

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

CR No.3220 of 2016(O&M)

Date of decision:23.5.2016

M/s Ozone Spa Private Ltd.

....Petitioner

VERSUS

M/s Ambience Hospitality Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Puneet Bali, Senior Advocate with
Mr. Aman Pal, Advocate for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Mr. Sanjay Vij, Advocate for the respondent.

REKHA MITTAL, J.

The present petition lays challenge to order dated 02.03.2016 (Annexure P-12) passed by the Additional Civil Judge (Senior Division), Gurgaon whereby application filed under Section 8 of the Indian Arbitration and Conciliation Act, 1996 (for brevity 'the Act') was dismissed.

Counsel for the petitioner would contend that the respondent-landlord has filed a petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (for brevity 'the Rent Act'), seeking eviction of the petitioner from the tenanted premises on the ground of personal necessity. The rights of the parties are settled by way of two agreements i.e. registered lease deed dated 16.11.2007 and service agreement dated 12.12.2007 (Annexure P-2 and P-3). As per clause 16 of

the lease deed; dispute between the parties is liable to be referred to an Arbitral Tribunal and a relevant extract therefrom reads as under:-

“16. If any dispute or difference of any kind whatsoever shall arise between the Parties in connection with or arising out of this Lease Deed which the Parties are unable to settle amicably between themselves, then such disputes or difference shall be decided by a panel of three arbitrators in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The arbitration shall be held in New Delhi and English language shall be used in the arbitral proceedings. The parties agree that the decision of the majority of the arbitrators so appointed shall be final and binding upon the parties.”

Similarly in the service agreement dated 12.12.2007, there is an arbitration clause No.11 that reads:-

“11. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with or arising out of this agreement, which the parties are unable to settle amicably between themselves, then such disputes or differences shall be decided by a panel of three arbitrators in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The Arbitration shall be held in New Delhi and English Language shall be used in the arbitral proceedings. The parties agree that the decision of the majority of the arbitrators so appointed shall be final and binding upon the parties.”

It is further argued that as per clause 2 of the lease deed, the party of third part i.e. lessee has been given the right at its sole option/discretion to renew the lease deed for a further period of 10 years on the same terms and conditions as stipulated in the lease deed. It has further been provided that in the event of period of lease to be renewed for a further period of 10 years, the first party (lessor) shall execute and register a fresh lease deed for the renewed period in favour of the lessee without any objection. The petitioner sent various letters to the respondent for renewal of lease deed dated 16.11.2007 and the service agreement for a

further period of 10 years in accordance with clause 2 of the lease deed. No response came from the respondent until 08.05.2015 and the respondent vide letter dated 08.05.2015 (Annexure P-5) asked the petitioner to vacate the premises. The respondent sent notice dated 17.07.2015 (Annexure P-6) through its Advocate to the petitioner for vacating the premises and a detailed reply thereto dated 27.07.2015 (Annexure P-7) was sent to the respondent stating therein that the lease cannot be terminated as it has to be extended according to the provisions of the lease deed.

It is further argued that the petitioner invoked the arbitration clause and filed a petition before the Hon'ble Delhi High Court under Section 9 of the Act. Interim order was passed in favour of the petitioner. In terms of the arbitration clause in the agreement, the matter has already been referred to the Arbitral Tribunal and the proceedings have already taken off. The respondent is participating in the said proceedings as reflected in procedural Order No.1 of the Tribunal (Annexure P-8A). It has been argued with vehemence that as the respondent has already appointed its Arbitrator and has participated in the proceedings pending before the Arbitral Tribunal comprising Mr. Justice B.P. Singh (Retd.), Mr. Justice J.K. Mehra (Retd.) and Mr. Justice J.D. Kapoor (Retd.), the respondent has acquiescenced in the arbitration proceedings and has waived its right to challenge jurisdiction of the Arbitral Tribunal. In this regard, reference has been made to Division Bench judgment of this Court Managing Committee, Khalsa Higher Sec. School, Batala Vs. State of Punjab and others, 2004(3) RSJ 732. Further reference has been made to judgments of Hon'ble the Supreme Court Vikas Motors Ltd. Vs. Dr. P.K.

