

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3303 of 2015 (O&M)

Date of Decision: 27.07.2015

Bharat Sanchar Nigam Ltd.  
and others

.... Petitioners

Versus

Sh. Rajinder Mohan Lal  
and another

.... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Anil Rathee, Advocate,  
for the petitioners.

1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes.**

**RAJIV NARAIN RAINA, J.**

1. BSNL entered into a lease agreement with the previous owner of the roof of the building in dispute to erect RTT (Roof Top Tower) for transmission purposes erected thereon on April 23, 2007. The lease agreement was signed on November 26, 2009 retrospectively from April 23, 2007 for a period of three years. The lease came to an end by efflux of time in the year 2010. The property changed hands so also the landlord. The transaction happened on September 01, 2011. The lease having expired, landlord served notice to BSNL to quit but BSNL refused to vacate the premises which brought the landlord to file a petition before the Rent Controller, Chandigarh under section 13 of the East Punjab Urban Rent Restriction Act, 1949 for eviction. Petitioners pleaded personal necessity to expand their business and to place Gensets and transformers etc. on the roof

top to facilitate their expansion of business in a proposed restaurant etc. in a portion of the property and to accommodate the expanding business when two of the daughters of the petitioners had joined hands to expand the family's common wealth through business enterprise. The petitioners were also in litigation with other tenants in the demised premises on the third and fourth floors of the building situated in Sector 34-A (Sub City Centre), Chandigarh which premises were required for their personal use and occupation.

2. In response to the petition, BSNL did not file its written statement and instead revoked section 8 of the Arbitration & Conciliation Act, 1996 (for short "the A&C Act") for referring disputes between the parties to the Arbitrator. BSNL recited the lease agreement as justification for the application under section 8 of the A&CA, 1996. The petitioning landlord joined issue and submitted that though there is an arbitration clause in the lease agreement but the parties are governed on the matters of eviction governed by special statutes where the tenants enjoys statutory protection against eviction and it is the only specified courts which are conferred jurisdiction to grant eviction or decide tenancy disputes and the A&CA, 1996 is inapplicable when proceedings are initiated before the Rent Controller. The special protection afforded to tenants and the rights of landlord to evict tenants can only be adjudicated in the form devised to settle disputes by adjudication before the Rent Forums.

3. The learned Rent Controller, Chandigarh has dismissed the application under section 8 of the A&CA, 1996 vide order dated January 15, 2015 relying on a decision of this court rendered in **St. Joan's Education**

**Society vs. National Thermal Power Corporation Limited and others**, 2012(4) RCR (Civil) 136 where this court commended the view that in matters of eviction of tenants the forum is the Rent Controller empowered by rent laws and it is only the Rent Controller which can order eviction or decide the disputes and differences between landlords and tenants. BSNL is before this Court against the order dismissing the application for return of plaint. The ejectment petition will be adjudicated by the Rent Controller in case the order passed under section 8 of the A&CA, 1996.

4. Mr. Anil Rathee, learned counsel appearing for the petitioners relies on Single Bench decision in CR # 4106 of 2011 titled **Munish Singal and others vs. BSNL and others**, decided on May 07, 2012 relying on clause 17 of the lease agreement in the case of BSNL itself that disputes and differences between the parties are arbitrable by the sole Arbitrator the Chief General Manager Telecom, Punjab Telecom Circle, BSNL, Sector 34, Chandigarh. The court interpreted the expression "or otherwise in relation to the premises" in clause 17 to have very wide amplitude. It would cover not only the disputes arising out of the agreement but also any and every dispute arising otherwise but relating to the demised properties. The dispute raised by the plaintiffs in the suit relates to the demised property and, therefore, covered by the arbitration clause. This was a case of a civil suit for possession and ejectment of the defendants and also for mesne profits. The case also related to installation of towers on roof top in premises at Panchkula where the building may have had protection of the Haryana Urban (Control of Rent and Eviction) Act, 1973 the building being less than 10 years old. This fact is not mentioned in the judgment but I assume that

this must have been the only reason for instituting a civil suit and not approaching the Rent Forum. Civil suits are governed by section 9 of the CPC and have plenary jurisdiction and if there was no specific bar to the maintainability of the suit the arbitration clause in the lease agreement would afford no help. The case is dissimilar and clearly distinguishable on facts. In the present case, the petition for eviction was filed before the Rent Controller.

5. The other decision relied upon by Mr. Rathee is the ruling in **Hughes Communications India and others vs. East West Traders and another**, 2013(4) RCR (Civil) 691. In this case, the plaintiff called in question the appointment of an arbitrator in a rent dispute where the petitioner had filed a petition for eviction of the tenant under the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 and only the Rent Controller has jurisdiction to enter upon the dispute between the parties.

6. I may point out that the decision in *Hughes Communications India* (Supra) was rendered on May 28, 2013. The decision in *St. Joan's Education Society's* case was not brought to the notice of the court.

7. The learned Single Judge in *Hughes Communications India* (Supra) noticed the decision of the Supreme Court in **Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.**, (2011) 5 SCC 532 and culled out its ratio to mean "the Supreme Court has held that the claim to specific performance which creates but a personal obligation is arbitrable. The arbitrator will have a power to also deal with disputes that may result in grant of relief for specific performance."

