

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

**CR No.1065 of 2014
Date of decision :01.08.2016**

M/s Hoshnak Rai and Sons

.....Petitioner

Versus

M/s Aman Enterprises

.....Respondent

CR No.5093 of 2014

M/s Hoshnak Rai and Sons

.....Petitioner

Versus

M/s R.S.Plastics

.....Respondent

AND

CR No.5097 of 2014

M/s Hoshnak Rai and Sons

.....Petitioner

Versus

M/s Supreme Enterprises

.....Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Pankaj Jain, Advocate
for the petitioner.

Mr. Manoj Kumar Sood, Advocate
for respondent (in CR No.5093 of 2014).

Mr. Anindita Katyal, Advocate
for Mr. Varun Katyal, Advocate
for respondents (in CR No. 5097 and 1065 of 2014)

DARSHAN SINGH, J. (Oral)

This order of mine shall dispose of all the three revision petitions mentioned above as in all the three connected petitions the common questions of law and facts are involved.

2. The facts are taken from civil revision no.1065 of 2014 titled as M/s Hoshnak Rai and Sons Vs. M/s Aman Enterprises. The petitioner-landlord has filed the petition under Section 13 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short 'Rent Act') for ejectment of the respondent-tenant on the ground of arrears of rent, material alteration in the demised premises and personal necessity.

3. During the pendency of the petition, respondent-tenant moved an application under Section 8 of the Arbitration & Conciliation Act, 1996 (for short 'Arbitration Act') for referring the matter to the Arbitrator. The said application was contested by the present petition. However, the learned Rent Controller, Faridabad vide impugned order dated 12.12.2012 has allowed the said application. Hence these

revision petitions.

4. Initiating the arguments, learned counsel for the petitioner contended that the ejectment of a tenant can only be ordered by the Rent Controller on the grounds mentioned in Section 13 of the Rent Act. The Rent Controller is conferred with exclusive jurisdiction to decide the dispute between landlord and tenant with respect to the recovery of possession of the tenanted premises. No such power can be exercised by the Arbitrator so the matter could not have been referred to the Arbitrator. He relied upon cases **Dr. Jasbir Singh Mann Vs. Ana Cidaliza Columna Ohri and others 2009(2) R.C.R (Civil) 940** and **Ranjit Kumar Bose and another Vs. Anannya Chowdhury and another 2014(3) R.C.R (Civil) 147**. Thus, he contended that the impugned order is illegal.

5. On the other hand, learned counsel for the respondents contended that the petitioner was also a consenting party to the order as after passing of the impugned order he has moved the application suggesting the names of three Advocates as Arbitrator. So, now he is estopped to challenge the impugned order. They further contended that as there was arbitration clause in the lease agreement, so the matter has been rightly referred to the Arbitrator by the learned trial Court.

6. I have duly considered the aforesaid contentions.

7. Petitioner-landlord has filed the petition under

Section 13 of the Rent Act for eviction of the respondents-tenants on the grounds mentioned in the petition. It is not disputed that there was arbitration clause in the lease agreement. Though, the lease period mentioned therein had already expired before filing of the petition. The question to be considered in the present revision petition is as to whether the Rent Controller was competent to refer the matter to the Arbitrator for adjudication, the answer shall be in negative.

8. The similar question arose before this Court in **Dr. Jasbir Singh's case (Supra)**. In that case also the ejectment petition was filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 in the Court of Rent Controller, Jalandhar. The petitioner-tenant moved an application for referring the matter to the Arbitrator. The ejectment was sought on the ground of non-payment of rent, impairing the value and utility of the tenanted premises and sub-letting. The said application was contested by the landlord and ultimately the same was dismissed by the learned Rent Controller. The matter came in revision before this Court. This Court has laid down as under:-

“10. I have not been able to appreciate the line of reasoning adopted by Mr. Saggar. His submission that the arbitration award now is to be treated as a decree of the court and thus executable would not mean that the provisions of Rent Act, which is a specialized legislation can be given a go-bye. The grounds on which the ejectment of a tenant can be sought are provided under the Rent Act. Similarly, the plea that the arbitrator is now well empowered to decide the question of

his jurisdiction would not mean that the same plea is bound to be raised before him alone. The petitioner had moved an application for referring the ejectment petition to the arbitrator. The Rent Controller could not have declined to exercise its power to decide the same simply because the plea in regard to jurisdiction of the arbitrator can be raised before the arbitrator and as such the matter is required to be referred to arbitration. The Rent Controller is justified in relying upon the ratio of law as laid down in the case of *Natraj Studios (P) Ltd.* (supra), where there is a special legislation, it has to prevail, specially so when the provisions of Section 13 of the Rent Act would bar any other court from trying an ejectment petition. The right to seek ejectment of the petitioner by the respondents flows from the provisions of the Rent Act. Whether the arbitrator would have power to direct ejectment would also be open to debate. As already noticed, whenever any special enactment is made governing the rights of different parties, this is bound to prevail. The authority in case it is needed in this regard, can be had from the ratio of law laid down by the Hon'ble Supreme Court from the cases of *Haryana Telecom Ltd.* (supra) and *Natraj Studio* (supra)."

9. The Hon'ble Supreme Court in **Ranjit Kumar's case** (Supra) has laid down as under:-

"8. In this case, there is an arbitration agreement in clause 15 of the tenancy agreement, which provides that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of the tenancy agreement shall be settled by arbitration in accordance with the provisions of the 1996 Act. But the words 'notwithstanding anything in any contract' in Section 6 of the Tenancy Act, will override the arbitration agreement in clause 15 of the tenancy agreement where a suit for recovery of possession of any premises has been filed by a landlord against the tenant. Such a suit filed by the landlord against the tenant for recovery of possession, therefore, cannot be referred under Section 8 of the 1996 Act to arbitration. In fact, sub-section (3) of Section 2 of the 1996 Act expressly

provides that Part-I which relates to 'arbitration' where the place of arbitration is in India shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Section 6 of the Tenancy Act is one such law which clearly bars arbitration in a dispute relating to recovery of possession of premises by the landlord from the tenant. Since the suit filed by the appellants was for eviction, it was a suit for recovery of possession and could not be referred to arbitration because of a statutory provision in Section 6 of the Tenancy Act."

In view of the consistent rule of law laid down in the cases referred above, as it is only the Rent Controller who can order the eviction of the tenant on proof of the grounds mentioned in Section 13 of the Rent Act. Thus, the statutory provisions of Section 13 of the Rent Act will bar the arbitration in a dispute relating to the recovery of the possession of the tenanted premises by the landlord. Therefore, the learned Rent Controller has fallen into error to refer the matter to the Arbitrator.

10. It is settled principle of law that there could be no estoppel against statute. Thus, mere subsequent conduct of the petitioner that it has moved some application suggesting the names of the Arbitrator will not legalise the impugned order which is contrary to the statutory provisions of the Rent Act.

11. Thus, keeping in view of my aforesaid discussion, the present revision petitions are hereby allowed. The impugned order dated 12.12.2012 referring the matter to the Arbitrator is hereby set aside. The learned Rent Controller,

Faridabad shall proceed further with the eviction petitions filed by the petitioner in accordance with law. The parties are directed to appear before the learned Rent Contoller, Faridabad on 08.09.2016.

01.08.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No