

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

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CR No.4764 of 2017
Date of Decision:19.12.2017

Kone Elevators Private Ltd. ...Petitioner

Versus

Sarabjit Kaur Dhami ...Respondent

CR No.6352 of 2017

Kone Elevator India Private Ltd. ...Petitioner

Versus

Sarabjit Kaur Dhami ...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Swaran Singh, Senior Advocate with
Mr. M.S. Bedi, Advocate
for the respondent.

ANIL KSHETARPAL, J.

By this order two civil revision petitions i.e. CR Nos.4764 and
6352 of 2017 are being disposed of as common issue is involved.

However, facts are being taken from CR No.4764 of 2017.

Defendant-petitioner is in the revision petition against the order
dated 06.04.2017 passed by the learned Additional Civil Judge (Senior
Division), Hoshiarpur, dismissing the application under Section 8 of the

Arbitration and Conciliation Act, 1996, on the ground that detail and

intricate evidence is required for decision of the dispute and, therefore, the Arbitrator is not competent to minutely scrutinize the evidence.

It is not disputed that as per agreement between the parties, dispute is to be resolved through Arbitration. Relevant clause in the agreement reads as under:

“ In the event of difference or dispute arising out of, under or in connection with this agreement, over the rights of obligation of parties hereto, the dispute or difference shall be referred to the Arbitration of a Sole Arbitrator to be appointed by KONE Elevator India Private Limited. The Venue of the Arbitrator shall be at Chennai and the Courts in the City of Chennai alone shall have the jurisdiction in relation to the Arbitration and the Provisions of the Arbitration and Conciliation Act, 1996 shall be applicable to such Arbitration.”

For resolving the dispute between the parties, Arbitration is a private forum chosen by the parties through an agreement. As per Section 8 of the Arbitration and Conciliation Act, 1996, once it is brought to the notice of the Court that there is an agreement between the parties for resolving the dispute through Arbitration before filing the first statement on the substance of the dispute, the Court shall relegate the parties to the Arbitration.

In the present case, plaintiff had filed a civil suit for recovery of the amount. It has been pleaded that the plaintiff wanted to install an elevator (lift) in his premises which was duly installed and there was some

dispute between the parties.

Arbitrator is competent to order recovery of an amount. Scope of Arbitrator to adjudicate upon the disputes has been considered by the Hon'ble Supreme Court in the judgment titled '**Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and others**, (2011) 5 SCC 522. The Hon'ble Supreme Court in Para 36 has carved out the following exceptions:-

“ 36. The well-recognised 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.”

In a recent judgment titled '**A. Ayyasamy vs A. Paramasivam & Ors**', (2016) 10 SCC 386, the Hon'ble Supreme Court has further added case serious nature of fraud in the aforesaid list.

In view of the aforesaid, the order passed by the learned trial Court cannot be sustained. The Arbitrator is competent to scrutinize the evidence and adjudicate upon the dispute with regard to the recovery of the

amount.

In view of the above, both the civil revision petitions are
allowed.

Parties are relegated to the remedy of the Arbitration.

19.12.2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No