

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 7125 of 2013

Date of Decision: May 29, 2015

M/s International Corp. Solutions Pvt. Ltd. and anr.

.....Petitioners

Vs.

Chaitanya Garg

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Kabir Sarin, Advocate
for the petitioners.

Mr. Sanjay Vij, Advocate.

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M.M.S. BEDI, J.

The petitioner is aggrieved by the dismissal of his application under Section 8 of the Arbitration and Conciliation Act, 1996, for short 'the Act', passed by Civil Judge (Junior Division), Gurgaon, in Civil Suit tilted Chaitanya Garg Vs. M/s International Corp. Solutions Pvt. Ltd. and another.

Brief facts necessary for the adjudication of the present revision petition are that the respondent has filed a suit for ejectment and recovery of rent and mesne profits for six months from April to September 2012 alongwith 18% interest and penalty after termination of lease w.e.f. September 22, 2012 to October 12, 2012 totaling a sum of Rs.15.50 lacs

with mesne profits pendente lite and future interest at the rate of 18% per annum against the petitioner Company and its Director. The petitioners resisted the maintainability of the suit on the ground that as per Section 8 of the Act, the matter requires to be referred to the Arbitrator claiming that the plaintiff had entered into a lease agreement dated September 16, 2011 with defendant No.1- petitioner. The plaintiff has claimed in his suit that the petitioners have committed breach of the terms of the lease agreement and the dispute between the petitioner-defendant No.1 and plaintiff-respondent is with regard to the obligations of the parties arisen out of the lease agreement which has an arbitration clause. As per para 6.5 of the lease agreement, plaintiff- respondent had agreed to refer any dispute or difference arising out of, from or relating to anything contained in the agreement to arbitration after following the gamut of procedure mentioned therein. Para 6.5 of the lease agreement reads as follows:-

“6.5 Dispute Resolution and jurisdiction:-Any dispute or difference between the LESSOR and the LESSEE arising out of, from or relating to anything contained in the Agreement shall be resolved amicable through mutual discussion between the senior of the Parties. If any such dispute or difference could not be amicably resolved within 30 days such dispute and difference shall be referred to the arbitration. Such arbitration shall be governed by the provisions of the

Arbitration and Conciliation Act 1996 and rules amendments made thereunder. The Arbitrator to be a neutral person appointed by both the parties mutually failing which the Arbitrator shall be appointed by the Court after expiry of 60 days from raising of dispute. The venue of the arbitration shall be New Delhi. For the purpose of the Arbitration and Conciliation Act 1996 where the intervention and the of the courts is necessary the courts of Gurgaon shall have exclusive jurisdiction Subject to the Arbitration as referred above the Courts of Gurgaon shall have Jurisdiction in respect of all matters of disputes and difference arising in connection with this Lease Deed.”

Defendant No.1- petitioner pleaded in his application that the entire foundation of the plaint is based upon the rights and obligations of the parties arising out of the terms incipitulated in the lease agreement. Despite the said arbitration clause, plaintiff- landlord had chosen to approach the Court with malafide intention. In view of the above said clause, the petitioner prayed for reference of the dispute to the Arbitrator as per Para 6.5 of the lease agreement, mentioning therein that defendant No.1 has been and is still ready to decide the dispute through arbitration. Attested true copy of the lease agreement was placed on record by the defendant- petitioner.

The application was contested by the landlord- respondent pleading that the relief claimed for recovery of arrears of rent and mesne profits cannot be decided by Arbitrator and that the Civil Court has got jurisdiction in respect of all the matter of dispute and differences. The plaintiff- respondent claimed that the dispute has arisen not only because of breach of obligations of the parties to the lease agreement but as the plaintiff was no more interested in retaining the defendant- petitioner as his lessee, therefore, after terminating the lease, the suit had been filed under general law as the provisions of Rent Act are not applicable to the property.

It was averred in the reply that the entire foundation of the plaint is not based upon rights and obligations of the parties arising out of the terms of the lease agreement and entire rights and obligations are not resulting from the lease agreement between the parties and that as per Clause 6.5 of the lease agreement, the parties had agreed to approach the Civil Court at Gurgaon or to proceed for arbitration proceedings.

The trial Court vide impugned order dated July 9, 2013 dismissed the application under Section 8 of the Act observing as follows:-

“After hearing learned counsel for both the parties and after relevant perusal of the Arbitration and Conciliation Act, 1996 and after reading plaint it transpires that plaintiff has filed the present suit for ejectment and recovery of Rs.75,01,807/- which include rent and mesne profit. So, this court is of the considered

opinion that issue of the eviction can only be adjudicated and decided by the court cannot be decided by the Arbitrator. The application under Section 8 for referring the matter to Arbitration is dismissed.”