Jain, 1999(4) R.C.R. (Civil) 153; D. Ranganayakulu Vs. Superintendent Engineer, NSRC O&M and another, 2010(4) SCC (Civil) 789. Reliance has also been placed upon judgment of the Allahabad high Court Amar Chand Vs. Smt. Magan Devi and others, 2012 (91) ALR 76.

Counsel has further argued that in order to circumvent the orders passed by the Delhi High Court and to avoid the arbitration process, the respondent has filed the petition under Section 13 of the Rent Act. The petitioner filed an application under Section 8 of the Act for referring the parties to the arbitration but the same has been wrongly and illegally dismissed by the Additional Civil Judge (Senior Division), Gurgaon vide order impugned dated 02.03.2016. It is argued that once it has been admitted that there is an agreement between the parties containing an arbitration clause, the Court should have referred the matter to the Arbitral Tribunal already constituted before whom the respondent had already put in appearance and the proceedings had commenced. It is further argued that a similar issue arose in Hughes Communications India and others Vs. East West Traders and another, 2013(4) RCR (Civil) 691, wherein this Court has held that the Act is a complete Code and if an arbitral process has started, interference by a Civil Court would still be circumscribed by the width of jurisdiction that is provided in the Act itself. It has further been held that no Civil Court will exercise jurisdiction without reference to the provisions of the Act. According to counsel, in the case at hand, the Rent Controller wrongly assumed that dispute between the parties is required to be decided by the Court of law.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that dispute before the Arbitral

Tribunal is only in regard to renewal of the lease deed and not with regard to liability of the petitioner to ejectment by taking recourse to grounds for eviction available under Section 13 of the Rent Act. It is further submitted that it is not within the domain of an Arbitral Tribunal to decide the eviction proceedings which exclusively fall within the jurisdiction of a statutory Fora constituted for the purpose. Counsel has further argued that the petitioner cannot derive any advantage to its contention from the judgment in Hughes Communications India and others case (supra) wherein there was a clause in the agreement providing for a right to purchase by a tenant which was pending adjudication before an Arbitral Tribunal and in those circumstances, this Court has stayed the proceedings for eviction of the tenant but even in the said case, it has not been held by the Court that dispute with regard to eviction of a tenant can be referred to Arbitral Tribunal. It is argued that any agreement between the parties to refer the dispute to an Arbitral Tribunal can neither operate to exclude jurisdiction of a Court specifically provided for in a statute nor the question with regard to eviction of a tenant by invoking provisions of the Rent Act can be referred to an Arbitrator. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India Ranjit Kumar Bose and another Vs. Anannya Chowdhury, 2014(3) RCR (Civil) 147, Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd and others, AIR 2011 SC 2507.

Another submission made by counsel is that the Arbitral Tribunal is seized of the matter as to whether the lease period is liable to be renewed for another 10 years in view of clause 2 of the lease deed, admittedly, executed between the parties of which the life term has expired

on 31.03.2015. Further argued that even if term of the lease deed is ultimately renewed for a further period of 10 years, the question with regard to eviction of a tenant can neither be decided by an Arbitral Tribunal nor extension of lease period can debar the landlord from seeking eviction of his tenant under the Rent Act. In addition, it is urged that if the landlord could not be debarred from filing an application for eviction of the tenant during subsistence of the lease agreement up to 31.03.2015, how pendency of the proceedings before the Arbitral Tribunal with regard to renewal or non-renewal of the lease period can enure to benefit of the petitioner to stall the eviction proceedings, lawfully initiated before the Authority exclusively competent to decide the same.

I have heard counsel for the parties, perused the paper-book and the judgments cited by counsel for the parties.

