

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

% *Date of Judgment: 10.02.2012.*

+ C.R.P. 22/2012

GLOBAL AGRI SYSTEM PVT LTD Petitioner
Through Mr.Sandeep Sethi, Sr.Adv. with
Mr. Harunesh Tandon, Adv.

versus

BIMLA SACHDEV Respondent
Through Mr. Vikas Mehta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 Order impugned before this Court is the order dated 28.01.2012 whereby the two applications filed by the defendant i.e. the first application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'said Act') and the second application under Order 7 Rule 11 of the Code of Civil Procedure (hereinafter referred to as the 'Code') had been dismissed.

2 Record shows that the present suit is a suit for possession, mesne profits and damages filed by the plaintiff against the sole defendant; suit premises are property No. K-13A, Hauz Khas Enclave, New Delhi which had been let out to the defendant in terms of a registered lease deed dated 13.03.2006. Contention of the plaintiff is that Clause 20 of the said lease deed contains an arbitration clause and in terms thereof, the disputes having arisen between the parties in view of the mandate of Section 8 of the said Act they had to be referred for arbitration.

3 Relevant would it be at this stage to reproduce the arbitration clause which is a part of the lease deed and which reads herein as under:-

“If there should be a dispute among the parties or any of them arising out of or relating to this agreement, they will attempt in good faith to resolve the dispute promptly through discussions. If the dispute cannot be resolved through negotiation, then it may be referred to arbitration by a single arbitrator appointed jointly by the parties. This arbitration agreement and the proceedings thereunder shall be governed by (Indian) Arbitration and Conciliation Act, 1996 or any statutory amendment or reenactment thereof. The venue of arbitration shall be New Delhi, India.”

4 Learned counsel for the respondent while refuting the prayer sought for by the plaintiff has placed reliance upon a judgment of the
CRP No. 22/2012

Apex Court reported in AIR 2000 SC 1379 Wellington Associates Ltd. Vs. Mr. Kirit Mehta to support his submission that the word ‘may’ as appearing in the present arbitration clause in fact has been construed in the similar circumstances in the judgment of Wellington Associates (Supra) as a directory condition and distinct from the word ‘shall’ and as such by applying the ratio of the aforementioned judgment, there was no mandate upon the Court for reference of disputes to arbitration.

5 Learned counsel for the petitioner has refuted this submission; it is not denied that there were twin clauses which were the subject matter of dispute in the case of Wellington Associates and the Court had noted that the preceding clause 4 which when read with the subsequent clause 5 had led to the conclusion that the word ‘may’ is only directory and not mandatory.

6 The arbitration clause which is a part of this lease deed has been noted. Tenor of this clause clearly stipulates that if there is any dispute between the parties relating to this agreement, attempt in good faith to resolve this dispute from a discussion would be made; further an alternate of negotiations is also contained in the said clause; as a third condition, the parties may refer their dispute to a single arbitrator to be

jointly appointed by the parties. The word ‘may’ appearing herein as also giving an option to both the parties to get an arbitrator appointed jointly largely deciphers the intent of the parties which in the instant case is not a mandate upon the parties to refer their dispute to an arbitrator; in the eventuality that the parties cannot settle their dispute by discussion or by negotiations, they as an alternate ‘may’ i.e. as a third alternate given to the parties to get their disputes settled through the forum of arbitration and the word may having been supplanted by the sentence that the parties will get arbitrator jointly appointed in fact shows that the parties have to view this is an option only and not mandatorily go for arbitration.

7 In fact a similar situation had arisen in the case of B. Gopal Das Vs. Kota Straw Board MANU/RH/0064/1971. In that case the clause read as follows:-

“That in case of any dispute arising between us, the matter may be referred to arbitrator mutually agreed upon and acceptable to you and us.”

8 In this case, it was held that a fresh consent for arbitration was necessary; the clause in the present case is in fact clearer and more

happily worded; thus it cannot be said that the parties had agreed to mandatorily opt for arbitration in case of a dispute between the parties. The trial Court had rightly noted this clause to be vague and not binding.

9 The prayer made in the application under Section 8 of the said Act has also been perused. It seeks a prayer for dismissal of the suit and not for a reference to arbitration. That apart, the conduct of the petitioner is also relevant. Learned counsel for the respondent has pointed out that the rent has not been paid by the tenant/petitioner since March, 2008 and inspite of specific directions of the trial Court dated 02.12.2010 and 15.12.2010, rent was not paid; in fact the order of 15.12.2010 specifically postulates that the arrears of rent be cleared within a period of three weeks. It is not in dispute that the clearance has not been effected till date. \

10 The petitioner has thus not come to the Court with clean hands. Dismissal of the application under Section 8 of the said Act in this scenario calls for no interference.

11 The second application under Order 7 Rule 11 of the Code was also rightly dismissed. Contention before this Court has been that the Court did not have the pecuniary jurisdiction to deal with the present

suit as the mesne profits have been claimed for an amount of ₹16 lacs which were not within the pecuniary jurisdiction of the Civil Judge; this submission now urged does not form a part of the pleadings of the application under Order 7 Rule 11 of the Code; in fact the averments made in the said application are largely the defences sought to be set up by the defendant which cannot be adhered to while dealing with an application under Order 7 Rule 11 of the Code. It is a well settled position of law that the averments made in the plaint alone have to be looked into to decide an application under Order 7 Rule 11 of the Code. The averments made in the plaint clearly disclose a cause of action qua the plaintiff and against the defendant. Dismissal of application under Order 7 Rule 11 of the Code also calls for no interference.

12 Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 10, 2012

A