Learned counsel for the petitioner has placed a strong reliance on the judgment of the Apex Court in **Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums**, (2003) 6 SCC 503, **Bharat Sewa Sansthan Vs. U.P. Electronics Corpn. Ltd.**, (2007 (7) SCC 737, **Branch Manager, Magma Leasing and Finance Limited and another Vs. Potluri Madhavilata and another**, (2009) 10 SCC 103 in support of his contention that where arbitration clause exists, Court has a mandatory duty to refer the dispute arising between the contracting parties to refer the matter to the Arbitrator and that the civil Court has no jurisdiction to continue with the suits once an application under Section 8 of the Act has been filed. He has also placed reliance on judgment in **Reliance Infratel Ltd. and another Vs. Gaje Singh**, CR 7632 of 2011, decided on January 23, 2013, by K. Kannan, J of this Court.

In **Hindustan Petroleum Corpn. Ltd.** case (supra), the order passed by the High Court dismissing the application under Section 8 of the Act for staying a suit pending a reference, of the suit to an Arbitrator contemplated under the dealership agreement between the parties, was set aside by the Apex Court holding that any dispute arising between the parties regarding dealership is referable to arbitration and where dual procedure

exists, one under criminal law and another under contractual law, invocation of the latter by a contracting party was proper. In that case the dispute was pertaining to short supply of products and tampering with weights and measure seals by dealer in contravention to the dealership agreement. The Apex Court held that the dispute arose out of the arbitration agreement as such matter should be referred to Arbitrator.

In **Bharat Sewa Sansthan** case (supra), there was a dispute relating to balance of arrears of rent, arrears of water and sewerage tax and rate of interest on payment of arrears of rent raised by the appellant Sansthan in its calculation statement filed before the High Court which was at variance with the calculation statement submitted by the respondent Corporation. The Apex Court held that the disputed claim could be appropriately tackled and adjudicated upon by the arbitrator in terms of the arbitration clause. In the said case, the District Judge had dismissed the application filed by the Corporation under Section 8 of the Act but the High Court had allowed the application directing the District Judge to refer the matter to the Arbitrator. The said order was upheld by the Apex Court.

In **Reliance Infratel Limited's** case (supra), a suit had been filed for declaration that lease agreement entered between the parties was wrong, null and void. In that case the dispute was that as per the lease agreement, the amounts were not being released. There was an arbitration clause between the parties. The High Court had set aside the order passed

by the trial Court dismissing the application under Section 8 of the Act and directed to refer the matter to the arbitrator.

In Branch Manager, Magma Leasing and Finance Company Limited and another case (supra), there was a hire purchase agreement between the parties for referring the matter to the arbitrator. The said agreement embraced all the disputes, differences, claims and questions between the parties arising out of the said agreement or in any way relating thereto. It was held that Section 8 of the Act is in the form of legislative command and on fulfillment of conditions required for applicability of Section 8 of the Act, Court has no option except to refer the parties to arbitration.

Learned counsel for the respondent has argued that the provisions of the arbitration clause in rent/ lease agreement does not mean that jurisdiction of the Civil Court or Rent Tribunal is ousted. A Civil Court or Rent Tribunal has got its independent jurisdiction to decide the matter under relevant law i.e. rent law legislature or provisions of Transfer of Property Act as the case may be. In support of his contention, he relied on **Reliance Digitel Media Ltd. Vs. M/s Jawed Habib Hair Xpreso Ltd.**, 2014 (2) HLR 189. In the said judgment, the order dismissing the application under Sections 5 and 8 of the Act was upheld. The judgment of **Hindustan Petroleum Corpn. Ltd.** case (supra) and **Branch Manager, Magma Leasing and Finance Company Limited and another** case (supra), **Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited**

and others, 2001 (5) RCR (Civil) 168 SC, **Ashoka Buildcon Pvt. Ltd. Vs. Vadilal Dairy International Ltd.**, 2011 (1) RCR (Civil) 406 and **Akshay Kapur and others Vs. Rishav Kapur and others**, ALR 2003 (2) 508 were distinguished to hold that a Civil Court has got jurisdiction to refuse an application under Section 8 of the Act even if the dispute is covered by the Arbitration agreement.

I have heard learned counsel for both the parties and carefully gone through the facts and circumstances of this case. The respondent-plaintiff is a lessor whereas the petitioner is a lessee as per the lease agreement. Annexure P-2 dated September 16, 2011 executed for a period of three years, prescribing the terms of the lease containing the terms that agreement shall commence on August 22, 2011 and would remain in effect for three years. It contains provisions regarding escalation of rent and deposit of security amount etc. There is provision for renewal of the lease deed by an extension later on. So far the termination of agreement is concerned, it can be terminated by lessor or lessee. A locking period in lease for first 24 months has been prescribed after which the lessee could vacate the premises in time by giving advance notice of three months. The lessor has represented to the lessor, that he is owner and allottee of the commercial premises measuring 5533 sq. feet (built up area) on second floor of Global Foyer, Golf Course Road, Sector 43, Gurgaon, Haryana. As per clause 6.3, there are certain obligations upon the lessee to make payment under the agreement and perform other covenant conditions, stipulations etc.

and in the event of violation of any of the conditions, lessor would be entitled to terminate forthwith the lease and upon said termination the lessee will forthwith remove itself, its agents, servants and employees and other belongings from the premises. Clause 6.5 is the arbitration cause which has been reproduced hereinbefore.