8. I have very serious doubt if that was the ratio in the binding precedent. The Supreme Court dealt with specifically with section 8 of the 1996 Act. The Court drew out from the A&CA, 1996 certain well-recognized examples of non-arbitral disputes and listed them in para.36 of the judgment in *Booz Allen* (Supra) in which tenancy matters were specifically mentioned. The setting in which the exceptions were carved out in para.36 are best read verbatim and between paras.35 and 37 and the same are reproduced for ready reference:-

"35. *The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may be necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.*

36. *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 matters; (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.

37. It may be noticed that the cases referred to above relate to actions in rem. A right in rem is a right exercisable against the world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject-matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, a judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and a judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself."

9. The attention of the learned Single Judge in *Hughes Communications* case (Supra) was not drawn to the authority in **Natraj Studios (P) Ltd. v. Navrang Studios and another**; AIR 1981 SC 537, where the Supreme Court dealt with the protective provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 with reference to the scheme of arbitration under the then Arbitration Act, 1940. The Supreme Court held that the arbitration agreement regulated by rent laws and the disputes arising as to possession of premises can be decided by Small Causes Courts alone and not by way of arbitration resolution since an arbitrator would have no jurisdiction in the matter. The Court observed in para. 17 and 21 of the report as under: -

*"17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against*

*harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain Courts is pursuant to the social objective at which the legislation aims. Public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognised by a Court of law.*

*21. In Deccan Merchants Cooperative Bank Ltd. v. M/s Dalichand Jugraj Jain (1969) 1 SCR 887 : (AIR 1969 SC 1820), the conflict was between the jurisdiction of the Registrar of Co-operative Societies under the Maharashtra Co-operative Societies Act and the jurisdiction of the Court of Small Causes under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The Court held that whether or not the Registrar of Cooperative Societies was a 'Court' whose jurisdiction was ousted under S.28 of the Bombay Rents, Hotel and Lodging House Rates control Act, 1947, the jurisdiction of the Registrar was surely ousted on broader considerations of public policy. The Court pointed out that the Rent Act had a specific social objective in view and for the achievement of that objective it was necessary that the Court set up under the Rent Act alone should deal with a dispute between a landlord and a tenant and that in accordance with the provisions of the Rent Act. Necessarily, the jurisdiction of the Registrar was ousted. The Court said (at pp. 901, 902);*

*“The scheme of the various Rent Acts and the public policy underlying them are clear; the policy is to give protection to the tenants. Various powers have been conferred on the authorities under the Rents Acts to grant protection to the tenants against ejectment and other reliefs claimed by the landlords... If the matter is heard by the Registrar, none of these provisions would apply. We can hardly imagine that it was the intention of the legislature to deprive tenants in buildings owned by cooperative societies of the benefits given*

*by the Rent Act. It seems to us that the Act was passed, in the main, to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute between the landlord and the tenant should be dealt with by the Courts set up under the Rent Act and in accordance with the special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Act. It seems to us that the two acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply."*

10. What remains of the issue and is still debatable I am hard pressed to find or discern.

11. There was another case in point which required notice being a decision of the learned Single Judge of the Madras High Court in **Sathish Raj and another v. Atlanta Applied Dynamics (India) Pvt. Ltd. and another** ; 2007 (1) Arb. LR 436 (Madras) where the court held that the parties can enter into any contract containing clause for arbitration to refer any dispute for arbitration. But when there is a special enactment covering the subject-matter field of a particular dispute, the provisions of that Act alone have to be invoked and the dispute cannot be referred to any other mode of adjudication. The Court was considering the provisions of the local rent law of the State vis a vis resolution by arbitration. It may be kept in mind that the civil court had primary jurisdiction while Rent Controllers are statutory authorities set up for the purpose of adjudicating landlord-tenant disputes. The jurisdiction of these adjudicators cannot be by-passed by an arbitration intervention through the provisions of the A&CA, 1996. When

there are special or general forums exercising jurisdiction over the relief claimed in subject matter jurisdiction, then the arbitration clauses can be invoked for arbitration purposes but not for rights exercised *in rem* by an oppressor of rights.

12. When the lease agreement contained an arbitration clause but there is no agreement or consent between the parties extending the term of lease, then although not provided for in the agreement, the occupation of the tenant over the demised premises after the expiry of the lease agreement is not under an agreement. The respondent becomes a tenant holding over the disputed premises/space under the general law, which protects and respects his possession over the property. In such a case, an application for referring the dispute to arbitration deserves to be dismissed. See **M/s V.S.Enterprizes v. B.R.Sharma**, 2012-1, PLR 146, (SB) for this proposition.

