



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

CIVIL REVISION PETITION NO. 265 OF 2022 (IO)

BETWEEN:

SRI.THANGAVELU. R
S/O. LATE T. RAJANNA,
AGED ABOUT 66 YEARS,
RESIDING AT NO. 1951,
2ND CROSS, MCECHS LAYOUT,
2ND PHASE, SHIVARAMKARANTHNAGAR,
NEAR JAKKUR, BENGALURU-560 064.

...PETITIONER

(BY SRI. PRASAD K R RAO., ADVOCATE)

AND:

1. SHRI. SANTHOSH. J
S/O. JOSEPH,
AGED ABOUT 47 YEARS,
PROP M/S EXEL SALES CORPORATION,
NO.1/1, 13TH CROSS,
ANEPALYA MAIN ROAD,
AUDUGODI, BENGALURU-560 030.

2. M/S. EXEL MARKETING
NO.1/1, 13TH CROSS,
ANEPALYA MAIN ROAD,
AUDUGODI, BENGALURU-560 030,
REPRESENTED BY RESPONDENT NO.1.

...RESPONDENTS

(BY SRI. ABHINAV R, ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC
AGAINST THE ORDER DATED 22.08.2019 PASSED ON IA No.2
IN OS No.6370/2017 ON THE FILE OF THE XIX ADDITIONAL
CITY CIVIL AND SESSIONS JUDGE, BANGALORE, ALLOWING





THE IA No.2 FILED UNDER SECTION 8(1) OF THE ARBITRATION AND CONCILIATION ACT 1996 R/W SEC.151 OF CPC.

THIS PETITION, COMING ON FOR FURTHER DICTATION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioner-plaintiff challenges the order dated 22.08.2019 passed by the XIX Additional City Civil and Sessions Judge, Bangalore, in O.S. No. 6370/2017, by which the application filed by the respondent No.1 (defendant No.1) under Section 8(1) of the Arbitration and Conciliation Act, 1996, came to be allowed. The said order was affirmed vide order dated 06.01.2022 passed in I.A. No. 4 in the O.S. No. 6370/2017, preferred by the petitioner seeking a review of the earlier order.

2. The suit filed by the petitioner-plaintiff was for the recovery of a sum of Rs.16,29,311.74 along with interest at the rate of 18% per annum, and was decreed ex parte on 10.04.2018. Thereafter, the defendant No.1 filed M.A. 358/2018 under Order IX, Rule 13 of the CPC, 1908, and the trial court restored the suit by order dated 20.02.2019. Subsequently, on 20.03.2019, defendant No.1 filed an application under Section 8(1) of the Arbitration and Conciliation Act, 1996, seeking referral of the dispute to



arbitration, as stipulated in Clause 12 of the partnership deed dated 26.02.2006. Aggrieved by the order allowing the application on 22.08.2019 and the dismissal of the review petition by order dated 06.01.2022, the petitioner has filed the present petition.

3. Before the ex-parte decree, defendant No.1 had entered appearance on 27.10.2017 and sought time to file a written statement. Defendant No.2, though served with notice, remained absent and was subsequently placed ex parte. Since defendant No.1 failed to file a written statement, the trial court posted the matter for the plaintiff's evidence on 01.01.2018. Due to the failure of the defendants to contest the suit, the trial court decreed the suit, directing the defendants to pay Rs.16,29,311.74 along with interest at the rate of 10% per annum.

4. Subsequently, defendant No.2 filed an application under Order IX, Rule 13 CPC to set aside the ex parte decree and restore the suit. The trial court, by order dated 20.02.2019, allowed the application, set aside the ex parte decree, and restored the suit to its original file. On 05.03.2019, the defendant filed an application under Section 148 CPC seeking an extension of time to file a written statement. The trial court allowed the application and granted time to file the written statement. However, defendant No.1 failed to file the



written statement, and consequently, the trial court took the written statement of defendant No.1 as nil and posted the matter for cross-examination of the plaintiff. On 20.03.2019, defendant No.1 filed an application under Section 8(1) of the Arbitration and Conciliation Act, 1996, read with Section 151 CPC, seeking the matter to be referred to arbitration. The trial court, after hearing the parties, passed the impugned order referring the matter to arbitration and directed the respondent to appoint an arbitrator within 15 days.

5. The learned counsel for the petitioner argues that the application under Section 8(1) of the Arbitration and Conciliation Act, 1996, should have been filed before the first written statement is filed. The written statement was required to be filed within 30 days, extendable by an additional 60/90 days. Therefore, the application filed under Section 8(1) after the prescribed period of limitation is not maintainable. In support of this, he relies on the following decisions:

- i) SSIPL Lifestyle Pvt Ltd vs. Varma Apparels (India) Private Limited, 2020 SCC Online Del 1667
- ii) SPML Infra Ltd vs. Trisquare Switchgears Pvt Ltd, 2022 SCC Online Del 1914.

