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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 19.01.2024*

+ **FAO (COMM) 12/2024 & CM APPL. 3706/2024, CM APPL. 3707/2024 and CM APPL. 3708/2024**

RANJANA BHASIN

..... Appellant

Through: Mr. Raghavendra Mohan Bajaj,
Adv. with Mrs. Renu Handa
Bajaj and Mr. Kanav Agarwal,
Adv.

versus

SURENDER SINGH SETHI & ORS.

..... Respondents

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 03.10.2023 (hereafter '**the impugned order**') in CS (COMM) No. 345/2022 captioned *Surender Singh Sethi vs Ranjana Bhasin & Ors.* The appellant, arrayed as defendant no.1 in the said suit, had filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereafter "**A&C Act**") in the said suit praying that the parties be referred to Arbitration.

2. The learned Commercial Court had rejected the said application by the impugned order, essentially, on the following two grounds:

(i) The application was filed beyond the period available for



filing the written submissions and, therefore, the application is barred by limitation;

(ii) The application was defective as the appellant had not filed an original arbitration agreement or a duly certified copy of the arbitration agreement along with the said application.

3. Respondent no.1 instituted the above captioned suit, on 13.04.2022, for rendition of accounts, settlement, recovery of dues along with pendente lite and future interest. The summons in the suit were issued to the appellant and respondent nos.2 to 4 (the defendants in this suit) on 19.05.2022. It is stated that the appellant had refused the said service and, therefore, the summons were deemed to have been served.

4. The appellant also appointed a counsel, who filed a memo of appearance before the learned Commercial Court on 28.07.2022. The suit was listed on 13.09.2022 and the learned Commercial Court closed the rights of defendants to file the written submissions and directed that the suit be proceeded *ex-parte* against them.

5. Thereafter on 15.12.2022, the counsels for the defendants (including the appellant) appeared before the learned Commercial Court and sought a copy of the plaint and the accompanying documents. The said request was granted. Thereafter, on 17.03.2023, the appellant and other defendants filed an application under Section 8(1) of the A&C Act. In addition, they also filed an application under Order IX rule 7 CPC. This Court is informed that the said application was allowed and the appellant has been permitted to participate in the



proceedings. However, the application under Section 8(1) of the A&C Act was rejected.

6. It is contended by the learned counsel for the appellant that the appellant had, in fact, refused the service and, therefore, it is obvious that she did not have a copy of the plaint and other documents. He submits that the time period for filing the written submissions and an application under Section 8 of the A&C Act is required to be reckoned from the date of a meaningful service. According to him, since the summons were refused, there was no meaningful service of the plaint or the documents. His challenge to the impugned order rests on the foundation of the aforesaid contention.

7. We find no merit in the aforesaid contention. The same proceeds on the premise that there was no meaningful service of summons in the suit. This is palpably erroneous as it is admitted that the appellant had refused the summons issued on 19.05.2022. There is no allegation that the summons (which were refused) were not accompanied by plaint or the relevant documents.

8. It is also material to note that the appellant's application under Section 8 was filed more than three months after the plaint and the documents were supplied to the appellant. This was also beyond the period stipulated for filing the written statement.

9. The question whether a party in a suit can file an application under Section 8 of the A&C Act after the period of filing the written statement has expired, is no longer *res integra*. It is covered by an earlier decision of this Court in *SPML Infra Ltd Vs. M/s Trisquare Switchgears Pvt Ltd.*: FAO (COMM) 81/2022 decided on 06.07.2022.



10. In view of the above, we find no infirmity with the decision of the learned Commercial Court in rejecting the appellant's application under Section 8(1) of the A&C Act.
11. The appeal is, accordingly, dismissed.
12. All pending applications also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 19, 2024/SA