Concededly, the Arbitral Tribunal comprising Mr. Justice B.P. Singh (Retd.), Presiding Arbitrator, Mr. Justice J.K. Mehra (Retd.), and Mr. Justice J.D. Kapoor (Retd.), is seized of the matter as to whether lease deed dated 16.11.2007, the term whereof has expired on 31.03.2015, is liable to be renewed for a further period of 10 years w.e.f. 01.04.2015 to 31.03.2025. So far as the service agreement is concerned, the renewal thereof would be dependent upon renewal of the lease deed. It is not the plea of the petitioner that the lease deed contains any clause that the respondent/landlord is debarred from recovering possession of the tenanted premises prior to expiry of the lease period or seek eviction of the tenant by taking recourse to provisions of the Rent Act. Counsel for the petitioner, on a pointed query raised by the Court, is not in a position to give any convincing reply as to whether the respondent could not file a

petition for eviction of the petitioner during subsistence of the lease deed till 31.03.2015. However, in response thereto, he has referred to judgment of this Court Hughes Communications India and others case (supra) in order to contend that in similar circumstances, this Court has stayed the proceedings for eviction pending before the Rent Controller.

Before proceeding further, it is pertinent to deal with the judgment Hughes Communications India and others case (supra). In the said case, the proceedings setting out the disputes had commenced through an application filed by the respondent contending that the original lease agreement between the parties contains a reference to arbitration and consequently the resort to action for eviction filed at the instance of petitioner-landlord (M/s East West Traders) is not maintainable and the matter will have to be referred to the Arbitrator. The application filed under Section 8 of the Arbitration and Conciliation Act was ordered to be dismissed.

This Court in para 7 to 10 has discussed and held, quoted herein below:-

“7. Even an issue that right to enforce a contract of sale of immovable property by specific performance is not anathema to the proceedings before the arbitrator. This has also been considered directly by a judgment of the Supreme Court in ***Booz Allen & Hamilton Inc v SBI Home Finance (2011) 5 SCC 532*** where the Supreme Court has held that the claim to specific performance which creates but a personal obligation is arbitrable. The arbitrator will have a power to also deal with disputes that may result in grant of relief for specific performance. In ***Olympus Superstructures Pvt Ltd v Meena Vijay Khetan and others (1999) 3 SCR 490***, the Supreme Court has held that a right to specific performance arises out of a contract and parties can agree to refer the issues relating to specific performance to shorten the litigation and the arbitrator can also grant such a relief.

(c) An arbitral clause in a document that is terminated is still enforceable

8. Even the contention of the landlord that he has put an end to tenancy and that he has resorted to action for eviction does not render invalid or irrelevant the arbitration clause. *Reva Electric Car Company Private Ltd v Green Mobil, 2012(4) R.C.R. (Civil) 574: 2012(6) Recent Apex Judgments (R.A.J.) 152: (2102) 2 SCC 93* is an authority for the proposition that an arbitration clause which formed part of contract shall be treated as agreement independent of other terms of contract and hence arbitration clause continues even if the contract does not continue. I will not find any error in the order passed and the revision petition challenging the said order in C.R. No.3031 of 2011 would require to be dismissed.

VI. Rent petition for eviction, whether required to be stayed/ stalled by reference to arbitration

(a) Clause providing for a right to purchase by a tenant in the unregistered lease, whether it is enforceable shall be a matter for adjudication by arbitrator

9. The specific question that has caused the friction between the parties is on a subject whether in a petition where the landlord had complained that the tenant had committed breach of terms of lease and has created a sub-lease in favour of two persons namely an entity going by the same name as the respondent but a different address given and the BSNL as a sub tenant they will be liable for being evicted. The tenant was relying on a clause in the lease deed itself that had provided for a right empowering the tenant to purchase the property and lawfully used to put an end to the tenancy and seek for its enforcement before the Arbitrator. While a clause for arbitration itself is severable and the right could be enforced by having an arbitrator appointed for subjecting the dispute between the parties, it is still a moot point of whether a clause in the unregistered lease deed that allows for a right to purchase the property granted under the lease could be relied on or not. The learned senior counsel for the tenant relies on an observation in Halsbury's Laws of England, Fourth Edition, vol 27, 1981, para 109 relating to Leases and Underleases that an option to purchase in a lease agreement is collateral and independent of and not incidental to the relationship of landlord and tenant. I am not reproducing the terms of the lease that contains a reference to an agreement to purchase by the respondent from the petitioner only by virtue of the fact that I am still keeping open the issue of enforceability of such a clause under the unregistered lease and will not find a need to reproduce the same for consideration. It may amount

of pre-judging the issue of the petitioner's contention that such a clause is not enforceable.

