

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

FAO No.4136 of 2005

Date of Decision.23.12.2016

Harjit Singh (since deceased) through LRs

.....Appellant

Vs

The Punjab Small Industries and Exports Corporation Limited and another
.....Respondents

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the appellant.

Mr. Sanjeev Sharma, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The appellant-landlord is aggrieved of the impugned order of the Additional District Judge, Chandigarh whereby the arbitral Award dated 22.02.1999 directing the respondent-Punjab Small Industries and Exports Corporation Limited (hereinafter called as "PSIEC") to hand over possession of the premises in dispute, has been set aside.

Mr. Sumeet Mahajan, learned Senior Counsel assisted by Mr. Amit Kohar, Advocate submits that vide agreement of lease dated 17.06.1976, PSIEC took on lease land comprising in Khasra Nos.155, 158, 154, 145, 144, 146, 147, 149 and 148 situated at village Achnali on a monthly rent of ₹5000/- initially for a period of five years. The lease was to be extended in the year 1981 and the respondent-PSIEC was to give three months notice to the petitioner to extend the lease but the respondent did not serve any notice. Several requests were made to vacate the premises.

Even a legal notice dated 09.07.1998 whereby the respondent was called

upon to hand over the physical possession yielded no result. Clause 13 of the said agreement envisaged the resolution of dispute to be referred to the Chairman of the respondent-PSIEC, hence the matter was referred. Before the Arbitrator, the respondent filed the reply in the following terms:-

“Parawise comments.

1. Yes

2. Lease deed could not be extended as mutually understandably, the rent was paid regularly being paid.

3. No request/notice received by us except notice dated 12.09.1994.

4. No notice has been received by us. A photo copy of notice dated 7.9.98 has been forwarded by head office letter No.PSIEC/HAR-2/20427 dated 8.10.1998 received at Mandi Gobindgarh wherein it was desired to appear before Chairman, PSIEC Ltd., Chandigarh with record and reply.

5. No comments. Original agreement may be at head office.

6. It is correct.

7. As stated in Sr. No.4 above.”

In fact, as per the provisions of Section 2 (f) of the East Punjab Urban Rent Restriction Act, 1949, the agreement envisaged leasing out of rented land. Section 2 (f) of the aforementioned Act prescribes the definition of rented land including the purpose of being used principally for business or trade. In support of his contention, he relies upon the judgment rendered by Division Bench of this Court reported in **Hukam Chand Vs. Om Chand 1997(2) RCR (Rent) 393** and before the Hon'ble Supreme Court in **Hukam Chand Vs. Om Chand and others (2001) 10 SCC 715**, in essence, he contended that mere fact that there was a mention that structures that may be erected would be removed or the lessee was given a right or entitled him to use the land himself or raise construction thereon, would not

fall within the term “rented land” and therefore, the objection of the PSIEC raised for the first time and accepted by the Objecting Court regarding the applicability of the erstwhile Act was wholly erroneous and perverse. He has drawn attention of this Court to paragraphs 7 and 8 of the aforementioned Division Bench judgment of this Court and paragraph 7 of the judgment of Hon'ble Supreme Court.

He further contends that the objections were not falling within the provisions of Section 34 of the Arbitration and Conciliation Act, 1996. In fact, the applicability of the aforementioned Act of 1949 is deemed to have been waived as per the provisions of Section 4 of the 1996 Act. The scope of interference in the arbitration Award is very limited. Even if a different opinion has to be formed, the Objecting Court has to form an opinion that the Award suffers from patent illegality which is brought within the ambit of public policy as per the judgments rendered by Hon'ble Supreme Court in *National Highway Authority of India Vs. Cementation India Ltd.* 2015(3) RAJ 1. He also referred to the judgments rendered by Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority* (2015) 3 SCC 49 and *Navodaya Mass Entertainment Ltd. Vs. J. M. Combines* (2015) 5 SCC 698.

