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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) 1538/2009 & CM APPL No. 18914/09**BLUE COAST INFRASTRUCTURE
DEVELOPMENT LTD & ORS**

..... Petitioners

Through: Mr. Amit Sibal with Ms. Divya Jain,
Advocate

versus

SURENDER PAL GARG & ANR

..... Respondents

Through: None.

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CM (M) 1539/2009 & CM APPL No. 18916/09**BLUE COAST INFRASTRUCTURE
DEVELOPMENT LTD & ORS**

..... Petitioners

Through: Mr. Amit Sibal with Ms. Divya Jain,
Advocate

versus

RADHA GARG

..... Respondent

Through: None.

And

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CM (M) 1540/2009 & CM APPL No. 18918/09**BLUE COAST INFRASTRUCTURE
DEVELOPMENT LTD & ORS**

..... Petitioners

Through: Mr. Amit Sibal with Ms. Divya Jain,
Advocate

versus

SURENDER PAL GARG & ANR

..... Respondents

Through: None.

Signature Not Verified

Digitally Signed By: AMULYA
 Certify that the digital file and
 physical file have been compared and
 the digital data is as per the physical
 file and no page is missing.

CORAM: JUSTICE S.MURALIDHAR

- Whether Reporters of local papers may be allowed to see the judgment?

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2. To be referred to the Reporter or not? *L*
 3. Whether the judgment should be reported in Digest? *L*

ORDER
19.04.2010

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1. Despite service none appears for the Respondents.
2. On 23rd December 2009 this Court passed the following order:

“These three petitions under Article 227 of the Constitution of India have been preferred by the defendants in the three suits instituted by the respondents in each of the cases, for the relief of ejectment after termination of tenancy and for recovery of mesne profits and against the order in each suit, dismissing the application of the defendants under Section 8 of the Arbitration Act, 1996. The registered lease deed in each of the three cases contains an Arbitration Clause which appears to be wide enough to cover the dispute of the nature, subject matter, of the suit. The trial court has dismissed the application inter alia on the ground that the suits had been filed by the respondents/landlords who were lessors in each of the lease deed, not only against the petitioner no.1/tenant but also against petitioners 2 and 3 who are stated to be group companies of the petitioner no.1; The petitioners 2 and 3 were impleaded as defendants on the averment that though the letting was to the petitioner no.1 only but the petitioners 2 and 3 were also found in use/occupation of the premises. The trial court has held that since the non parties to the arbitration clause were also parties to the suit, arbitration was not the appropriate remedy.

The reasoning of the trial court prima facie appears to be erroneous. The respondents/plaintiffs had claimed ejectment as landlords only and by valuing the suit for the purpose of court fees and jurisdiction as between landlord and tenant only and possession was not claimed from the petitioners 2 and 3 in any

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other capacity. The petitioners have also in the petition reiterated that only the petitioner no.1 is in occupation of the premises and the petitioners 2 and 3 are not even stated to be in use of the premises.

Issue notice to the respondents by all modes including dasti on the petitioners taking requisite steps, returnable on 19th April, 2010.

Dasti under signature of the Court Master.

CM No.18914/2009 (u/s 151 CPC for stay) in CM(M) No.1538/2009, CM No.18916/2009 (u/s 151 CPC for stay) in CM(M) No.1539/2009 and CM No.18918/2009 (u/s 151 CPC for stay) in CM(M) No.1540/2009

Till the next date of hearing, there shall be stay of proceedings in the suits.

CM No.18915/2009 (u/s 151 CPC for exemption) in CM(M) No.1538/2009, CMNo.18917/2009 (u/s 151 CPC for exemption) in CM(M) No.1539/2009 and CMNo.18919/2009 (u/s 151 CPC for exemption) in CM(M) No.1540/2009

Allowed, subject to just exceptions.”

3. This Court has heard the submissions of Mr. Amit Sibal, learned counsel for the Petitioners.

4. It is stated that the Petitioners herein took the suit premises i.e. Flat No. 218, together with parking space LB-8 in Antariksh Bhawan, 22 Kasturba Gandhi Marg, New Delhi on tenancy for a period of three years beginning on 15th February 2005. While it is the case of the Respondents/Plaintiffs that there was no renewal of the lease deed, the Petitioners disputed this fact. In para 4. of the plaint it is stated that the suit premises are no longer with Defendant No.1, i.e. Petitioner No.1 herein, but with Defendant Nos. 2 and 3

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i.e. Blue Coast Hotels & Resorts Limited, Petitioner No. 2 herein and Morepen Laboratories Limited, Petitioner No. 3 herein to whom they were sub-let without any authority or permission from the Plaintiffs/Respondents herein. It is further stated in para 4 of the plaint that “this breach being fatal to even the grant of the lease further warrants the eviction forthwith of the Defendants from the suit premises.”