13. I had occasion to consider the issue in a landlord tenant matter in **M/s Reliance Digital Media Ltd. vs. M/s Jawed Habib Hair Xpreso Ltd.**, 2014(2) HLR 189 and held on an analysis of the judgments which were placed before me including *Natraj Studios*, *Booz Allen and Sathish Raj* and held that ejectment can be ordered only through Court process and not through arbitration proceedings. The Arbitral Tribunal is not a court and thus has no power to evict a person from the disputed property where possession was lawfully delivered to tenant in accordance with laws governing tenancy operated through the Rent Controllers constituted under rent laws.

14. The judgment in *M/s Reliance Digital Media Ltd.* (Supra) was

applied by a Coordinate Bench in Civil Revision No. 7125 of 2013 decided on May 29, 2015 in case titled **M/s International Corp. Solutions Pvt. Ltd. and anr. vs. Chaitanya Garg** holding that what is materially significant is to examine the subject matter of the arbitration agreement and subject matter of a suit (the court was dealing with proceedings arising out of a suit) if they are one and the same. And if they are not then the suit must proceed. Similarly, the rent petition cannot be thrown out on the basis of an arbitration agreement which does not give such wide powers of eviction on the arbitrator.

15. In this line of argument, the arbitration clause has to be read to start with. The arbitration clause in the present case relevant to the context is Clause 19 which reads:-

*"19. Provided always and it is hereby expressly agreed that if at any time there shall arise any dispute, doubt, difference or question with regard to interpretation or in respect of the right, duties and liabilities of the parties hereto or in any way touching or arising out of these presents or otherwise in relation to the premises then every such dispute, difference, doubt or question (except the decision whereof is herein expressly provided for) shall be referred to the sole arbitration of the Chief General Manager Telecom, Punjab Telecom Circle, BSNL, Sec 34 Chandigarh."*

16. This takes us to the discussion of the ruling in *Munish Singal* (Supra) rendered by the learned Single Judge where the Judge dealt with an arbitration clause of BSNL which was Clause 17 in that case which requires no reproduction due to the similarity with the present clause. The learned Single Judge was of opinion that an expression "or otherwise in relation to the premises" which are the same words found in present Clause 19 are of very wide amplitude. The court held that it would cover not only the

disputes arising out of the agreement but also any and every dispute arising otherwise but relating to the demises property. Since the dispute raised by the plaintiffs in the suit relates to the demised property the same is covered by the arbitration clause. Though the case was one arising out of a civil suit and not a rent petition but all the same the interpretation of the expression in inverted commas as above requires to my mind a fresh look. As I read the setting of that expression in Clause 19, I would not read in it wide amplitude as was placed on the construction of the words by the learned Single Judge. The arbitration clause read as a whole presents a picture where disputes, doubts, differences in question with regard to interpretation of the agreement or in respect of the rights, duties and liabilities of the parties to the agreement or in any way touching or arising out "these presents" govern the construction of the expression "or otherwise in relation to the premises" then every such dispute etc. has to go to sole arbitration. The word "otherwise" does not create fresh channels of forums or fresh channels of adjudication to be determined by forums other than arbitration. To my mind, the word "otherwise" has to be read in the context of rights, duties and liabilities of the parties. Eviction is neither a duty nor a liability of any of the parties. A right of eviction is a statutory right protected by special rent legislation and the A&CA, 1996 is a general law and it appears to be well settled proposition of law that the general must give way to the special. This is what the rule in *generalia specialibus non derogant* also speaks about. There is an implied exception to the law in the general law yielding to the special.

17. While the learned Single Judge interpreted the expression "or

otherwise in relation to the premises" the weight of judgments of the Supreme Court and other courts indicating to the contrary were not brought to notice that rent laws are special laws and a person can be evicted only by the due process of the Rent Controller and not by the arbitrator who is a private person. The judgments noticed in this order would not brought to the notice of the learned Single Judge the reductio of which binding precedents is that eviction can take place when rent laws are not applicable through the process of serving notices to quit issued under section 106 of the Transfer of Property Act, 1882 of where rent laws are applicable through the jurisdiction and process of the Rent Controllers. Therefore, I am unable to persuade myself to the view taken in *Munish Singal* and *Hughes Communications India* and those cases can only be read as confined to their own facts and are not binding precedents on the subject matter field of rent law in its relation to the law of arbitration.

18. In passing, I would only add a word to say that the Rent Controller, Chandigarh though culled out the principles in para.36 in *Booz Allen* but did not refer to the Supreme Court judgments from where the words came and appears to have attributed the same to this court in *St. Joan's Education Society's* case which applied the principles laid down in *Booz Allen* and, therefore, the impugned order dated January 15, 2015 is based on sound principles expounded in *Booz Allen* and is not open to be disturbed. The trial has to take place between the parties before the Rent Controller and not before the arbitrator and the application under section 8 moved by the BSNL eminently deserved to be dismissed.

19. The decision in of the Supreme Court in *Natraj Studios* supra was

not cited before the learned Single Judge when court took the decision *Hughes Communications India* case that the Rent Controller has to take his hands off the rent petition till the arbitration before the named arbitrator comes to a close.

20. The view taken by the learned Rent Controller, Chandigarh is to my mind the correct view which is in conformity with law. I would, therefore, dismiss the revision petition.

(RAJIV NARAIN RAINA)  
JUDGE

27.07.2015  
manju