(b) Plea by tenant that there is a change in character as purchaser is a plea that falls within arbitral domain; ground of eviction though not arbitrable, examination of rights of tenant to purchase is arbitrable

10. The dispute between the parties that has arisen between the landlord and tenant has driven the landlord to an action for ejectment. The tenant disputes this right on a contention that he is not any longer a tenant and he has, after the completion of the stipulated number of years in the unregistered lease, a right to obtain a sale deed and consequently he is not any longer a tenant to be answerable for an action for ejectment before the Rent Controller. The crucial question is whether dispute is such that it is not arbitrable. If it is, the next question is, whether facts and circumstances are such that is not exigent to refer the kind of dispute to arbitration.”

A plain reading of para 10 would make it evident that in the referred authority, the tenant has disputed right of the landlord to action for ejectment on a plea that he is no longer a tenant and after completion of the stipulated number of years in the unregistered lease, he has a right to obtain a sale deed and consequently he is not answerable for an action for ejectment before the Rent Controller. The Court, in the given scenario, has held in para 13 that the Rent Controller shall not be permitted to continue the proceedings further when there is a clear dispute between the parties of respective status. The enforceability of an alleged right of an agreement to purchase the property shall be decided first before the ground for ejectment is brought for an adjudication before the Rent Controller. Further it has held, in para 14, that the Rent Controller's jurisdiction ceases if there exists no subsisting relationship of landlord and tenant. The Rent Controller has to therefore, take a hands off approach till the arbitration before the named arbitrator comes to a close. In Joseph Kanthiraj and another vs. Atharunnisa Begum, 2010(1) R.C.R. (Rent) 147, the Supreme Court

approved of stay of proceedings before the Rent Controller when a suit was filed by the tenant for specific performance of agreement of sale.

Reverting to the case in hand, the petitioner has never denied it to be a tenant in the suit premises. On the contrary, the petitioner has sought arbitration with regard to its right to continue as a tenant for another 10 years by invoking clause 2 of the original lease deed. As the petitioner has never disputed his status as a tenant in the premises in question and the respondent has initiated the eviction proceedings by considering the petitioner to be a tenant, the petitioner cannot derive any advantage to its contention from what has been held in Hughes Communications India and others case (supra) to contend that the matter with regard to eviction of the petitioner is either liable to be referred to the Arbitral Tribunal by invoking Section 8 of the Act or to seek stay of the proceedings pending before the Rent Controller till conclusion of the arbitral proceedings. Even in Hughes Communications India and others case (supra), it has been held that ground of eviction though not arbitrable, examining rights of a tenant to purchase is arbitrable.

The judgments referred to by counsel for the petitioner do not support the view that dispute regarding eviction of a tenant can be referred to an Arbitrator. In view of the above, the petitioner can neither derive any advantage to his contention from the judgments dealing with acquiescence/estoppel nor can stall the eviction proceedings pending decision of Arbitral Tribunal.

In Booz Allen and Hamilton Inc.'s case (supra), Hon'ble the Apex Court 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, a relevant 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 tenanted premises on the ground of personal necessity is liable to be referred to the Arbitral Tribunal. Thus, the learned trial Court has rightly relied upon the judgment Booz Allen and Hamilton Inc.’s case (supra) to reject claim of the petitioner that the matter with regard to eviction of the tenant (petitioner) is liable to be referred to Arbitrators by invoking the arbitration clause in the lease deed, reproduced hereinbefore.

In Ranjit Kumar Bose’s case (supra), 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 Inc.'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 Inc.'s case (supra), I find myself unable to differ with the order impugned or accept plea of the petitioner that either the question with

regard to eviction of the petitioner is liable to be referred to the Arbitrators or to be stayed pending decision of issues raised in arbitration proceedings.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed. No order as to costs.

MAY 23, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE