

CR No.2724 of 2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2724 of 2018 (O&M)

Date of Decision :26.11.2018

ARJUN DEV CHANDRA AND ANOTHER

....PETITIONERS

V/S

GURUNANK PUBALIC WELFARE TRUST AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. M.S. Sachdev, Advocate
for the petitioners.

Mr. Varun Sharma, Advocate
for the respondents.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 30.08.2017 (**Annexure P-2**), passed by the learned Civil Judge (Junior Division), Jalandhar, dismissing the application filed by the petitioners under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) for referring the parties to arbitration as per registered lease deed dated 12.12.1973 (**Annexure P-5**) as also order dated 26.03.2018 (**Annexure P-1**), whereby the review filed by the petitioners against the said order was also dismissed.

[2] Brief facts of the case, leading to the filing of the present revision petition are that a civil suit was filed by respondent No.1 for permanent

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attorneys, assignees, heirs, relatives, friends and employees etc. from causing any kind of damage/demolition and/or raising any kind of construction/reconstruction in the tenanted premises known as “Friends Theatre”, constructed over the land measuring 7 kanals 11 marlas comprising in Khasra No.4421/2, situated at Old Post Office Road, Opposite Roxy Hotel, Jalandhar City, Punjab. As shown Red in the site plan attached and bounded as under:-

East	-	Old Post Office Road.
West	-	Property of others.
North	-	Old DC Courts.
South	-	Property of others & road.

[3] A perusal of the civil suit filed reveals that in Para No.7 of the plaint, it was mentioned that the lessees had agreed to take on lease the plot of land in question for a period of 99 years on the terms and conditions contained in the lease deed and had further undertaken to complete a Cinema Hall and to raise construction thereon according to the plans already sanctioned or to be sanctioned by the Municipal Committee and it was further agreed between the parties that immediately on execution of lease deed or as soon as possible, the lessees would commence and complete, with all possible expedition, a Cinema Hall or other buildings and structures on the demised land according to and in conformity with the plans sanctioned already by the Municipal Committee and other competent authorities so that such buildings and structures were ready for use within a period of one year. In paragraph No.9 of the plaint, it is mentioned that the petitioners-defendants in utter violation of the terms and conditions of the lease deed dated 12.12.1973 **(P-5)** had started demolishing

permission of the respondents-plaintiffs and other co-owners, for which the petitioners-defendants had no right, title or interest. The respondents-plaintiffs reproduced all the clauses, i.e. Clause Nos.1 to 12, of the lease deed dated 12.12.1973 (P-5) in the plaint itself including the clause providing for arbitration in case of any dispute between the parties arising out of the implementation of the lease deed.

[4] Learned counsel for the petitioners contended that it was settled law that once the clause pertaining to arbitration contained in the agreement between the parties was not in dispute/arbitration agreement was not in dispute, then non-attaching of the original or certified copy of the arbitration agreement was inconsequential for the purpose of reference of the dispute in terms of Section 8(2) of the Act.

[5] Reliance was placed on a decision of Hon'ble the Supreme Court in 'Bharat Sewa Sansthan versus U.P. Electronics Corporation Limited', 2007(7) SCC 737; decision of this Court in 'M/s Aero Club through its authorized representative Mr. Bobby Emmanuel, Regional Sale Manager, North versus V.P. Arora and others', 2010(4) PLR 767; 'M/s Vishal Retail Limited versus Sachin Deep Sood and others', 2015(3) PLR 48 and 'Reliance Communications Infrastructure Ltd and others versus Rajesh Chawla', 2010(2) PLR 3. Relevant extracts of the same are reproduced as under:-

'Bharat Sewa Sansthan versus U.P. Electronics Corporation Limited,

“ 21. It is not in dispute that on 11.11.1980 the respondent-Corporation took from the appellant-Sansthan an area measuring 14,925 sq. ft. on monthly rent under a lease agreement. In June 1981, the appellant-Sansthan let out additional accommodation measuring 3000 sq. ft. area on monthly rent for setting up Marketing Office of M/s

Uptron India Limited, which is the subsidiary of the respondent-Corporation. The appellant-Sansthan filed suit for recovery of arrears of rent and ejectment of the respondent-Corporation from the demised premises. In the trial court, the respondent-Corporation preferred two applications, i.e. one under Section 8(1) of the Arbitration Act and second under Order XI Rule 14 CPC for summoning of the original lease deed from the appellant-Sansthan. The learned Additional District Judge (Special Judge, E.C. Act), Lucknow, has rejected both the applications. The High Court in writ petition filed by the respondent-Corporation against the order of the trial court, allowed the application of the respondent-Corporation filed under Section 8(1) of the Arbitration Act. It was the specific case of the respondent-Corporation before the High Court that the original agreements are in the possession of the appellant-Sansthan, whereas the stand of the appellant-Sansthan was that the original agreements are not in its possession. The respondent-Corporation placed on record of the trial court photocopies of the agreements along with an application under Section 8(1) of the Arbitration Act. The High Court, in our view, has rightly held that the photocopies of the lease agreements could be taken on record under Section 8 of the Arbitration Act for ascertaining the existence of arbitration clause. Thus, the dispute raised by the appellant-Sansthan against the respondent-Corporation in terms of the arbitration clause contained in the lease agreement is arbitral.”

