

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

**CR No.1264 of 2015
Decided on: 30.11.2016**

M/s. Godrej & Boyce Mfg. Co. Ltd.

....Petitioner

Versus

Ashok Garg and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Vikram Punia, Advocate
for the petitioner.

None for respondent No.1.

Mr. Pankaj Jain, Advocate
for respondent No.2.

REKHA MITTAL, J.

The present petition directs challenge against orders dated 17.02.2014 (Annexure P8) and dated 08.01.2015 (Annexure P10) passed by the Civil Judge (Jr. Division) Faridabad whereby application filed under Section 8 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') for referring the matter to the Arbitrator in terms of Clause 7.15 of the lease agreement dated 17.06.2006 has been dismissed and the application for review of order dated 17.02.2014 also did not find favour with the trial Court.

Counsel for the petitioner would submit that the Court below dismissed the application on two grounds detailed in para 7 of the impugned order, reads as follows:-

1. The tenant is seeking protection under the lease agreement which is not existing as the term for the said lease agreement was for a period of 5 years and the said

period is over. Once the agreement itself is not enforceable then the respondent cannot take the benefit of the said agreement.

2. Secondly, the issue of earlier application for referring the matter to arbitrator was decided at a different stage i.e. the suit was filed during the subsistence of the lease agreement and as per the conditions of the lease agreement any dispute arising was to be referred to arbitrator. Even otherwise, the said order is under challenge before the Hon'ble High Court and it would not be wise for this Court to comment on the said order.

Counsel has assailed both the grounds by making few submissions. It has been argued that on expiry of initial period of lease that commenced w.e.f. 01.07.2006 as per the lease agreement (Annexure P5), the petitioner in compliance with Clause 3.2 of the agreement has been paying rent with increase of 15% as mentioned in Clause 3.1 of the agreement and the said rent having been accepted by the respondent, it amounts to extension of the lease period, therefore, the Court below has wrongly held that the lease agreement is no longer in subsistence.

With regard to the order for referring the matter to the arbitration in a suit for possession filed by the respondents (plaintiffs therein), the order passed in those proceedings has attained finality as the revision petition preferred by the respondents against that order was dismissed as withdrawn. It is vehemently argued that keeping in view the terms and conditions of the lease agreement particularly Clause 7.15 dealing with arbitration, the matter in dispute is liable to be referred to an Arbitrator in strict compliance with the arbitration agreement

between the parties.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that lease period of 5 years that commenced w.e.f. 01.07.2006 expired on 30.06.2011. Subsequent thereto, there is no renewal of the lease agreement in compliance with the provisions of Clause 3.2 of the lease agreement, therefore, no fault can be found in the findings of the trial Court that as lease agreement is no longer subsisting, the respondents cannot invoke Clause 7.15 for referring the matter to arbitration.

It has further been submitted that even if there was an agreement between the parties for referring the dispute to an Arbitrator but the eviction proceedings initiated under the provisions of the Rent Act cannot be referred to an Arbitrator as eviction petition lies within the exclusive domain of the Rent Controller under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India ***“Booz Allen and Hamilton Inc. vs SBI Home Finance Limited and others”***, 2011(5) SCC 532.

I have heard counsel for the parties, perused the paperbook particularly the lease agreement (Annexure P5) and the orders impugned.

It is undisputed position of the case that lease agreement was executed between the parties on 17th day of June, 2006 with regard to letting out plot No.16 Sector 4, Ballabhgarh, Faridabad (Haryana), referred to as 'demised premises' in the agreement. Under Article 1 of the agreement, the commencement date of lease agreement was

01.07.2006 and the lease was for a period of 5 years. The lease period came to an end on 30.06.2011.

Clause 3.2 of the agreement provides for entitlement of the lessee to renew the lease agreement. A relevant extract therefrom, germane to the present controversy, reads as follows:-

“3.2. The Lessee is entitled to renew the said lease agreement for further three term of 5 (five) years each with an increase of 15% in monthly rent as mentioned above in 3.1, with all the other terms and conditions remaining the same, for which Lessee shall give a notice in writing to the Lessee one month prior to the original lease period.”

