

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.1056 of 2015 (O&M)
Date of Decision : July 03, 2015

M/s Air Plaza Retail Holding

....Petitioner

Versus

R.L. Narang and others

....Respondents

CORAM : HON'BLE MR. JUSTICE GURMIT RAM

1. To be referred to the Reports or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present: Mr. Rahul Rampal, Advocate,
for the petitioners.

GURMIT RAM, J.

1. This revision petition is preferred by the petitioner-herein (tenant) against the order dated 06.01.2015 passed by the learned Rent Controller, Ludhiana vide which his application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 (in short "the Act) for referring the matter in dispute for arbitration was declined.

2. The brief facts are that respondents-herein (landlord) have filed an application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short "the Rent Act") for the eviction of the tenant from the demised premises which is now pending before the Court of learned Rent Controller, Ludhiana. During the pendency of this application, the tenant filed the instant application for referring the

matter for arbitration. It was mentioned in the application that qua the demised premises a registered lease deed was executed between the parties on 09.04.2012. Vide this lease deed, it was agreed that it would be subject to arbitration under the provisions of the said Act. Further Clause 16 of this lease deed provides as under:-

“All disputes, differences and questions of any nature which at any time arise between the parties to this Deed or their respective representatives and assigns or any of them out of the construction of or concerning anything contained in or arising out of this Deed or as to the rights, duties or liabilities under it of the parties to it respectively or their respective representatives shall be subject to the exclusive jurisdiction of the Courts, at Ludhiana. The disputes shall be settled by the Arbitration to be concluded in accordance with the Indian Arbitration Act, 1996; the venue of arbitration shall be at Ludhiana.”

Prayer was made for referring the matter in dispute between the parties to the Arbitration as provided above under Clause 16 of the lease deed.

3. Upon notice the landlord filed the reply taking preliminary objections that this application is not maintainable and that Rent Act is a special statute which confers protection to the tenants against their unlawful ejectment from demised premises. When the rights of the parties are protected under any special statute, then the matter in issue cannot be referred to the arbitration. Pleas were also taken that Rent Controller under the Rent Act is *persona designata* and does not

act and function as a Court. He is free to devise his own ways and procedure to deal with the matter in controversy. The learned Rent Controller after hearing the learned counsel for both the parties and going through the record as well dismissed the instant application vide the impugned order dated 06.01.2015.

4. Feeling aggrieved from this order the petitioner-herein (tenant) has come up with the instant revision petition before this Court.

5. The learned counsel for the petitioner has contended that the learned Rent Controller while passing the impugned order has failed to take note of provisions of Section 8 read with Section 5 of the Act and as such, this order has no sustainability in the eyes of law. Then it is his further contention that when any lease deed between the parties qua any demised premises contains any arbitration clause then all the matters, suits etc. arising out of subject matter of the lease deed are to be referred to the Arbitrator for the arbitration and the Court has no jurisdiction to entertain and try such like matter. In support of his contention he has cited authority of this Court as delivered in ***M/s Enco Engineers Combine vs. M/s Bhupindera Steel Pvt. Ltd. 2011(2) R.C.R. (Civil) 401.*** It was a civil suit for recovery and an application under Section 8 of the Act for referring the matter in dispute to the arbitration was declined by the learned trial Court. There was an arbitration clause in the lease agreement executed between the parties. It was held that in these facts jurisdiction of Civil Court is barred and the Court is bound to refer the matter for arbitration once

an application for the said purpose is moved by defendant under the provisions of the Act.

6. The learned Rent Controller while dealing with the matter in controversy has relied upon one authority of the Hon'ble Apex Court as laid down in ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. and others, 2011 AIR (SC) 2507***. In para No.22 of this judgment, the Hon'ble Apex Court has pointed out some disputes which are inarbitrable and the Court can refuse to refer the parties for Arbitration under Section 8 of the Act, even though the parties might have agreed upon for arbitration as the forum for settlement of such dispute. These are described as under:-

“The well recognized examples of non-arbitrable disputes are:-

- (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences;*
- (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody;*
- (iii) guardianship matters;*
- (iv) insolvency and winding up matter;*
- (v) testamentary matters (grant of probate, letters of administration and succession certificate); and*
- (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are*

conferred jurisdiction to grant eviction or decide the disputes.

The principle laid down in this case law are further followed by the Hon'ble Apex Court in a subsequent case titled as ***Ranjit Kumar Bose and another vs. Anannya Chowdhury and another, 2014 AIR (SC) 1534.***

7. In view of the principles laid down by the Hon'ble Apex Court in the case laws cited supra, no substance is found in the revision petition. The impugned order is found to be well reasoned based on the settled principles of law. Hence the revision petition stands dismissed and disposed of accordingly.

Nothing said herein will have any effect on the ejectment proceedings which are stated to be pending before the learned Rent Controller concerned.

July 03, 2015

Gaurav Sorot

**(GURMIT RAM)
JUDGE**