

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

+ IA NO. 10702/2011 IN CS(OS) NO. 913/2011

M/S ANJUMAN TARAQQI URDU (HIND) Plaintiff
Through: Mr. A.K. Singla, Sr. Advocate
with Mr. J.K. Sharma, Adv.

versus

M/S VARDHMAN YARNS & THREADS LTD. Respondent
Through: Mr. Dalip Kumar Sharma, Adv.

% Date of Decision : February 02, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. The defendant in the aforementioned suit has filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 for reference of the disputes between the parties to arbitration.
2. Notice of the application was issued to the learned counsel for the plaintiff, who has chosen not to file a reply and to make oral submissions opposing the application.

3. The factual background in which the application is filed is as follows.

4. The plaintiff, which is a society registered under the Societies Registration Act, has filed the present suit against the defendant for recovery of possession of the premises known as 'Urdu Ghar', 212, Deen Dayal Upadhyay Marg, New Delhi consisting of the entire first floor measuring 3505 Sq. Ft. inclusive of balcony measuring 682 Sq. Ft. and mezzanine floor measuring 1300 Sq. Ft. totalling 5487 Sq. Ft., let out to the defendant company—M/s Vardhman Yarns & Threads Limited (then incorporated as M/s Mahavir Spinning Mills Limited) on a monthly rent of Rs.1,23,086/- (Rupees one lakh twenty three thousand and eighty six only) inclusive of maintenance charges. Apart from the recovery of possession of the aforesaid immovable property, the plaintiff also claims recovery of damages by way of mesne profit for the pre-suit period as well as the post-suit period.

5. The lease-deed executed between the parties was signed on 09.06.2005 containing therein the record of terms and conditions agreed upon between the parties. The lease period was for a term of five years as stated in the lease-deed to be reckoned from 19.07.2004,

i.e. upto 18.07.2009. The aforesaid lease came to an end with the efflux of the period given thereunder, that is, with effect from 18.07.2009, and from that date the occupation of premises by the defendant company is on a month to month basis according to the English calendar month, since no renewed lease-deed is registered between the parties. The plaintiff by issue of notice dated 05.02.2011 terminated the defendant's tenancy under Section 106 of the Transfer of Property Act. The defendant sent reply dated 25.02.2011 stating therein that vide letter dated 01.06.2009, the defendant had made a written request to the plaintiff to exercise its option with an increase of 15% in the rent for a further period of five years, which was confirmed by the plaintiff on 04.06.09, who has since been receiving and accepting the revised rent. The defendant, in its reply, further alleged that the lease could not be determined before the expiry of the lease period, which was to expire on 18.07.2014. However, before legal proceedings pursuant to the said notice could be instituted by the plaintiff, the defendant obtained receipt No. 656 dated 07.03.2011 from the plaintiff's bank account, wherein the receipt of defendant's cheque No. 715338/715339 dated 01.03.2011 totalling Rs.1,23,086/-

(Rupees one lakh twenty three thousand and eighty six only) is acknowledged. According to the plaintiff, the cheque described in the said receipt was accidentally deposited for encashment by the plaintiff's officials and consequently payment thereunder was received.

6. In the above circumstances, the plaintiff issued fresh notice of termination of tenancy under Section 106 of the Transfer of Property Act dated 15.03.2011 intimating the defendant that after expiry of 15 days from the receipt of the notice, occupation of premises by the defendant will be unauthorized, and that in case defendant fails to hand over vacant peaceful possession of the premises within the aforesaid period, the plaintiff would institute proceedings for recovery of possession holding the defendant liable for damages/compensation calculated at the rate of Rs.100/- per sq.ft. per day. It is, thus, the case of the plaintiff that with the notice of termination dated 15.03.2011, the defendant has no right to hold possession of the property and the occupation of the defendant in respect of the suit premises is illegal and unauthorized. The defendant in its reply dated 30.03.2011 reiterated the contents of its reply dated 25.02.2011.

7. As already indicated above, the defendant has filed the present application for dismissal of the suit in the light of the existence of an arbitration clause in the lease deed dated 09.06.2005 executed between the parties, being Clause (c) whereby the parties have mutually agreed as under:-

“That all disputes arising out of or pertaining to this lease (sic.) shall be settled by negotiations. If negotiations do not succeed the dispute shall be referable to arbitration as per the provisions of Arbitration Act, 1940 or any statutory modification thereof, for the time being in force.”

8. Mr. Dalip Kumar Sharma on behalf of the defendant contends that the dispute in the present suit is liable to be referred to arbitration in view of the aforesaid specific clause for arbitration contained in the registered lease deed dated 09.06.2005. He relies upon a large number of judicial pronouncements to further contend that the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 are pre-emptory in nature and where the provisions of the said Section become fully applicable, the Court has no other option but to refer the parties to arbitration in terms thereof. In particular, he referred to the decisions rendered in *M/s Architectural Innovations Vs. Rajasthan*

Co-op. Group Housing Society, 77 (1999) Delhi Law Times 403; P. Anand Gajapathi Raju and others Vs. P.V.G. Raju (died) and others, AIR 2000 Supreme Court 1886; and Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits & Wovens and Others, (2007) 3 Supreme Court Cases 686.