6. In response, the learned counsel for the respondents argues that since the defendant did not file a written statement, there is no bar to filing an application under Section 8 of the Act, as Section 8 allows filing the application



before the first statement is made. He relies on the decision of the High Court of Madras in the case of **G.T.L. Infrastructure Limited (GIL) vs. Amaladoss, 2023 SCC Online Mad 1684.**

7. Additionally, he contends that the petitioner filed an application to review the impugned order, but the trial court rejected the application. Therefore, the present petition is not maintainable without challenging the trial court's order.

8. In support, the respondents rely on the decision in **Rashtriya Ispat Nigam Ltd & Anr. v. Verma Transport Co., (2006) 7 SCC 275.**

9. The arguments of the learned counsel for the parties have been duly considered.

10. The question that arises for consideration is whether an application made under Section 8 of the Arbitration and Conciliation Act, 1996, is subject to the period of limitation prescribed for filing a written statement under Order VIII of the CPC, 1908.

11. Before proceeding any further, it is pertinent to examine the relevant governing provisions.

11.1. Rule 1 of Order VIII of CPC, 1908 reads thus -

1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:



Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.

11.2. Section 8 of the Arbitration Act 1996 reads thus -

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 to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

(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:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to



call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(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.

12. In the case of **SSIPL Lifestyle Pvt Ltd vs. Varma Apparels (India) Private Limited (2020 SCC Online Del 1667)**, the Delhi High Court addressed the question of whether the addition of the words “the date of” means that the date for filing the written statement in a suit should be considered as the limitation period for filing a Section 8 application under the Arbitration and Conciliation Act, 1996. In that case, the defendants were served on April 23, 2018, and time was granted until May 16, 2018, to file the written statement. However, the defendants failed to do so, and on July 13, 2018, the NCLT passed an order stating that the opportunity for filing the written statement was closed, and the plaintiff’s application to adduce evidence was allowed. The High Court observed that Section 8 of the Arbitration and Conciliation Act, as amended in 2016 (effective from 23.10.2015), prescribes a time limit for filing a reference application from the date of submitting the first statement on the substance of the dispute. The Court reasoned that the 2016 amendment to the Act, in light of recent amendments to the CPC under the Commercial Courts Act, 2015, was a conscious step to fix a limitation period for filing the reference



application. The Court further opined that if there was undue delay in filing the application, as per the Booz Allen (2011) 5 SCC 532 mandate of filing the reference application at the earliest, the arbitration clause could be deemed waived.

13.. In **SPML Infra Ltd vs. Trisquare Switchgears Pvt Ltd (2022 SCC Online Del 1914)**, the Delhi High Court observed that a mere delay in making the application under Section 8 of the Act of 1996 may not be fatal to the right to seek an arbitral reference. However, once the proceedings have progressed beyond the stage of completion of pleadings, such an application to divest the court of its jurisdiction could not lie, as the parties would have been sufficiently invested in the proceedings before the jurisdictional court. The Court further opined that if a party's right to file a statement of defense is closed, this would result in its rights accruing in favor of the other party. The Court also reiterated the ratio from the **Verma Transport case (2020 SCC Online Del 1667)**, stating that the amendments to Section 8 of the Arbitration and Conciliation Act of 1996 and Order VIII, Rule 1 of the CPC by the enactment of the Commercial Courts Act, 2015, reflect the legislative intent for the expeditious adjudication of commercial disputes in a time-bound manner. The Court concluded that the introduction of the expression "date of" in the amended Section 8 of the Act 1996 imposes a



precise time frame within which an application seeking an arbitral reference could be filed.

14. In **GTL Infrastructure Limited (GIL) v. Amaladoss (2023 SCC Online Mad 1684)**, the Madras High Court placed reliance on the decision of the Supreme Court in *Kailash v. Nankhu* (2005) 4 SCC 480 and opined that a suit for recovery of money, being non-commercial in nature, had the outer limit for filing the written statement as prescribed in Order VIII of the CPC, which was directory in nature. The Court further relied on *Greaves Cotton Ltd. v. United Machinery and Appliances* (2017) 2 SCC 268, and held that the right to seek an arbitral reference under Section 8 of the Act, 1996 does not stand waived merely due to the passage of time between the date of entering appearance and the date of filing the reference application. It further held that the bar under Section 8 of the Act was that a reference application cannot be made after the filing of the written statement, but there was no bar to filing such a reference application under Section 8 along with the written statement. The Court concluded that once the existence of the arbitration agreement was brought to the notice of the Court, the approach of the Court should be to examine whether the jurisdiction of the Court was ousted under the special statute of the Arbitration and Conciliation Act, 1996, in line with the ratio laid down in *Kailash v. Nankhu*, where the forfeiture of the right to file the



written statement upon the expiry of 120 days from the service of summons was mandatory in commercial suits.

15. In **Rashtriya Ispat Nigam Ltd and Anr v. Verma Transport Co. (2006) 7 SCC 275**, the Hon'ble Supreme Court interpreted the words "first statement on the substance of the dispute" and opined that Section 8 of the Act envisages making a reference application not later than when submitting the first statement disclosing the entire substance of the dispute in the main proceeding itself, and not in supplemental proceedings, such as those seeking interim relief. The Court further held that a written statement represents a submission to the jurisdiction of the authority and that such a right could only be waived by a specific finding from the judicial authority. It concluded that the waiver of the right to seek a reference to arbitration must be inferred from the conduct of the parties, and that such a right cannot be deprived of by technical pleas.

