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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: July 27, 2016

+ **FAO 344/2016**

HIMANGNI ENTERPRISES Appellant

Through: Ms. Geeta Luthra, Senior
Advocate, with Mr. Harvinder
Oberoi & Mr. Shonak Sharma,
Advocates

versus

KAMALJEET SINGH AHLUWALIA Respondent

Through: Mr. Anil Sapra, Senior Advocate
with Mr. Sameer Chaudhary, Mr.
Preet Pal Singh, Mr. Harishit
Aggarwal & Ms. Roopali Kapoor,
Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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Caveat Nos. 608 to 636 of 2016

Twenty nine caveats have been filed in this appeal.

Caveators are represented through Mr. Sameer Chaudhary,
Advocate.

Caveators are discharged.

These caveats are accordingly disposed of.

C.M.No. 26715/2016 (u/S 151 CPC)

There is delay of 12 days' in re-filing the accompanying appeal.

For the reasons stated in the application, it is allowed and delay is

condoned.

The application is disposed of.

C.M.No. 26714/2016 (Exemption)

Allowed subject to all just exceptions.

FAO 344/2016 & C.M.No. 26716/2016 (for stay)

Impugned order of 11th April, 2016 rejecting appellant/defendant's application under Section 8 of *the Arbitration and Conciliation Act, 1996* is assailed on the ground that even if the agreement containing the arbitration clause is not renewed, still the disputes arising under it are required to be adjudicated by the Arbitrator.

In a suit for ejectment, mesne profits, recovery of arrears and injunction filed by the respondent-plaintiff, the stand taken by appellant/defendant is that respondent-plaintiff was aware of the agreement of appellant with M/s. Wipro, by virtue of which M/s. Wipro was inducted into the suit premises by the appellant and there arose some disputes between the appellant and M/s. Wipro, which are subject matter of CS (OS) No.3273/2014 pending in this court. Appellant-defendant came into possession of the suit property i.e. *Commercial Space/Shop bearing No. SF-2, measuring 317.29 sq. ft. is situated on second floor in a commercial complex known as "Omaxe Square" situated on plot No.14, No Hierarchal Commercial Centre, District Centre Jasola, New Delhi* by virtue of a Lease Agreement of 31st August, 2010 between appellant and predecessor-in-interest of respondent-plaintiff. As per the aforesaid Lease Agreement of 31st August, 2010, the lease was for a

period of three years, which could be renewed for a further period of six years. According to learned senior counsel for appellant, the dispute which is the subject matter of the suit is liable to be referred to arbitration as a valid arbitration agreement exists between the parties.

During the course of the hearing, a reference was made to Clause 9.8 of the Lease Agreement of 2010 by learned senior counsel for the appellant to submit that even if the Lease Agreement lapses, still in view of the arbitration clause contained therein, the disputes arising out of it have to be adjudicated by the Arbitrator and not the court. Attention of this Court was drawn by learned senior counsel for appellant to Section 16 of *the Arbitration and Conciliation Act, 1996* to submit that the Arbitrator is competent to rule in respect of the existence or validity of the arbitration agreement and its jurisdiction. Reliance was placed upon Supreme Court's decision in *Enercon (India) Limited and Others v. Enercon GMBH and Another* (2014) 5 SCC 1 to submit that even the issue of there being a concluded contract was left to the Arbitral Tribunal and the case of appellant is on a better footing as the existence of arbitration agreement is not in dispute. Reliance is also placed upon Supreme Court's decision in *Branch Manager, Magma Leasing and Finance Limited and Another v. Potluri Madhavalata and Another* (2009) 10 SCC 103 to submit that upon termination of contract due to its breach, the disputes relating to the contract are arbitrable.

Further reliance is placed by learned senior counsel for appellant upon Supreme Court's decision in *Ashapura Mine-Chem Limited v. Gujarat Mineral Development Corporation* (2015) 8 SCC 193 to submit

that once a *Memorandum of Understanding* is found to contain a valid arbitration clause, then the disputes arising from the *Memorandum of Understanding* are required to be adjudicated upon by the Arbitrator. Similarly, reliance is placed upon this Court's decision in *Handicrafts and Handlooms Exports Corporation of India Ltd. v. Ashok Metal Corporation and Anr.* 2010 (117) DRJ 370 to assert that it is not open to the civil court to go into the question of non-existence of an arbitration agreement in a suit for declaration and injunction and this dispute is required to be decided by the Arbitrator.

Learned senior counsel for appellant submits that the impugned order erroneously proceeds on the premise that on account of non-renewal of lease deed, the arbitration clause contained therein cannot be invoked and so the impugned order deserves to be set aside and appellant's application ought to be allowed and the matter be referred to the Arbitrator in terms of Clause 9.8 of the Lease Agreement of 2010.

On the other hand, it is maintained by learned senior counsel for respondent that once the existence of the Lease Agreement is not in dispute, then in the absence of its non-renewal, the arbitration clause contained therein cannot be invoked and the trial court has rightly dismissed appellant's application seeking reference to arbitration as there is no dispute which is covered by the Lease Agreement as it is a simple case of termination of lease and appellant-tenant holding over. Attention of this Court is drawn to Section 111 of *the Transfer of Property Act* to point out that when the lease is determined by efflux of time, then the status of the tenant is of holding over. It is pointed out that as per Section

116 of *the Transfer of Property Act*, there comes into existence an oral tenancy which is on month to month basis and there cannot be an arbitration clause in the oral tenancy.

