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

+ CS(OS) 2587/2014

NEW DELHI INSTITUTE
OF MANAGEMENT STUDIES

..... Plaintiff

Through: Mr. Bipin K. Dwivedi & Mr. Abrar
Ali, Advs.

versus

DELHI MAHILA SAMARJ TRUST

..... Defendant

Through: Mr. Navin Chawla & Mr. Ketan Paul,
Advs.

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Date of Decision : 19th May, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

IA No. 2329/2015

1. Present application has been filed by the defendant for referring the matter to an Arbitrator under Section 8 of the Arbitration and Conciliation Act, 1996.
2. Learned counsel for the plaintiff points out that all the five claims raised in para 27 of the plaint arise out of the relationship between the parties as a landlord and tenant.

3. He also points out that Clause 29 of the Lease Deed is wide, comprehensive and it covers all differences or disputes arising between the parties under the Lease Deed.

4. He lastly submits that as the Arbitration Clause namely, Clause 29 of the Lease Deed is an admitted clause, this Court is under an obligation to refer the dispute to arbitration. In support of his submission he relies upon a judgment of the Supreme Court in ***M/s Sundaram Finance Ltd. and Anr. vs. T. Thankam 2015(2) Scale 603*** wherein it has been held as under:-

“10. Once there is an agreement between the parties to refer the disputes or differences arising out of the agreement to arbitration, and in case either party, ignoring the terms of the agreement, approaches the civil court and the other party, in terms of the Section 8 of the Arbitration Act, moves the court for referring the parties to arbitration before the first statement on the substance of the dispute is filed, in view of the peremptory language of Section 8 of the Arbitration Act, it is obligatory for the court to refer the parties to arbitration in terms of the agreement, as held by this Court in P. Anand Gajapathi Raju and Others. v. P.V.G. Raju (Dead) and Others.

11. The position was further explained in Hindustan Petroleum Corporation Limited v. Pinkcity Midway Petroleums. To quote:

14. This Court in the case of P. Anand Gajapathi Raju v. P.V.G. Raju has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if, as contended by a party in an agreement between the parties before the civil court, there is a clause for arbitration, it is mandatory for the civil

court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the Agreement is accepted by both the parties as also by the courts below but the applicability thereof is disputed by the Respondent and the said dispute is accepted by the courts below. Be that as it may, at the cost of repetition, we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the courts below ought to have referred the dispute to arbitration.”

5. On the other hand, learned counsel for the plaintiff states that while claims No.1 and 3 are covered under the Arbitration Clause; claims 2, 4 and 5 are not covered under the said clause.

6. He submits that there can be no bifurcation of the cause of action as held by the Supreme Court in ***Sukanya Holdings (P) Ltd. vs. Jayesh H. Pandya and Anr. (2003) 5 Supreme Court Cases 531*** and therefore, this Court should dismiss the present application. The relevant portion of the ***Sukanya Holdings (P) Ltd*** (supra) judgment relied upon by learned counsel for the plaintiff is reproduced hereinbelow:-

“16. The next question which requires consideration is — even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act. In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action, that is to say, the subject-matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject-matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject-matter of an action brought before a judicial authority is not allowed.”

7. Undoubtedly bifurcation of causes of actions before a judicial authority is not permissible. Consequently, the issue that has to be determined is as to whether the arbitration clause covers all the disputes raised by the plaintiff in the present plaint.

8. The arbitration clause as contained in Clause 29 of the Lease Deed reads as follows:-

“29. That in case of any differences or dispute arising between the parties under this Lease Deed, the same shall be referred to arbitration under the Indian Arbitration Act, 1940.”

9. Para 27 of the plaint contains all the claims and the disputes raised by the plaintiff in the present plaint. The said paragraph is reproduced hereinbelow:-

“27. That the defendant is liable to make the following payment to the plaintiff:

A.		
1.	Security deposit paid on 5.5.10	Rs.5,00,000.00
2.	Amount towards rent paid to M/s Sristhi Overseas for Okhla Campus from May 2010 to October 2010	Rs.47,10,016.00
3.	Amount spend on repair and Maintenance of 52, Tugalakabad Industrial Area, New Delhi	Rs.28,96,834.00
4.	Interest @ 18% on loan amount of Rs.26,06,969/- for a period of one Year	Rs.4,69,254.00
5.	Loss caused to the plaintiff due to Leaving of 40 students	Rs.36,60,000.00
	Total outstanding amount	Rs.85,76,104.00

B.

*1. Interest on outstanding amount
w.ef. 1.05.2013 @ 18% p.a. Rs.18,00,982.00*

Total Rs.1,03,77,086.00”

10. Since counsel for the plaintiff has admitted that claims No.1 and 3 fall within the ambit of the arbitration clause, this Court has only to examine whether claim No.2, 4 and 5 would also fall within its ambit.

11. This Court is of the opinion that claims No.2 and 5 are only on account of delay in handing over possession of the suit premises by the landlord. Claim No.4 seeks interest on the loan amount which was also given due to the landlord and tenant relationship between the parties. Consequently, claims No. 2, 4 and 5 also arise under the Lease Deed executed between the parties.

12. Accordingly, this Court is of the view that all the three requirements for referring the matter to arbitrator exist in the present case namely:-

- (i) The existence of an agreement with an arbitration clause.
- (ii) The existence of disputes which fall within the scope of the Arbitration clause.
- (iii) An application for reference of dispute to arbitration has been filed before making the first statement on the substance of the dispute.

13. Consequently, the present application is allowed and the present suit is referred to Arbitration in terms of Clause 29 of Lease Deed dated 5th May, 2010. Mr. Dinesh Dayal, Ex.DHJS, Mobile No. 9810100200 is appointed as Arbitrator. The Arbitrator is directed to fix his own fees. Parties are directed

to appear before the Arbitrator on 1st July, 2015 at 3.30 p.m.

14. It is clarified that defendant would be at liberty to raise its counter claim and/or set off in accordance with law. Needless to say the same is without prejudice to the rights and contentions of parties. With the aforesaid observations, the present suit stands disposed of.

MANMOHAN, J

MAY 19, 2015

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