

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3431 of 2014

Date of Decision:4.5.2016

Radha Sharda

---Petitioner

vs.

Bharat Sanchar Nigam Limited

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Sandeep Arora, Advocate
for the petitioner

Mr. K.B.Sharma, Advocate
for Mr. D.R.Sharma, Advocate
for the respondent

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

Rekha Mittal, J.

The present petition lays challenge to order dated 17.3.2014 passed by the Civil Judge (Junior Division), Hoshiarpur whereby application filed by the respondent/defendant under Section 8 of the Arbitration and Conciliation Act, 1996 (for brevity “the Act”) for referring the matter to the Arbitrator has been allowed.

Counsel for the petitioner has submitted that the premises in question was leased out to the respondent as per terms and conditions

incorporated in the agreement executed on 6.12.2004 (Annexure P-3) and the initial period of lease was for a period of 4 years and 11 months. It is further submitted that in view of clause 17 of the agreement, the lease could be extended for a period mutually agreed upon between the parties. It was further agreed that if no such mutual agreement is reached, the respondent shall have the option of retaining the premises for a further period of one year commencing from the date of expiry of the term so that respondent gets reasonable time for making alternative arrangements. The initial period of lease expired in the year 2009 and subsequent thereto, there was no agreement between the parties for renewal of the lease and as such in view of clause 17 of the agreement, the respondent could retain accommodation up to the year 2010. It is further argued that on expiry of initial period of lease as well as period of one year subsequent thereto, the petitioner filed a suit for possession by way of ejectment of the respondent from the property in question. The respondent filed application under Section 8 of the Act for referring the matter to the Arbitrator in view of arbitration clause (clause No. 24) in the agreement dated 15.12.2004 and the trial court has allowed the same. It is vehemently argued that as suit for possession by way of eviction does not fall within the purview and ambit of clause 24 of the agreement, the impugned order suffers from gross error rather illegality, therefore, cannot be allowed to sustain.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that in view of specific agreement between the parties that any dispute that shall arise at any time shall be referred to the sole Arbitrator of CGM/SSA Head/ GM, TD etc. of any

person appointed by him in view of clause 24 of the agreement, no fault can be found in the impugned order passed by the trial court.

I have heard counsel for the parties, perused the records particularly the lease agreement (Annexure P-3) and the impugned order (Annexure P-5).

It is an undenied and undisputed position of the case that after expiry of initial period of lease that commenced with effect from 16.3.2004, there was no renewal of the lease agreement. It is also clear that even the period of one year subsequent to expiry of initial period of lease during which the respondent could retain the accommodation for making alternative arrangement also got expired prior to institution of the suit filed in December 2011.

The lease agreement contains clause 24 with regard to referring of any dispute, doubt, difference or question with regard to interpretation or in respect of the right, duties and liabilities of the parties hereto or in any way touching or arising out of these presents or otherwise in relation to premises then every such dispute, difference, doubt or question (except the decision whereof is herein expressly provided for) shall be referred to the sole Arbitrator of the authority incorporated therein.

Counsel for the respondent, on a specific query raised by the Court, is not in a position to respond much less satisfactorily as to how the arbitration clause can be invoked in the circumstances of the present case that the lease agreement has worn out its life after the year 2010. As soon as the term of lease agreement got expired with efflux of time, it is difficult to accept contention of the respondent that the parties are still governed by

the terms and conditions of the lease agreement or the suit filed by the petitioner/plaintiff seeking possession of the demised premises by way of eviction is also liable to be referred to an Arbitrator by resorting to clause 24 of the agreement. In this view of the matter, I find merit in contention of the petitioner that the respondent neither can invoke the provisions of Section 8 of the Act by taking recourse to clause 24 of the agreement nor the order passed by the trial court can be allowed to sustain.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the application filed by the respondent under Section 8 of the Act is ordered to be dismissed. The trial court shall proceed with the suit, in accordance with law.

(Rekha Mittal)
Judge

4.5.2016
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