

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

**% Judgment Pronounced on: April 02, 2013**

**+ ARB.P. No.98/2012**

**KARTAR SINGH ..... Petitioner**

**Through Dr.Vijendra Mahndiyan, Adv. with  
Ms.Pallavi Awasthi, Adv.**

**versus**

**M/S MIRKANA ENGINEERING PVT. LTD. .... Respondent**

**Through Mr.Vikas Arora, Adv. with Mr.Mohit  
Taneja, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The case of the petitioner is that the petitioner is owner of a plot measuring 4200 sq. yds. located at Khasra Nos.115 and 116, Jagatpur, Wazirabad Road, Delhi-110084.
2. The respondent is the authorized dealer of M/s Tata Motor Limited for passengers vehicles and required space for carrying out its activities such as stockyards/body shop/workshop and as such approached the petitioner to lease out his aforesaid plot for the said purpose.
3. A lease deed dated 29<sup>th</sup> April, 2009 was entered into between the parties. As per the terms and conditions of the said lease deed, there was a lock-in period of three years and no party was entitled to terminate the said lease prior to expiry of the said period of three years. However, the respondent company vacated the leased premises prior to expiry of lock-in period. Therefore, the petitioner became entitled to claim the lease money

for the remaining 16 months from the respondent i.e. ₹12 lac besides claiming the damage to the property of the petitioner.

4. It is further stated that the respondent vacated the premises and handed over the key of the premises to the son of the petitioner without settling the accounts in full and final settlement. While inspecting the premises, it was noticed by the petitioner that the respondent's officials caused substantial damage to the demised premises; the details of which are as under:

- (i) Carpet green grass area measuring 110'x247' has been badly damages.
- (ii) The boundary walls have been defaced and require the painting and plastering.
- (iii) Substantial damage to the sanitary fittings has been caused.
- (iv) Entrance ramp has also been damaged by the respondent company's officials.

5. As per the terms of the lease, the respondent was required to hand over the possession of the premises as per its original condition at the time of creation of the tenancy. The petitioner obtained the detail from the architect who had given his estimate to the tune of ₹2,13,020/- for repairing of all these works which the respondent was liable to pay to the petitioner.

6. The petitioner thereafter got issued a legal notice dated 24<sup>th</sup> January, 2011 to the respondent who gave his reply dated 10<sup>th</sup> March, 2011 but did not agree with the allegation made by the petitioner in its notice.

7. The details of the claims raised by the petitioner are mentioned in para 11 of the petition. The petitioner also got issued a legal notice dated 29<sup>th</sup> December, 2011 upon the respondent calling upon him to concur within 30

days for the appointment of sole Arbitrator namely Mr.Yatendra Kumar, CA. The respondent despite of receiving the said notice and after lapse of 30 days did not concur with the appointment of sole Arbitrator. Thus, the petitioner has filed the present petition. In the notice for invoking the arbitration clause the respondent was called upon to pay a sum of ₹12,63,020/- after adjusting the amount of ₹1,50,000/- deposited by the respondent as interest free security.

8. Notice of this petition was issued to the respondent who filed his reply, inter alia, on the ground that the present petition is not maintainable as the case of the petitioner is based upon lease deed dated 29<sup>th</sup> April, 2009 which is unregistered and insufficiently stamped and as such cannot be read into nor can be relied upon for any purpose even for the purposes of reading the arbitration clause in the agreement. It is stated by the respondent that the non-registration of the document cannot be relied upon. As the said lease deed is not properly stamped and until deficient stamp duty along with the penalty is paid, the document cannot be looked into and no cognizance of any nature even for invoking the arbitration clause cannot be considered by this Court, in view of the decision rendered by the Supreme Court in the case of *S.M.S. Tea Estate Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd.*, 2011 (7) Scale 747. With regard to merit of the case, it is stated by the respondent that the respondent vacated the premises due to closure of business and it was done with the permission/consent of the petitioner, as at the time of possession, the petitioner's son was present who has received the peaceful possession of the property after due verification and satisfaction. Rather he accepted the keys of the property from the respondent. The case of the respondent is that the petitioner was liable to return the interest free security deposit of ₹1,50,000/- as per the agreement at the time of receiving the

possession from the respondent but he did not refund the same. Therefore, respondent is claiming ₹1,50,000/- along with interest @18% per annum with effect from 11<sup>th</sup> January, 2011. It is denied by the respondent that any damage was caused to the property of the petitioner. One of the contentions of the respondent is that in order to avoid the payment of interest free security of ₹1,50,000/- to the respondent, the present petition has been filed.