The short question which is required to be determined in the present case is whether the lessor can file a suit for recovery, mesne profits and seek eviction by approaching Civil Court besides claiming interest for the unpaid lease amount.

A perusal of the lease deed indicates that a number of obligations arise out of the agreement of arbitration. The said agreement appears to be a registered document having been registered at the office of Sub-Registrar, Gurgaon vide vasika No.71868 dated September 16, 2011. The rent Act appears to be not applicable to the building in dispute as it is a new construction and a period of 10 years has not elapsed but the respondent has issued a notice terminating the lease before filing a suit as is apparent from the copy of the plaint and he has issued notice under Section 106 of the Transfer of Property Act dated July 9, 2012 through Advocate terminating the lease w.e.f. September 21, 2012. In **M/s Reliance Digital Media Ltd. Vs. M/s Jawed Habib Hair X-presso Limited**, 2014 (2) HLR 189, a Coordinate Bench of this Court has relied upon judgment of Madras High Court in **Sathish Raj Vs. Atlanta Applied Dynamics (India) Pvt. Ltd.**, 2007 (1) Arb. LR 436 (Madras) to hold that the parties can enter into any

contract containing clause for arbitration to refer any dispute for arbitration. But when there is a special Act covering the 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. In the said judgment, it was observed that it should 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 Arbitration and Conciliation Act, 1996. When there are special or general authorities 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. In para 12 of the above said judgment, it was observed as follows:-

“12. The contract signed between the parties in this case is no better than a rent note or a lease agreement subject to the local rent laws permitting actions to be brought before the Rent Controller or through the due process of law ignited in civil courts where rent laws are not applicable then remedies can be sought through notices served under Section 106 of the Transfer of Property Act determining tenancy, followed by a civil suit

praying for eviction by grant of a permanent and mandatory injunction.”

Even otherwise, I have carefully gone through the lease agreement which is intended not to create a relationship of lessor or lessee but also deals with a number of obligations inter-se the parties, regarding various facilities provided in the premises belonging to the respondent which is stated to be a big mall in Gurgaon.

Section 8 of the Act provides as follows:-

“8. Power to refer parties to arbitration where there is an arbitration agreement.--(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section(1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an

arbitration may be commenced or continued and an arbitral award made."

An analysis of Section 8 of the Act would show that for its applicability, following conditions must be satisfied:-

- (a) that there exists an arbitration agreement;
- (b) that action has been brought to the court by one party to the arbitration agreement against the other party;
- (c) that the subject matter of the suit is same as the subject matter of the arbitration agreement;
- (d) that the other party before he submits his first statement of the substance of the dispute, moves the court for referring the parties to arbitration; and
- (e) that along with the application the other party tenders the original arbitration agreement or duly certified copy thereof."

Applying the above said parameters to the present case, it is apparent that the subject matter of the suit i.e. ejectment and recovery of interest, mesne profits over the arrears of rent is not the subject matter of the arbitration agreement. An Arbitrator cannot enter into the niceties of the validity of notice under Section 106 of the Transfer of Property Act and the rights of a person in occupation after termination of tenancy as such it is held that the subject matter of the suit is not same as the subject matter of the arbitration agreement as such I do not find any infirmity in the order passed by the Court below dismissing the application under Section 8 of the Act.

It is not out of place to observe here that the intention of the parties for adjudication of application under Section 8 of the Act is not a material factor but at the same time, the principles of equity cannot be ignored. In the present case, counsel for the respondent has submitted that in case the arrears of lease amount are always paid, the respondent has got no objection to refer any dispute to the Arbitrator. It will also not be out of place to mention here that the objection of referring the matter to the Arbitrator is to seek an expeditious adjudication of the rights of the parties which are not capable of being challenged in a civil Court. The intention of the petitioner lessee is to evade the legal rights of the plaintiff- respondent flowing from the provisions of Order 15 Rule 5 CPC as amended and applied to the State of Punjab, Haryana and Chandigarh.

On asking of the Court, counsel for the petitioner has informed that till date no steps have been taken by the petitioner to make an attempt to get the matter adjudicated by an arbitrator as per provisions of Section 8 (3) of the Act.

On the basis of the above said circumstances, no ground is made out for interference in the impugned order.

Dismissed.

May 29, 2015
sanjay

(M.M.S.BEDI)
JUDGE