He has also drawn attention of this Court to the cross-examination of the witness of the PSIEC to contend that the PSIEC in this regard had waived the objection with regard to the jurisdiction, thus, objections according to him were not maintainable and liable to be dismissed. All these facts have not been taken care of by the Objecting Court. In support of his contention, he has relied upon the ratio decidendi culled out in the judgment rendered by this Court in *Gian Chand Vs.*

Parkash Chand and others 1984(1) RCR (Rent) 532, Shri Netar Ram Vs. Hans Raj and others 1985(1) RCR (Rent) 526 and M/s Mahavir Rice & General Mills, Talwani Bhai Vs. Punjab State Warehousing Corporation, Chandigarh and others 2010(4) RCR (Civil) 535 regarding the application of provisions of Section 4 of the 1996 Act.

Per contra, Mr. Sanjeev Sharma, learned counsel appearing for the respondents submits that the finding rendered by the Objecting Court is perfectly legal and justified. The objections were falling within the parameters of Section 34 of the 1996 Act. The Objecting Court had formed an opinion that the property is situated within the urban limits of Mandi Gobindgarh. There was a relationship of landlord and tenant and therefore, the erstwhile Act of 1949 would be applicable, in essence, the jurisdiction of the Arbitrator was ousted. Even the Arbitrator did not give any opportunity to the PSIEC to file the written statement. It was only the comments and therefore, the Award suffers from illegality and perversity and rightly so, has been set aside. In fact, there was violation of principles of natural justice.

Even the original agreement of lease stood rescinded as after the expiry of initial period of five years, though the agreement was not extended but the appellant continued to accept the rent from 01.06.1987 and the rent was enhanced to ₹12,760/-. Then there was a creation of fresh tenancy, as such, the contents of the original lease agreement could not be pressed into service.

In order to buttress his arguments, he submitted that as per the original agreement, an area of 2 acres was taken on lease for a rent of ₹5000/- but thereafter, six more acres of the land were taken. In support of

his contention, he relied upon the judgment of Full Bench of this Court in **Sawan Ram Vs. Gobinda Ram and another 1980 (1) RCR (Rent) 21** to contend that that the Civil Court has no jurisdiction to try the eviction petition where the East Punjab Urban Rent Restriction Act, 1949 is applicable. On similar lines, cited judgment of Rajasthan High Court in **National Textile Corp. (DP&R) Ltd. and another Vs. The Rent Control Appellate Tribunal, Jaipur 2011(4) RLW 2803** and regarding the misconduct of the Arbitrator, he relied upon the judgment rendered by this Court in **Vijay Kumar Vs. Bathinda Central Cooperative Bank and others 2013(3) PLR 172** and the judgment rendered by Hon'ble Supreme Court in **Oil & Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd. 2003(2) RCR (Civil) 554** to contend that where the award of the Arbitrator de hors the provisions of Rent Act and is illegal on the face of it, it is liable to be aside under Section 34 of the 1996 Act.

In other words, he submits that if the Award is contrary to the statutory provisions of the Act or against the terms of the contract, it would be a patently illegal. The status of the PSIEC was a tenant holding over after the expiry of the lease period and therefore, the term of the “arbitration” in the old lease comes to an end and cannot become a new contract of arbitration. In support of his contention, he relied upon Division Bench judgment of this Court in **Dayal Chand Vs. The Union of India and others 1979 RCR (Rent) 205**, thus, urges this Court for dismissal of the appeal.

In rebuttal, Mr. Sumeet Mahajan, learned Senior Counsel has referred to the ratio decidendi culled out by Hon'ble Supreme Court in **SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private**

Limited (2011) 14 SCC 66 and Reva Electric Car Company Private Limited Vs. Green Mobil 2012(2) SCC 93 to contend that the arbitration clause survives even upon termination of the main contract and therefore, the finding given by the Division Bench in Dayal Chand (supra) is no longer a good law.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submission of Mr. Mahajan, learned Senior Counsel, in essence, the order of the Additional District Judge, Chandigarh is liable to be set aside for the following reasons:-

(i) The Objecting Court has not taken care of the admission of DW-1, Rameshwar Singh Rana in cross-examination, who filed his affidavit as Ex.OX and in cross-examination admitted as under:-

“...I have not taken any objection before the arbitrator regarding the jurisdiction nor I have filed any application u/s 12 of the Arbitration and Conciliation Act.....”

