

Heard Mr M Dutta, learned counsel for the petitioner. Also heard Mr B D Das, learned Senior counsel for the respondents.

This application, under Article 227 of the Constitution of India read with Section 151 of the CPC has been filed against the order dated 26.05.2011, passed by the learned Civil Judge, Nalbari in MS No. 7/2010 rejecting the petition No. 81/2011, whereby a prayer was made for framing a preliminary issue about the maintainability of the suit in view of an agreement between the parties containing an arbitration clause.

The learned Court, by the order under challenge, held that a stipulation in a private agreement barring the jurisdiction of the Civil Court cannot override the provisions of Section 9 of the Code of Civil Procedure and thus, the petition came to be rejected.

Mr M Dutta, learned counsel for the petitioner submits that the learned trial Court had fallen in error in passing the impugned order as the provision contained in Section 8 of the Arbitration and Conciliation Act, 1996, for short, the Act, was totally overlooked and, therefore, this petition deserves to be allowed by setting aside the impugned order dated 26.05.2011.

Mr B D Das, learned Senior counsel appearing for the respondents concedes that in view of the clause of arbitration in the agreement entered into by the respondent Board, with the petitioner, having regard to the steps taken by the petitioner in compliance of Section 8 of the Act, the suit cannot proceed any further and the parties are liable to be referred to arbitration.

The learned counsel for the parties submit that the trial Court may be directed to refer the parties to arbitration.

A perusal of the order dated 26.05.2011 shows that the learned court below had not at all adverted to the provisions of the Act and the findings recorded are clearly not sustainable in law.

In that view of the matter, the impugned order is set aside.

Considering the matter in its entirety, as agreed to by the learned counsel for the parties, the parties will appear before the learned trial court on 15.06.2012 so as to enable the learned trial Court to pass appropriate orders to refer the parties to arbitration.

The petition stands closed with the aforesaid observations and directions.