It is undenied that the petitioner (lessee) did not give a notice in writing to the lessor at any time much less one month prior to the original lease period seeking renewal of the lease agreement. As the petitioner did not express its desire for renewal of the lease agreement by complying with the terms and conditions of Clause 3.2 of the agreement, the mere fact that the petitioner is paying monthly rent with increase of 15% provided for in Clause 3.1 of the agreement cannot be construed that there is a renewal of the lease agreement in view of the terms and conditions settled between the parties. Once there is no renewal of the lease agreement, the trial Court has rightly held that no lease agreement is subsisting between the parties.

The respondents have filed an application for eviction under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 on twin grounds namely tenant has failed to make payment of rent and the demised premises is required for *bona fide* personal use and occupation of the respondents detailed in sub-para 2 of para 5 of

the eviction application. The crucial question that calls for determination is *whether a petition filed under Section 13 of the Rent Act can be referred to arbitration even if it is accepted that an arbitration agreement is still subsisting.*

Hon'ble the Supreme Court of India in ***Booz Allen and Hamilton's case (supra)***, in answer to question No.4 has held in para 20 and a relevant extract therefrom reads as follows:-

“20..... But where the issue of 'arbitrability' arises in the context of an application under section 8 of the Act in a pending suit, all aspects of arbitrability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application under Section 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.”

Further an extract from para 22, is reproduced hereunder for ready reference:-

“22..... 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.”

The aforesaid observations clearly negates plea of the petitioner that dispute *qua* eviction of the petitioner from the demised premises on the ground of personal necessity is liable to be referred to Arbitration.

In “**Ranjit Kumar Bose and another vs Anannya Chowdhury**”, 2014(3) RCR (Civil) 147, there was an arbitration agreement (clause 15) of the tenancy agreement that provided that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of tenancy agreement shall be settled by arbitration in accordance with the provisions of the 1996 Act. The Court held that the words ‘*notwithstanding anything in any contract*’ in Section 6 of the Tenancy Act, will override the arbitration agreement in case a suit for recovery of possession of any premises has been filed by a landlord against a tenant. Such a suit filed by the landlord against the tenant cannot be referred to arbitration under Section 8 of the 1996 Act. As has been noticed hereinbefore, Hon’ble the Apex Court in **Booz Allen and Hamilton’s case (supra)** has quoted well recognized examples of non-arbitrable disputes and eviction or tenancy matters is one of those. The Rent Act applicable to the State of Haryana extends to all urban areas in Haryana except to any cantonment area. Section 13 of the Rent Act deals with eviction of tenants and sub-Section (1) of Section 13 says “*a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.*” Sub-Section (2) of Section 13 provides that a landlord

who seeks to evict his tenant shall apply to the Controller, for a direction in that behalf. A careful reading of Section 13 of the Rent Act leaves no manner of doubt that the legislation has conferred exclusive jurisdiction upon the Rent Controller to order eviction of a tenant in possession of a building or a rented land to which the provisions of Rent Act applies. When the provisions of Section 13 of the Rent Act are examined in the light of ratio laid down in *Ranjit Kumar Bose's case (supra)* and *Booz Allen and Hamilton's case (supra)*, I find myself unable to differ with the order impugned or accept plea of the petitioner that matter with regard to eviction of the petitioner is liable to be referred for arbitration.

As the matter with regard to eviction of the petitioner under the Rent Act is not amenable to be referred for arbitration in the light of discussions made hereinbefore, the petitioner cannot derive any advantage to its contention from the order allowing its application under Section 8 of the Act in a suit for possession and recovery albeit the revision petition against the said order has been dismissed as withdrawn, and therefore, the order has attained finality.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed. No order as to costs.

30.11.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No