(ii) On perusal of the comments, it is evident that no objection had been taken with regard to the applicability of the Rent Act, thus, objection of the same is deemed to have been waived as per the provisions of Section 4 of the 1996 Act.

(iii) Assuming for the argument's sake that the Rent Act was applicable, even then the Arbitrator had the jurisdiction, for, it is conceded position on record that the respondent-PSIEC had taken the premises as rented land and was also granted permission to raise construction thereon in any manner they

wanted to. By taking into consideration the conceded fact, the expression “rented land” as prescribed in Section 2 (f) of the East Punjab Urban Rent Restriction Act has been debated upon by Division Bench of this Court in paragraphs 7 and 8 in **Hukam Chand Vs. Om Chand** (supra). For the sake of brevity the aforementioned paragraphs are reproduced as under:-

7. After hearing learned counsel for the parties and going through the record of the case, we do not find any merit in this appeal. The definition of 'rented land' makes it abundantly clear that the letting out of the land has to be separately for the purpose of being used principally for business or trade. Is it so in the present case ? The lease deed, Ex. PW3/C, stipulated that the lessees are entitled to use the land themselves or lease it out further to a sub-lessee and further they could raise any construction thereon after obtaining sanction from the Municipal Committee. Can it be inferred from these stipulations that the land was separately let out principally for being used for business or trade. The stipulation rather goes to show that the land could be used for any purpose. Even building could be constructed thereon, may be for purpose of residence or otherwise. It was not being let out principally for the purpose of business or trade. For purpose of bringing the land within the definition of 'rented land', it cannot be said that if the land can be used for purpose of business or trade, though not separately let out principally for that purpose it would still fall within the definition of 'rented land,. Nature of the property is to be determined as on the date when it was let out. In [Hazara Singh and others v. Dalip Singh and others](#), 1981(1) Rent Law Reporter 222, it was held that the land over which the tenant could use it for cultivation through himself or through anybody else or could use for installation of some factory does not fall within the term rented land inasmuch as the land is not separately let out principally for business or trade. In Civil Revision No. 177 of 1966, Prem Narain v. Smt. Rajo and others, (Decided on October, 31 1967), (1968)70 P.L.R. (Short Note 5), a learned Single Judge of this Court took the view that it is apparent from the definition of "rented land" Under [Section 2\(f\)](#) of the Act that even if

the land has been let out for business or trade but not let out principally for business or trade the definition would not be attracted. In [Gian Chand v. Parkash Chand and others](#), (1984)86 P.L.R. 275, it was held by this Court that where the land was let out with a discretion to the tenant that he could use it for any purpose and he constructed rooms and varandah on the land and started running a Karyana business in the same, the land could not be said to have been let out for being used principally for business or trade and would not fall within the definition of 'rented land. The aforesaid authorities with which we concur are an answer to the argument of the learned counsel for the appellant. In [Bai Chanchal and others v. Syed Jalaluddin and others](#), 1970 Vol. 2 Rent Control Reporter 915, it was urged before the apex Court that pleadings indicated that the land had been let out for making structures and the structures could only be utilised by being let out on rent. Such purpose would constitute business or trade. The apex Court observed that it was unable to see any jurisdiction for such an inference. The mere fact that there was a mention that structures that may be erected would be removed could in no way lead to a conclusion that the principal purpose of the lease was to use the land for business or trade. In [Sowaran Singh's case](#) (supra), the land had been let out for purpose of trade and the only question involved was whether the construction raised thereon by the tenants would change the nature of the demised premises into a shop. The authority has no bearing and was rightly distinguished by the learned Single Judge. Similarly, in the other authority cited by the learned counsel for the appellant (1977(2) R.C.J. 147) the tenant had been given a right to construct buildings to sublet them. In these circumstances, it was held that the land had been let out principally for business and trade. As observed above, there is no such stipulation in the lease deed in question in this case. This authority has no applicability.

8. The Courts are to see the terms of the lease and not the actual user in case of a rented land. As observed above, in the present case, the lease of the land was not separately for being used principally for business or trade.”