Reliance is placed upon a decision in *National Textile Corporation Ltd. and Anr. v. Ashval Vadera* 155 (2008) DLT 221 to assert that the parties cannot resort to the terms and conditions of an exhausted contract and in a case of new oral lease, the arbitration clause in the lapsed lease deed cannot be invoked by the tenants. It is vehemently asserted by learned senior counsel for respondent that the business contracts cannot be equated with Lease Agreements as the Lease Agreements are strictly governed by the *Transfer of Property Act* and so the decisions relied upon by the appellant have no application. Further, reliance is also placed upon decisions of this Court in *Ravinder Nath and Anr. v. Best Entertainment (P) Ltd.* 2011 IX AD (Delhi) 676 and *M/s. Saurabh Buildcon Pvt. Ltd. v. M/s. Aster Technologies Pvt. Ltd. & Anr.* 2013 (5) R.A.J. 562 (Del) to submit that the arbitration clause perishes with the expiry of the lease deed. Thus, it is submitted that this appeal has no substance and it deserves to be dismissed.

After having heard both the sides at length and on perusal of the impugned order, the material on record and the decisions cited, this Court finds that the Lease Agreement of 2010 between appellant and the predecessor-in-interest of respondent-plaintiff had lapsed way back in the year 2013 and much thereafter respondent-plaintiff had purchased the suit property from the erstwhile owner/predecessor on 31st December, 2014. No doubt, respondent-plaintiff had stepped into the shoes of the erstwhile

owner, but in the absence of renewal of the Lease Deed of 2010, the status of appellant-tenant is that of holding over. This Court finds substance in the stand of learned senior counsel for respondent-plaintiff regarding there being marked difference between the ‘Business Agreements’ and ‘Lease Agreements’ pertaining to immovable properties.

It is settled legal position that Lease Agreements pertaining to immovable properties, like in the instant case, are governed by the provisions of *the Transfer of Property Act*. Section 111 of *the Transfer of Property Act* clearly mandates that by efflux of time, the lease stands determined. In the instant case, the lease in respect of the suit property stood determined in the year 2013 and thereafter, the status of the appellant-tenant is of holding over and as per Section 116 of *the Transfer of Property Act*, the status of holding over tenant is that of month to month and in such a case, the tenancy is oral. It is unknown that in a case of oral tenancy, an arbitration clause can be invoked.

Pertinently, Apex Court’s decision in *Enercon (India) Limited (supra)* relates to a Business Agreement and, so the ratio contained therein would not apply to the case in hand as the instant case of a Lease Agreement is strictly governed by the provisions of the *Transfer of Property Act* and not the Contract Act. Similarly, reliance placed by the appellant’s counsel upon decision in *Potluri Madhavalata (supra)* is of no avail because in this cited decision, there was termination of contract due to breach of the agreement, but it is not so in the instant case. It is being

so said because a case of lapse of contract and termination of contract cannot be equated.

In *Ashapura Mine-Chem Limited (supra)*, the disputes arose from a *Memorandum of Understanding* and the said *Memorandum of Understanding* was very much in existence when the dispute arose whereas in the instant case, the disputes (not spelt out) relate to a lapsed Lease Agreement and, so the decision in *Ashapura Mine-Chem Limited (supra)* is of no assistance to the case of appellant. In *Ashok Metal Corporation (supra)*, there was a Business Agreement between the parties and the said agreement had not lapsed and, so the arbitration clause was rightly invoked. The facts of the instant case are entirely at variance with the facts of *Ashok Metal Corporation (supra)* and so, no reliance can be placed upon the decision in *Ashok Metal Corporation (supra)*.

During the course of hearing, it was enquired from learned Senior Counsel for appellant to briefly indicate as to what are the disputes to see whether so-called disputes relate to or arise out of the lapsed Lease Agreement in question and the retort was that appellant is not required to disclose it. This stand of appellant speaks for itself.

Be that as it may. This Court is of the considered opinion that when the Lease Agreement in respect of a property is exhausted, then the arbitration clause contained therein cannot be invoked for the reason that the instant Lease Deed of the year 2010 clearly provides that there will be option to renew the Lease for a further period of six years upon enhancement of rent and if the parties agree for such renewal, then a fresh Lease Deed would be executed on such renewal. Admittedly, no fresh

deed was executed and, so resort to the arbitration clause in the exhausted Lease Deed cannot be invoked.

The legal proposition raised in this appeal stands squarely answered by another Bench of this Court in *M/s. Saurabh Buildcon Pvt. Ltd. (supra)*. It needs no reiteration that the arbitration clause perishes with the expiry of the Lease Deed qua the disputes which can be those arising during the period of the Lease. In the instant case, the disputes sought to be raised pertain to the Lease Deed of 2010, which had perished way back in the year 2013. There was no justification whatsoever to invoke the arbitration clause of an exhausted Lease Deed to seek resolution of the disputes arising from the Lease Deed.

This Court is of the considered view that the impugned order suffers from no infirmity and there is no substance in this appeal. Accordingly, this appeal and the pending applications are dismissed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

JULY 27, 2016
r/s