16. The decision in **Rashtriya Ispat Nigam Ltd. v. Verma Transport Co. (2006) 7 SCC 275** was rendered before the 2016 amendment to the Arbitration and Conciliation Act, 1996, which brought significant changes to the manner in which arbitration applications are to be treated in relation to the filing of written statements in a suit. The case primarily dealt with the interpretation of the words "first statement on the substance of the dispute" under Section 8 of the Arbitration



and Conciliation Act, 1996, which was applicable before the amendment. However, the subsequent decisions of the Delhi High Court in **SSIPL Lifestyle Pvt Ltd vs. Varma Apparels (India) Pvt Ltd (2020 SCC Online Del 1667)** and **SPML Infra Ltd. vs. Trisquare Switchgears Pvt Ltd (2022 SCC Online Del 1914)** have distinguished the ratio laid down in *Rashtriya Ispat Nigam Ltd.* due to the changes introduced by the 2016 amendment.

17. In the cited decision in the case of *SSIPL Lifestyle Pvt Ltd (supra)*, the High Court of Delhi with reference to unamended Section 8 of the Act, 1996 and amended Section 8 has ruled as follows:

20. Thus, the model law was followed in the un-amended Section 8. However, in the amended Section 8, there is a departure. In the un-amended Section 8, it is also settled that the objections as to Section 8 could be contained in the written statement itself [Sharad P. Jagtiani (supra)] and it is also settled that a Section 8 application could be moved along with the written statement itself i.e. simultaneously with the written statement [Krishan Radhu (supra)]. The question, however, is whether the adding of the words 'the date of' means that the date for filing a written statement in a suit would be considered as the limitation period for filing of a Section 8 application.

22. Thus, as per the above decision, in view of the amended language in Section 8, the limitation for filing of the written statement under CPC for non-commercial suits and under the Commercial Courts Act for commercial suits would be applicable for filing of an application under Section 8. In view thereof, the Court concluded that the maximum period would be 90 days for ordinary civil suits and 120 days for commercial suits.



29. As per the above findings of the Supreme Court, though the Court found that there was no time limit fixed for filing an application under Section 8, there was an obligation to move such an application “at the earliest”. Under the unamended provision, if parties were contesting supplemental proceedings or were in talks of settlement etc., a Section 8 application could be moved anytime before the filing of the written statement. While in the unamended provision, the emphasis was on filing of the first statement on the substance of the dispute, now the emphasis is on the date of submitting the first statement. Under the unamended Act, the same was a period and that too an unascertained period, it is not so under the amended Act.

18. The Delhi High Court has also referred the decision of the Apex Court in the case of **Booz Allen and Hamilton Corporation -vs- SBI Home Finance Ltd. (2011 5 SCC 532)** wherein while dealing with the unamended Section 8 of the Act 1996, the Apex Court held that though Section 8 does not prescribe any time limit for filing an application thereunder and only states that such an application is to be filed before submission of the first statement on the substance of the dispute, the scheme of the Arbitration and Conciliation Act, 1996 and provisions of Section 8 clearly indicate that the application thereunder should be made at the earliest.

19. In view of the legal principles established with reference to the unamended and amended Section 8 of the Act 1996, the application under Section 8 of the Act should have been filed within an outer limit of not later than 120 days as stipulated under amended Order 8 Rule 1 of CPC from the



date of service of summons, which provides for filing of written statement.

20. In the instant case, while passing the earlier order of ex parte decretal of the petitioner's suit in O.S. No. 6370/2017 vide order dated 10.04.2018, the Ld. Trial Judge had observed at paragraph no. (15) therein that *"inspite of service of summons, defendant No.2 had failed to appear before court to contest the suit"*. Furthermore, since the respondent-defendants had failed to contest the suit the, the case was posted for commencement of recording plaintiff's evidence on 07.04.2018. The suit however, was restored vide order dated 20.02.2019 and the respondent-defendant No.2 despite being granted an extension of time to file the written statement, had instead preferred a reference application under Section 8 of the Arbitration and Conciliation Act, 1996 on 20.03.2019. A contextual interpretation of the statutory scheme of the Act of 1996, and the prescription of the outer limit of 120 days to file the written statement as contained in Order 8, Rule 1 of CPC, 1908, and the ratio laid down by the Apex Court in the case of **Booz Allen (2011 5 SCC 532)**, leads us to reasonably conclude that a reference application under Section 8 of the Act, 1996 should have been filed within a period of 120 days from the date of service of summons to the defendant, which was long passed before 20.03.2019.



21. Thus, where the reference application under Section 8 of the Arbitration and Conciliation Act, 1996 was made long after the expiry of the outer limit of 120 days from the date of service of summons, such a reference could not be construed to have been made at the earliest.

Accordingly, I pass the following:

ORDER

- i) The civil revision petition is allowed.
- ii) The impugned order dated 22.8.2019 passed in O.S.No.6370/2017 by the learned XIX Additional City Civil and Sessions Judge, Bangalore, is hereby set aside.

Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE