

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 853 OF 2013

Mr. Ashok Thapar,
An adult of Indian Inhabitant,
Aged about 62 years, Occ: Business,
Having address at Room No. A-3,
Pamposh Enclave, New Delhi – 110 048. ...Applicant

V/s.

M/s. Tarang Exports Pvt. Ltd.,
A Private Limited Company duly
Incorporation under the Companies
Act, 1956 having its office at 119,
Mittal Chambers, Nariman Point,
Mumbai – 400 021. ...Respondent

.....

Ms. Sneha Agarwal i/b. Mr. Lalit Jain for the Applicant.
Mr. Ashok Kumar Dubey i/b. SAVJ Law Solutions for the
Respondent.

.....

**CORAM: MRS. MRIDULA BHATKAR, J.
RESERVED ON : 20 JUNE, 2018
PRONOUNCED ON : 13 JULY, 2018**

JUDGMENT

1. This Civil Revision Application is directed against the order dated 8th July, 2013 passed by the learned Judge, City Civil Court, Gr. Bombay thereby dismissing Notice of Motion No. 1372 of 2013.

2. The issue involved in this Civil Revision Application is whether an Arbitration Clause survives even after bilateral termination of the Agreement.

3. The respondent, who is the original plaintiff, has filed a suit based on Agreement dated 30th July 2012, which was executed between the plaintiff and the defendant. Pursuant to the Agreement dated 30th July 2012, the plaintiff was allowed to use and occupy the premises on a leave and licence basis. As per Agreement, the dispute in respect of the transactions is to be referred to an Arbitrator under the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act"). The Agreement dated 30th July, 2012 was mutually terminated by both the parties in the month of October, 2012. Thereafter, the plaintiff has filed the suit for recovery of the security deposit and other claims based on the contents of the said Leave and Licence Agreement. Hence, the Notice of Motion was taken out by the defendant seeking that the Civil Court has no jurisdiction to try and entertain the suit and it is to be dismissed being barred in view of Clause No.11 of the said Leave and Licence Agreement. The trial Court dismissed the

Notice of Motion and held that the Civil Court has jurisdiction to try and entertain the plaintiff's suit.

4. The learned Counsel for the applicant in support of her submission, has relied on the judgment of Single Judge of Madras High Court in the case of ***M/s. Ford Credit Kotak Mahindra Ltd. v. M. Swaminathan*** reported in ***AIR 2005 Madras 218***. She has submitted that Arbitration Clause subsists even after termination of the Agreement in view of the reliefs claimed by the plaintiff.

5. The learned Counsel for the respondent has supported the order passed by the learned Judge of the trial Court. The Agreement was terminated by the plaintiff and it was accepted by the defendant by sending an e-mail on 3rd October, 2012. Once it is cancelled, a party cannot approach the Arbitrator and his Arbitration Clause extinguishes.

6. Heard submissions. The issue of jurisdiction of the Civil Court in the case of existence of the Arbitration Clause in the Agreement between the parties and in the event of termination of the Agreement where such Arbitration Clause survives or not is not *res-integra*.

7. I place reliance on the judgment of the Supreme Court in the case of ***SMS Tea Estate Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd*** reported in ***(2011) 14 SCC 66***, wherein the Supreme Court has held as under :-

“Even if a deed of transfer of immovable property is challenged as not valid or enforceable, the arbitration agreement would remain unaffected for the purpose of resolution of disputes arising with reference to the deed of transfer”.

In the said case, the Supreme Court was dealing with the issue whether an arbitration agreement if unregistered is valid and enforceable. While dealing with the said issue, the Supreme Court also considered competence of arbitral tribunal to rule on its jurisdiction.

8. In the case of ***Branch Manager, Magma Leasing and Finance Limited and Another Versus Potluri Madhavalata and Another*** reported in ***(2009) 10 SCC 103***, the Supreme Court has held as under :

“Section 8 is in the form of legislative command to the court and once the pre-requisite conditions as aforestated are satisfied, the court must refer the parties to arbitration.

As a matter of fact, on fulfillment of conditions of Section 8, no option is left to the court and the court has to refer the parties to arbitration”.

In the said case, the Supreme Court has relied on the judgment in the case of ***P.Manohar Reddy & Bros. vs. Maharashtra Krishna Valley Development Corporation And Ors.*** reported in ***(2009) 2 SCC 494***. The Supreme Court has made following observation :

"27. An arbitration clause, as is well known, is a part of the contract. It being a collateral term need not, in all situations, perish with coming to an end of the contract. It may survive. This concept of separability of the arbitration clause is now widely accepted”.

9. In the case of ***M/s. Ford Credit Kotak Mahindra Ltd.*** (*supra*), the learned Single Judge of Madras High Court has also taken a view that though there is termination of the agreement, the arbitration clause subsists.

10. The purpose of the Arbitration and Conciliation Act, 1996 is to minimize the burden of the Courts so also to expedite the matters. Once the parties have intended to refer their dispute to the Arbitrator in their Agreement, then any dispute pertaining to the contents of the Agreement or touched the subject matter of the Agreement is necessarily to be referred to the Arbitrator even though Arbitration Agreement is mutually terminated by both the parties.

11. In the present case, the view taken by the learned Judge of the trial Court is not legal. The trial Court ought to have taken into account that there is a prayer of recovery of the security deposit and other claims, which are based on the Leave and Licence Agreement. Unless the Agreement is referred to, this fact cannot be proved and in the beginning, parties have intention to refer their dispute to the Arbitrator. Hence, I allow this Civil Revision Application with following order:

ORDER

(i) The order dated 8th July, 2013 passed by the learned Judge, City Civil Court, Gr. Bombay is hereby quashed and set aside.

(ii) The trial Court has no jurisdiction to try and entertain the suit.

(iii) The trial Court shall refer the dispute to the Arbitrator as mentioned in the Arbitration Clause.

(MRIDULA BHATKAR, J.)