9. In case, the main petition filed by the petitioner as well as the reply filed by the respondent are read together, it appears to this Court that there is a controversy between the parties. It is the admitted position that there is an arbitration clause in the lease deed dated 29<sup>th</sup> April, 2009 executed between the parties. The relevant dispute resolution clause 9.10 reads as under:-

“9.10 Dispute Resolution

That in the case of dispute between parties, the parties can seek to resolve the dispute by discussion. If the dispute is not resolved within 30 days from the date of occurrence of dispute, then any of the parties can refer the dispute to Arbitration within the meaning of Arbitration and Conciliation Act, 1996 and appoint a sole arbitrator with mutual consent. The Arbitration proceedings shall be in English Language and place of arbitration shall be Delhi. Each party shall bear the cost of arbitration in equal proportion. The party shall abide by the stipulations contained in the Arbitral award.”

10. It is admitted by the respondent that the arbitration agreement does not require any registration. The present lease agreement dated 29<sup>th</sup> April, 2009 contains the arbitration clause which is duly signed by the parties. With regard to the judgment referred by the respondent in the case of **S.M.S. Tea Estate Pvt. Ltd.** (supra), the said judgment does not help the case of the respondent. The relevant para-7 of the said judgment is reproduced here as below:-

“7. When a contract contains an arbitration agreement, it is a collateral term relating to the resolution of disputes, unrelated to the performance of the contract. It is as if two contracts -- one in regard to the substantive terms of the main contract and the other relating to resolution of disputes – had been rolled into one, for purposes of convenience. An arbitration clause is therefore an agreement independent of the other terms of the contract or the instrument. Resultantly, even if the contract or its performance is terminated or comes to an end on account of repudiation, frustration or breach of contract, the arbitration agreement would survive for the purpose of resolution of disputes arising under or in connection with the contract. Similarly, when an instrument or deed of transfer (or a document affecting immovable property) contains an arbitration agreement, it is a collateral term relating to resolution of disputes, unrelated to the transfer or transaction affecting the immovable property. It is as if two documents – one affecting the immovable property requiring registration and the other relating to resolution of disputes which is not compulsorily registrable – are rolled into a single instrument. Therefore, even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer. These principles have now found statutory recognition in sub-section (1) of section 16 of the Arbitration and Conciliation Act, 1996 Conciliation Act 1996 (‘Act’ for short) which is extracted below:

“16. Competence of arbitral tribunal to rule on its jurisdiction. - (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.”

11. Learned counsel for the respondent has not denied the fact that the arbitration agreement does not require for any registration. He has also not denied the fact that the lease agreement between the parties is in writing and there is an arbitration clause. The said agreement is also signed by the parties. In view of the above, in case the lease deed is unregistered, the same can be looked into for collateral purposes. Even otherwise, assumed the same cannot be looked into at the stage of evidence or other purpose, the arbitration agreement can still be segregated and treated as an independent agreement in writing duly signed by both the parties. The fact whether the objection raised by the respondent that the lease deed is an unregistered document which requires registration as well as stamping or as to whether it can be considered by the arbitrator for collateral purposes or cannot be considered at all for the purpose of evidence, the said issue is to be considered at the stage of evidence which is solely the domain of Arbitrator, however, the arbitration agreement would still remain intact for the purpose of disputes resolution.

12. As far as the referring of disputes under Section 11(6) of the Act is concerned, at this stage the Court is concerned with the arbitration agreement as well as the arbitration clause which is not denied by the respondent. Therefore, the respondent’s contention that the petition cannot be accepted would have to be considered at the appropriate stage by the arbitrator who is competent to rule its own jurisdiction including ruling on any objection with regard to existence or validity of the arbitration agreement under the provision of Section 16 of the

Act. Thus, the prayer of this petition is allowed. The disputes are referred to the arbitration, to be conducted under the aegis of Delhi High Court Arbitration Centre and its rules and the fee shall also be paid to the sole Arbitrator as per the Rules thereof. The Arbitrator appointed by the Delhi High Court Arbitration Centre shall give prior notice before commencing the proceedings. The petition stands disposed of. A copy of the order be sent to Delhi High Court Arbitration Centre.

**(MANMOHAN SINGH)**  
**JUDGE**

**APRIL 02, 2013/jk/ka**