227.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.4400 of 2014
Date of decision:02.11.2015

Reliance Life Insurance Company Limited and another.
... Petitioners

versus

M/s A.R. Estates Pvt. Ltd. .... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Rajbir Singh, Advocate,
for the petitioners.

Mr. Ishan Gupta, Advocate,
for the respondent.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. *(Oral)*

1. The revision is against an order dismissing an application for appointment of an Arbitrator made under Section 8 of the Act. The suit was filed for recovery of certain sums on account of service tax, arrears of enhanced rent and interest. The petition for reference under Section 8 was made with reference to a clause in the lease specified in 16(g) that specifically referred to the dispute between the lessor and the lessee shall be referred to the sole Arbitrator to be appointed by the lessee. The objection taken by the

plaintiff was that the lease period has expired and the lease has been terminated by the lessee and after the termination, the clause in the lease deed cannot be put to use. It is the further argument that in clause 2 of the lease agreement, it is specifically set out that the lease shall be subjected to deduction by the lessee on tax at source and the rent shall be exclusive of service tax as applicable from time to time. According to the plaintiff, since the suit is filed for service tax component, it must be taken as excluded. This contention of the plaintiff prevailed with the court below and he dismissed the application filed under Section 8.

2. The order is erroneous. An arbitral clause is required to be read as a separate agreement under Section 7 of the Arbitration and Conciliation Act, 1996. The fact that a lease may have expired or could have prevented continuance of leasehold rights for non-statutory tenants cannot put an end to arbitral agreement, for, it has to be for the purpose of Section 7 read as independently enforceable. If the service tax component of liability has to be treated exclusive of rent, it will be wrong to assume that a claim for service tax will not be governed as a dispute for reference to arbitral agreement. The clause must be understood as only a liability independent of the rent that is fixed and the exclusivity of the service tax ought not to be understood as an adjudication regarding its assessment to be excluded from the arbitral clause. Such a reading will cause violence

to the bare understanding of the clause in the rental agreement.

3. The order impugned is set aside and the revision petition is allowed. The case is ordered to be referred to arbitration in the manner that the arbitral agreement provides and any party seeking for adjudication may secure the appointment of an Arbitrator in the manner contemplated by the provisions of the agreement and under the provisions of the Act.

(K.KANNAN)
JUDGE

02.11.2015
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