The aforementioned judgment as submitted by Mr. Mahajan was appealed before the Hon'ble Supreme Court and the same

was upheld while rendering the finding in paragraph 7. The same reads under:-

“7. The term “rented land” has been defined in clause (f) of Section 2 of the Act to mean “any land let separately for the purpose of being used principally for business or trade”. The High Court has, on a perusal of the relevant clauses of the lease deed and the abovesaid definition, held that the purpose of letting out the land could not be said to be “principally for being used for business or trade”. We have referred to the relevant clause of the lease deed in the earlier part of this judgment. The lease authorises the lessee to use it by himself or to lease it out further to a sub-lessee. The lease also authorises the lessee to raise construction over the leased land, which construction shall be liable to be transferred to the lessor subject to settlement as to compensation, and failing the settlement, the construction shall be liable to be demolished and removed and possession over the vacant land handed over to the landlord. It is an admitted fact that on the leased land the lessee has not chosen to carry on any business or trade; only construction has been raised over the land and such constructed building has been let out to different tenants and sub-tenants. An identical expression, contained in pari materia provision of the Bombay Rent Restriction Act (16 of 1939), came for the consideration of this Court in Bai Chanchal v. Syed Jalaluddin [(1970) 3 SCC 124 : 1970 RCR 915] . It was held that where under the lease it was permissible to the lessee to construct houses and let them out or to use the land in any manner, it was impossible to hold that the purpose of letting out was of “being used principally for business or trade”. In view of the finding arrived at by the trial court, as also by the learned Single Judge and the Division Bench of the High Court, based on appreciation of evidence and construction of clauses of the lease deed, we do not find any reason to dislodge the finding. It has, therefore, to be held that the property forming the subject-matter of lease is not a “rented land” as defined in clause (f) of Section 2 of the Act. The suit was, therefore, maintainable before the civil court.”

Thus, for all intents and purposes, it would be a farcical exercise to debate upon the applicability of jurisdiction of the

Arbitrator as the expression “rented land” does not fall within the meaning of Rent Act and therefore, in view of the certain entitlements given to the PSIEC and in view of such situation, the Arbitrator had the jurisdiction to try and adjudicate upon the dispute as Clause 13 of the lease agreement envisaged resolution of the dispute by the Chairman of the Corporation.

(iv) As regards the submission of Mr. Sharma regarding status of tenant being holding over after the expiry of the lease period by relying upon the ratio decidendi culled out in the judgment rendered by Division Bench in **Dayal Chand** (supra) is no longer a good law in view of the judgments rendered by Hon'ble Supreme Court in **SMS Tea Estates Private Limited Vs. Chandmari Tea Company Private Limited (2011) 14 SCC 66** and **Reva Electric Car Company Private Limited Vs. Green Mobil 2012(2) SCC 93**. The finding rendered by the Hon'ble Supreme Court reads as under:-

“Where a lease deed is for a term of thirty years and is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease. It can be relied upon for the limited purposes of showing that the possession of the lessee is lawful possession or as evidence of some collateral transaction. Even if an arbitrator is appointed, he cannot rely upon or enforce any term of the unregistered lease deed. Where the arbitration agreement is not wide and does not provide for arbitration in regard to all and whatsoever disputes, but provides only for settlement of disputes and differences arising in relation to the lease deed, the arbitration clause though available in theory is of little practical assistance, as it cannot be used for deciding any dispute or difference with reference to the unregistered deed.”

(v) Though as per the facts noticed in the judgment, the Court found that the party would not be entitled to seek enforcement of the agreement owing to the certain restrictions/stipulations/contingencies, there was no such condition in the present lease agreement.

All these factors, in my view, have not been taken care of by the Objecting Court. Even if the PSIEC had not been given an effective chance to file reply or to file any document regarding the applicability of the East Punjab Urban Rent Restriction Act, 1949, the same would have been a farcical exercise as the expression “rented land” used in the lease deed does not fall within the mischief of applicability of Act of 1949.

The role of the Objecting Court is not to sit in the arm chair of the Arbitrator and form a different opinion. This view of mine is derived from the ratio decidendi culled out in the judgments of Hon'ble Supreme Court in *Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.*

For the reasons aforementioned, the order of the Objecting Court is hereby set aside and award of the Arbitrator is restored. Resultantly, the appeal is allowed.

(AMIT RAWAL)
JUDGE

December 23, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes