

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 4TH DAY OF AUGUST 2003

BEFORE

THE HON'BLE MR. JUSTICE P.VISHWANATHA SHETTY

CIVIL REVISION PETITION No 1735 OF 2002

BETWEEN

1 S K MILL STORES
BY ITS PROPRIETOR
MRS.FATIMA, W/O.SAYEEDKHAN KHAN
MAJOR, R/OF.PLOT NO.36,
NOW BEARING C T S NO.4858/67
SADASHIVANAGAR, BELGAUM

... PETITIONER

(By Sri : G BALAKRISHNA SHASTRY, ADV.)

AND :

1 RASOOLSAB
S/O.MOHIDDINSAB SANADI
MAJOR, R/O.HOUSE NO.1116/CCB NO.95
ADJACENT TO TALIMKHANA
JOSHI GALLI, SHAHAPUR
BELGAUM

... RESPONDENT

THIS CIVIL REVISION PETITION IS FILED U/S.115 CPC
AGAINST THE ORDER DATED 30.1.2002 PASSED ON IA NO.II IN
O.S.NO.425/98 ON THE FILE OF THE PRL. CIVIL JUDGE

(JR.DN.), BELGAUM, ALLOWING IA NO.II FILED BY THE RESPONDENT/DEFENDANT U/S.8 OF ARBITRATION AND CONCILIATION ACT FOR REFERRING THE MATTER IN DISPUTE TO THE ARBITRATOR.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING :

ORDER

I have heard Sri Shastry, learned counsel appearing for the petitioner elaborately.

2. The learned counsel appearing for the petitioner challenging the correctness of the order impugned. made two submissions. Firstly, he submitted that since on the application earlier filed the learned Judge had made an order rejecting the prayer of the petitioner for referring the matter to the Arbitrator the subsequent application filed by the respondent is not maintainable. Secondly, he submitted since the respondent has not taken a plea when the matter was before the Consumer Forum that the proceedings are required to be referred to the Arbitrator, the learned Judge ought to have held that the respondent cannot now seek for reference of the matter for arbitration.



3. I have been taken through the order impugned. I do not find any merit in the revision petition. The learned Judge on consideration of rival submissions of the parties has taken the view that there was no prayer made by the respondent in the earlier application filed by him seeking for reference of dispute to an Arbitrator. He has stated that the earlier application filed related to the prayer made by him where he had prayed for stay of further proceedings. Therefore, I do not find any merit in the first submission of the learned counsel appearing for the petitioner. Further, so far as the second contention of the learned counsel appearing for the petitioner is concerned, in my view, even if the respondent has not taken a defence in the proceedings initiated before the Consumer Forum, it is not a ground to refuse to refer the dispute to Arbitrator when the contract specifically provides for settlement of dispute through arbitration. The learned Judge at Paragraphs-9 and 10 of the order has assigned reasons in support of his conclusion to refer the dispute to an Arbitrator. I do not find anything wrong in the conclusion



reached by the learned Judge which calls for interference by me in exercise of my power under Section 115 of the Code of Civil Procedure.

4. Therefore, in the light of the discussion made above, this petition is liable to be rejected. Accordingly, it is rejected. However, no order is made as to costs.

Sd/-
Judge

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