & Garment Craft v. Prakash Chand Goel, reported in (2022) 4 SCC 181].**

26. At this juncture, learned advocate Mr. Parikh for the petitioner pointed out that on 27.09.2025 the defendant invoked Arbitration under Section 21 of the Act, 1996. It is submitted that as this Court is not disturbing the order passed by the trial Court, the petitioner being plaintiff-claimant requires to move towards an arbitration to get its due recover from the defendants. Learned advocate Mr. Parikh would humbly request this Court that the plaintiff was bona-fide pursuing the remedy of filing suit which was filed within period of limitation and so also bona-fide pursuing this remedy of filing writ application under Article 227 of the Constitution of India.

26.1 So, in light of the above, learned advocate Mr. Parikh for the petitioner would request this Court to make suitable observation that period which spent by the plaintiff

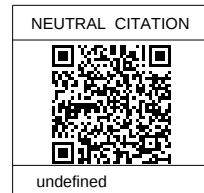


in all this legal proceedings may be suitably excluded when submit its statement before the Arbitrator, which is otherwise permissible under Section 14 of the Limitation Act.

27. Per contra, learned advocate Mr. Patel for the respondent would submit that as and when such plea may be taken by the petitioner herein before the Arbitrator in an arbitration proceedings, such plea may be decided by the Arbitrator.

28. Having heard learned advocates for the respective parties on the aforesaid issue, this Court would only observe that it would be open for the plaintiff to make suitable pleading/ averment/ prayers in the arbitration claim application, where it may seek an exclusion of period spent before the Civil Court and or before this Court, on the basis of pursuing legal remedy under bona-fide belief. If the ingredients of Section 14 of Limitation Act, 1963 would make out by the plaintiff herein, an appropriate decision may be taken by the Arbitrator in this regard, albeit in accordance with law.

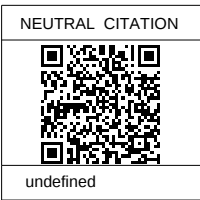
Conclusion



29. In view of forgoing observation, discussion and reasons, it lead to only one conclusion that impugned application though titled as filed under Order VII rule 11 of CPC read with Section 8 of the Act, 1996, would maintainable in law and so also merely because a certified copy of an arbitration agreement is not accompanied with the impugned application, it would not be a ground to reject the impugned application, inasmuch as the copy of arbitration agreement on record, be it with plaint or with the impugned application, is not disputed by the plaintiff.

30. The upshot of the aforesaid, I do not find any merit in the present writ application, inasmuch as, there is no jurisdictional error much less any error of law committed by the trial Court while allowing the impugned application filed under Section 8 of the Act, 1996.

31. According to my view, the trial Court has correctly relegated the plaintiff to the arbitration as per arbitration agreement executed between the parties. It is further held that in the facts and circumstances of the case, when the plaintiff as well as defendant submitted copy of an agreement contained arbitration clause would suffice and meet with requirement to maintain an application under Section 8 of the Act, 1996.



32. In view of the foregoing conclusion, the present writ application is bereft of any merit and requires to be rejected, which is hereby rejected. Rule discharged. No order as to costs.

Sd/-

(MAULIK J.SHELAT,J)

SALIM/