

Effect of Arbitration clause in MOA of a Company

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Civil Court Jurisdiction not barred because of Arbitration clause in Memorandum of Association – High Court of Chhattisgarh (India)

A recent Judgment dated 3rd April 2017 of the Chhattisgarh High Court in C.L. Athnagar & others Vs Hiran Lal Sahu (2017) SCC Online Chh 321 dealt with the issue “*Whether the jurisdiction of Civil Court is expressly or impliedly barred under S.9 of the Code of civil Procedure, since there is an arbitration clause in the Memorandum of Association of a Company?*”. It is important to note that S.201 of the Companies Act, 1956 declares that any clause in the MOA which relieves officers of the Company from any legal action, is void. Hence if the Memorandum of Association of a Company has an arbitration clause and if it is not invoked by the parties, civil court case is permissible.

Brief Facts of the case: The Plaintiff and defendants were present and former Directors of the company. The plaintiff filed a suit for cancellation of an agreement between them and for refund of Rs.5 Lakhs which was paid by him as an advance. The defendant while filing the written statement contended that the plaint be rejected under Order 7 Rule 11 of the Code of civil procedure on various grounds. The grounds also included a contention that the Civil Court is barred from entertaining the suit because the Memorandum of Association of the Company contains Arbitration clause. The trial court rejected the plaint under Order 7 Rule 11 since the suit is between the present Directors and former Director of the Company, Memorandum of Association has an arbitration clause and hence Arbitration is the available course of Action and jurisdiction of Civil Court is barred. Feeling aggrieved by the order of the trial Court, an appeal under S.96 of the Code of Civil Procedure was filed in the High court, which is the subject matter of the judgment relevant to this article.

Contentions of the Parties: The appellants contended that the said arbitration clause in MOA is not applicable in the present case because the dispute is relating to recovery of money and not relating to Company activity and the court can exercise its powers under S.8 of the Arbitration and Conciliation Act, 1996 to refer the matter to arbitration, only on an application made by defendant. The respondent contended that the Civil Court is barred from entertaining the suit because of arbitration clause in Memorandum of Association.

Conclusion: Merely the presence of an arbitration clause in a Memorandum of Association of a Company does not bar the jurisdiction of a Civil Court because of S.201 of the Companies Act, 1956 but it is subject to S.8 of the Arbitration & Conciliation Act, 1996 which requires an

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action by the defendant seeking to refer the matter to arbitration. Since defendant missed the opportunity to take the action in time, the suit was restored.