‘M/s Aero Club through its authorized representative Mr. Bobby Emmanuel, Regional Sale Manager, North versus V.P. Arora and others’

“35. Even though, it can not be disputed, that the provisions of Section 8(2) of the Act are mandatory in nature but the intention of the legislature is met, when there

is no dispute qua the arbitration agreement between the parties, as intention of the legislature to incorporate a condition of filing of certified copy or original copy was, that there should be no dispute with regard to the arbitration agreement, as in that event the matter can not be referred without adjudicating it, but once the parties of the agreement admitted validity of the agreement, and the party disputing also places reliance thereon, it can not be said that the application can be dismissed, merely for want of filing of certified or original copy along with the application.”

‘M/s Vishal Retail Limited versus Sachin Deep Sood and others’

*“14. Insofar as the first point is concerned, there is no dispute that Section 8 (2) of the Act provides that the appellant has to file original or certified copy of the agreement for the perusal of the Court. There is no quarrel with the judgment relied upon by the learned counsel for the respondents in the case of **Atul Singh and others** (Supra), but at the same time, this Court cannot loose sight of the fact that the suit was filed seeking recovery of the huge amount against the present appellant and the very base of the suit is the same agreement dated 20.6.2008 and there is no objection or denial to the fact that the agreement which has been attached is different than the agreement relied upon by the learned counsel for the respondents while filing the suit. In such circumstances, the judgment relied upon by leaned counsel for the petitioner in the case of **Bharat Sewa** (Supra) would come to his rescue to the effect that where the opposite party is not disputing photo copy of the document produced on record by filing an application under Section 8 of the Act, filing of certified copy of the same can be exempted.”*

‘Reliance Communications Infrastructure Ltd and others versus Rajesh Chawla’,

“9. I have carefully considered the rival contentions. Neither of the aforesaid judgments cited by learned counsel for the parties is relevant in the instant case because the plaintiff himself has based his claim in the suit on the basis of agreements dated 10.3.2006 and 25.6.2007. Learned counsel for the respondent concedes that plaintiff even attached copies of the said agreements with the plaint. In view thereof, requirement of section 8(2) of the Act stood substantially complied with inasmuch as there is no dispute between the parties that the aforesaid agreements were entered into by the parties and copies thereof were on the record of the civil suit and there was no dispute about the same. Consequently, application filed by defendant under section 8 of the Act could not be dismissed on the ground that it was not accompanied by original agreement or its certified copy, when copies of both the agreements had been relied on by the plaintiff himself.”

[6] A perusal thereof reveals that once the clause providing for arbitration has been relied upon by the respondents-plaintiffs themselves itself in the civil suit, then the non attaching of the original or the certified copy alongwith the application under Section 8(2) of the Act is immaterial. Admittedly, in the instant case, the plaint itself reproduced all the clauses of the lease deed dated 12.12.1973 **(P-5)** including clause 12, which pertains to reference of any dispute between the parties, arising out of the implementation of the lease deed to an arbitrator or arbitrators with the mutual consent of the lessors as well as the lessees. Further, it is the categorical stand of none else then the respondents-plaintiffs in Paragraph No.9 of the plaint that the petitioners-defendants have in utter violation of the terms & conditions of the

lease deed dated 12.12.1973 **(P-5)** started demolishing the building of the

cinema hall without the consent or permission of the respondents-plaintiffs and other co-owners, to which the petitioners-defendants have got no right, title or interest. Further Clause 2 of the lease deed, as contained in the plaint, provides that the lessees shall immediately on the execution of the lease deed or as soon as possible thereafter commence and complete, with all possible expedition, a Cinema Hall or other buildings and structures on the demised land according to and in conformity with the plans already sanctioned by the Municipal Committee and other competent authorities, so that such buildings and structures were ready for use within a period of one year.

[7] In the light of Clause 12 of the lease deed dated 12.12.1973 (P-5) providing for reference of any dispute between the parties, arising out of the implementation of the lease deed to arbitration through mutually appointed arbitrator or arbitrators and application having been moved by the petitioners-defendants before filing written statement, seeking reference of the dispute amongst the parties to arbitration in terms of Clause 12 of the lease deed, which has been referred to by the respondents-plaintiffs in the plaint itself, the application under Section 8 of the Act could not have been dismissed on the ground of non filing of original or certified copy of the agreement containing the arbitration clause.

[8] Another aspect of the matter, which has been argued by learned counsel for the respondents is that the dispute in the civil suit is not covered by the arbitration clause, as it is with regard to the demolition and does not involve any of the clauses of the lease deed. The answer to the aforementioned plea of the learned counsel for the respondents is squarely met in the contents of paragraph No.9 of the plaint, filed by none else than the respondents-plaintiffs, which is as under:-

" That the defendants in utter violation of the terms and conditions of the lease deed dated 12.12.1973,had started demolishing the building of Cinema Hall known as "Friends Theatre" without the consent or permission of the plaintiffs and other co-owners, to which the defendants have got no right, title or interest. "

[9] Accordingly, in the light of the position as noted above, it is held that the non filing of original/certified copy of the agreement, containing the arbitration clause is immaterial, where the respondents-plaintiffs as in the instant case have themselves relied upon the provisions of the said agreement/arbitration clause. In such a situation, there is no ambiguity with regard to the clause providing for reference of the matter to arbitration in case of any dispute between the parties, arising out of the implementation of the lease deed. The matter is required to be settled through arbitrator to be appointed with the mutual consent of the lesser as well as the lessee. In the circumstances, impugned orders are **set aside**. Parties through counsel are directed to put in appearance before the learned trial Court on **13.12.2018** for appointment of arbitrator in accordance with Clause 12 of the lease deed dated 12.12.1973 for settlement of their dispute.

Revision petition is allowed in aforementioned terms.

(B.S. WALIA)
JUDGE

November 26, 2018

rajneesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No