

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

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**CR No.4367 of 2018 (O&M)
Date of Decision: July 12, 2018**

M/s Skytech Estates Pvt. Ltd.

.....PETITIONER(s).

VERSUS

Rakesh Kumar and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Jagdish Manchanda, Advocate
for the petitioner.

DEEPAK SIBAL, J. (ORAL)

Through the present petition, challenge is made to the order dated 23.04.2018, passed by the Civil Judge (Senior Division), Rohtak (for short, the Trial Court) dismissing the application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, the Act) for reference of the dispute to an Arbitrator.

The facts in brief which need to be noticed for adjudicating upon the present petition are that on 10.10.2011 respondent No.1 and the petitioner entered into a Memorandum of Understanding (for short, MoU) through which, on payment of an assured return, respondent No.1 agreed to grant licensing rights of the shop in question to the petitioner. As per the agreed terms, the petitioner leased out the premises to respondent No.3. On the ground of non-payment of rent, respondent No.1 filed the instant suit seeking ejectment of the defendants therein. Mesne profits were also sought.

The case set up by respondent No.1 was that the defendants to the suit i.e. the petitioner and respondent No.3 had colluded with each other to deny payment of rent to respondent No1.

While the suit was pending, relying on the Arbitration Clause in the MoU, the petitioner moved an application under Section 8 of the Act seeking the matter to be referred to an Arbitrator. The Trial Court after sifting the evidence which had come before it and relying on a judgment of this Court dated 30.11.2016 in CR-1264 of 2015 - **M/s Godrej & Boyce Mfg. Co. Ltd. v. Ashok Garg and another,** dismissed the petitioner's application, giving him a cause to file the present petition.

Learned counsel for the petitioner submits that in view of the Arbitration clause contained in the MoU, the trial Court had no jurisdiction to proceed with the matter and that the dispute between the parties which arose from the MoU signed between them could be adjudicated upon only through Arbitration.

After considering the submissions made by learned counsel for the petitioner, no merit is found in them.

As per the MoU dated 10.10.2011 arrived at between the petitioner and respondent No.1, on payment of assured returns, the petitioner was granted rights to lease the shop in question. It is not disputed that as per the afore rights, the shop in question was leased out by the petitioner to respondent No.3-Jubilant Foodworks Limited and as on date it is respondent No.3 which is in possession of the shop in dispute. The suit for ejectment had been filed by respondent No.1 seeking ejectment of respondent No.3- Jubilant Foodworks Limited from the shop in question.

possession of the shop in question. There is no agreement between the petitioner and respondent No.3 carrying any arbitration clause. That being so, for the eviction of respondent No.3 from the shop in question no arbitration proceeding would lie. For the physical eviction of respondent No.3, the matter cannot be referred to an Arbitrator under the MoU signed between the petitioner and respondent No.1.

Even otherwise, eviction proceedings have been recognized by the Hon'ble Apex Court as non arbitrable disputes. In **“Booz Allen and Hamilton Inc. vs SBI Home Finance Limited and others”**, (2011) 5 SCC 532, it has been held as under:-

“22..... The well recognized 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.”

This Court in M/s Godrej & Boyce Mfg. Co. Ltd.'s case **(supra)** after following **Booz Allen's** case (supra), has held to the same effect.

In view of the above, there is no merit in the present petition.

Dismissed.

July 12, 2018
A.Kaundal

(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***