5. What is also significant is that there is no specific relief prayed for in the suit against Defendant Nos. 2 and 3. A copy of the lease deed shows that the parties intended all disputes arising out of the tenancy to be referred to arbitration. The relevant clause 28 reads as under:

“28. In the event of difference or dispute arising out of, under or in connection with this agreement over the rights of obligation of parties hereto, the dispute or difference shall be referred to the Arbitration of a Sole Arbitrator to be appointed with mutual consent of the Lessor and the Lessee. The venue of the Arbitrator shall be at New Delhi and the Courts in the City of Delhi/New Delhi alone shall have the jurisdiction in relation to the Arbitration and the provisions of the Arbitration & Conciliation Act 1996 shall be applicable to such Arbitration.”

6. On the strength of the above clause, the Petitioners filed an application under Section 8 of the Arbitration & Conciliation Act 1996 (‘Act’) praying that the disputes be referred to arbitration. The Petitioners placed reliance upon the decision of this Court in *P. Anand Gajapathi Raju v. P.V.G. Raju (Dead)* (2000) 4 SCC 539 whereas the Respondents placed reliance on the

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decision of *Sukanya Holdings (P) Limited v. Jayesh H. Pandya (2003) 5 SCC 531*. The learned Additional District Judge ('ADJ') by the impugned order dated 21st November 2009 dismissed the Petitioners' application under Section 8 of the Act on the ground that there was no arbitration agreement between the Plaintiff and Defendant Nos. 2 and 3 (Petitioners 2 and 3 herein) in whose favour the sub-tenancy was created by Defendant No. 1.

7. In the considered view of this Court, the learned ADJ was in error in coming to the above conclusion. It is the case of the Plaintiffs that by the alleged sub-letting of the premises in favour of Defendant Nos. 2 and 3, Defendant No.1 was in breach of the terms of the lease. The arbitration clause clearly covers such a breach. As explained by this Court in *Virender Yadav v. Aerosvit Airlines 153 (2008) DLT 25*, merely because some of the parties to the suit are not parties to the arbitration agreement, the request by the entity which is a party to the arbitration agreement that the dispute be referred to arbitration cannot be negated. Recently this Court in *M/s. Tandav Films Entertainment P. Limited v. M/s. Four Frames Pictures 2009 (41) PTC 515 (Del)* also held likewise. If at all, the Defendant Nos. 2 and 3 herein could claim rights only under Defendant No. 1 and as long as Defendant No. 1 is a party to the arbitration agreement that should be sufficient for referring the disputes to arbitration.

8. In the instant case, the averments made in the plaint show that the disputes fall within the scope and ambit of Clause 28 of the lease deed. It is the case of the Defendant Nos. 2 and 3, i.e. Petitioners 2 and 3 herein, that they are not in occupation of the premises in question. Nevertheless, even going by

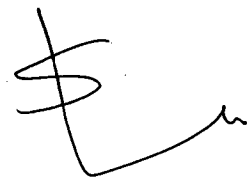
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the averments made in the plaint, Defendants 2 and 3 can claim rights only under Defendant No. 1 which is a party to the arbitration clause. The claim of Petitioner No. 1 to have the disputes referred to arbitration in terms of Clause 28 of the lease deed cannot be defeated only because the Petitioner Nos. 2 and 3 are not parties to the arbitration agreement.

9. The facts in *Sukanya Holdings (P) Limited* are different. There, the Supreme Court was concerned with the question whether the claims could be bifurcated into arbitrable and non-arbitrable claims and only the arbitrable ones referred to arbitration. On the facts of that case, it was held that the disputes could not be split and referred to arbitration. The decision in *Sukanya Holdings (P) Limited*, therefore does not apply to the facts of the present case.

10. For all the aforementioned reasons the impugned order dated 20th November 2009 is hereby set aside. The Petitioners' application under Section 8 of the Act stands allowed. Accordingly, the parties are directed to take steps under the Act to have Clause 28 of the lease deed operationalized and have the disputes referred to arbitration.

11. The petitions and the pending applications are disposed of. Order be given dasti to learned counsel for the Petitioners.



S.MURALIDHAR, J.

APRIL 19, 2010

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- Fresh CM 7948/10 for restoration (P-125)