9. Mr. Sharma further contends, relying upon the decision of the Supreme Court in *Hindustan Petroleum Corporation Limited Vs. M/s. Pinkcity Midway Petroleums, AIR 2003 Supreme Court 2881*, that it is clear from the language of the Section 16 of the Act that the Civil Court should not embark upon an inquiry in regard to the applicability of the arbitration clause to the facts of the case, in that the said Section of the Arbitration and Conciliation Act empowers the Arbitral Tribunal to rule “on any objections with respect to the existence or validity of the arbitration agreement”.

10. Mr. A.K. Singla, the learned senior counsel for the plaintiff, to rebut the contentions of Mr. Sharma, relies upon the decision rendered by the Supreme Court in *M/s SMS Tea Estates Pvt. Ltd. Vs. M/s Chandmari Tea Co. Pvt. Ltd., 2011 (7) SCALE 747*, and in particular on the portion extracted herein below:-

“Having regard to the limited scope of the said arbitration agreement (restricting it to disputes in relation to or in any manner touching upon the lease deed), the arbitrator will have no jurisdiction to decide any dispute which does not relate to the lease deed.”

11. Mr. Singla contends that the application filed by the defendant for reference of the dispute to arbitration is liable to be dismissed as clause 35 of the lease deed in the said case and the arbitration clause in the present case are in identical terms.

12. The aforesaid reliance placed by Mr. Singla upon the judgment of the Supreme Court in the case of *M/s SMS Tea Estates Pvt. Ltd. (Supra)* is altogether misplaced. In the said case, the question which arose for consideration of the Supreme Court was whether the Arbitration Agreement contained in an unregistered instrument, which is not duly stamped, is valid and enforceable. It was the contention of the respondents in the said case that the lease deed executed between the parties was unenforceable having regard to Section 107 of Transfer of Property Act, 1882 and Section 17 & Section 49 of the Registration Act, 1908; that the said lease-deed was not duly stamped and was, therefore, invalid, unenforceable and not

binding, having regard to the Section 35 of the Indian Stamp Act, 1899; that clause 35 providing for arbitration, being part of the said lease deed, was also invalid and unenforceable.

13. As regards the non-registration of lease deed, which contained the Arbitration Agreement, the Supreme Court held as follows:-

“An arbitration agreement does not require registration under the Registration Act. Even if it is found as one of the clauses in a contract or instrument, it is an independent agreement to refer the disputes to arbitration, which is independent of the main contract or instrument. Therefore having regard to the proviso to section 49 of Registration Act read with section 16(1)(a) of the Act, an arbitration agreement in an unregistered but compulsorily registrable document can be acted upon and enforced for the purpose of dispute resolution by arbitration”.

14. Further, examining the provisions of Section 33 and Section 35 of the Stamp Act, the Supreme Court in paragraph 12 of its judgment summed up the position as follows:-

“(i) The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registrable.

(ii) If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then

proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Section 35 and 38 of the Stamp Act.

(iii) If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the Court or before the Collector (as contemplated in Section 35 or 40 of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.

(iv) Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registrable. If the document is found to be not compulsorily registrable, the court can act upon the arbitration agreement, without any impediment.

(v) If the document is not registered, but is compulsorily registrable, having regard to section 16(1)(a) of the Act, the court can de-link the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 8 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

(vi) Where the document is compulsorily registrable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the Arbitrator appointed in such a matter

cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance and (b) as evidence of any collateral transaction which does not require registration.”

15. It was, thus, in the context of an unregistered and unstamped lease deed that the Supreme Court held that the arbitrator will have no jurisdiction to decide any dispute which does not relate to the lease-deed. This is further elaborated upon by the Court in paragraph 13 of its judgment, which is extracted herein below:-

*“13. Where a lease deed is for a term of thirty years and is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease. It can be relied upon for the limited purposes of showing that the possession of the lessee is lawful possession or as evidence of some collateral transaction. Even if an arbitrator is appointed, he cannot rely upon or enforce any term of the unregistered lease deed. Where the arbitration agreement is not wide and does not provide for arbitration in regard to all and whatsoever disputes, but provides only for settlement of **disputes and differences arising in relation to the lease deed**, the arbitration clause though available in theory is of little practical assistance, as it cannot be used for deciding any dispute or difference with reference to the unregistered deed.”*

16. The judgment in the case of *M/s SMS Tea Estates Pvt. Ltd.* (*Supra*) is, therefore, of no avail to the plaintiff.

17. The lease deed in the instant case is duly registered and stamped and the arbitration clause contained therein must, therefore, be given full play. It is trite that in a case where there exists an arbitration agreement, the Court is under obligation to refer the parties to arbitration in terms of the Arbitration Agreement. The Arbitration Agreement in the instant case covers all the disputes between the parties in the suit and satisfies the requirements of Section 7 of the Act. Thus, the provisions of Section 8 of the Act become fully applicable to the facts of the present case and this Court has no other option but to refer the parties to arbitration. I, therefore, consider that the present suit is not maintainable and plaintiff should invoke the arbitration clause and the dispute should be referred to the arbitration. This application under Section 8 of Arbitration and Conciliation Act, 1996 is, therefore, allowed. The suit filed by the plaintiff does not survive and is hereby dismissed being not maintainable.

**REVA KHETRAPAL
(JUDGE)**

February 02, 2012
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