

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

1. **Civil Revision No.694 of 2015**  
**Date of Decision:-08.02.2018**

Emaar MGF Land Ltd.

...Petitioner

Versus

Sarita Garg and others

...Respondents

2. **Civil Revision No.892 of 2015**

Emaar MGF Land Ltd.

...Petitioner

Versus

Vinod Gupta

...Respondent

**CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Sanjeev Sharma, Sr. Advocate with  
Mr. Ashim Aggarwal, Advocate  
for the petitioner.

Mr. Manbir Batth, Advocate  
for respondent No.2 (in CR No.694 of 2015).

Mr. Ashok Gupta, Advocate  
for respondent No.3 (in CR No.694 of 2015).

Mr. J.P.S. Ahluwalia, Advocate  
for the respondent (in CR No.892 of 2015).

**AMIT RAWAL J.(Oral)**

This order of mine shall dispose of two revision petitions i.e. CR No.694 of 2015 and CR No.892 of 2015. For the sake of brevity, the facts are being taken up from CR No.694 of 2015.

Mr. Sanjeev Sharma, learned senior counsel assisted by Mr. Ashim Aggarwal, Advocate appearing on behalf of petitioner submits that the impugned order dated 7.1.2015 (Annexure P-1) whereby applications moved under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter called 'the 1996 Act') for referring the matter to Arbitrator and for rejection of the application filed under Section 22(c) of the Legal Services Authority Act, 1987 seeking allotment of a flat has been dismissed. He submitted that respondents No.1 and 2, prior to institution of the petition before the Permanent Lok Adalat (PLA) on 15.10.2014 had availed the remedy before the Consumer Court which was objected to viz a viz the jurisdiction and the same was dismissed as withdrawn on 30.9.2014. Instead of availing the remedy in accordance with law as per the terms and conditions of the agreement (Annexure P-3) dated 4.2.2008 envisaging an arbitration clause No.43.2 provided resolution of a dispute, where both the parties have set their hands together for adjudication of the same through appointment of a sole Arbitrator as per the provisions of the 1996 Act. An application for rejection of the petition owing to the arbitration clause (Annexure P-12) dated 19.12.2014 was contested vide reply (Annexure P-13) but has erroneously been rejected by taking into consideration the

provision of Section 25 of the 1987 Act. In support of the contention a reference has been made to Section 2(aaa) and 19(5) of 1987 Act that even the Lok Adalat for adjudication of a dispute filed under Section 22(c) would be having a trapping of a judicial authority, whereas, the provision of Section 8 of the 1996 Act does not oust the jurisdiction of the Tribunal owing to the plain and simple language of expression “judicial authority”. All these factors have not been taken into consideration resulting into illegality and perversity. He further submitted that even the petition with regard to the maintainability was also raised as the power vested in the Lok Adalat is to undertake the prelitigation conciliation which had already been availed of, as indicated above.

Per contra, Mr. Manbir Batth, Advocate learned counsel appearing on behalf of contesting respondent submitted that the order under challenge is perfectly legal and justified. Whereas Mr. J.P.S. Ahluwalia, Advocate learned counsel appearing for the respondent in CR No.892 of 2015 submitted that the order under challenge does not call for any interference. No harm and prejudice will be caused to the petitioner objecting the jurisdiction of the PLA as the housing services vide notification dated 25.10.2010 have been declared as public utility services by Government of Punjab. Despite the arbitration clause it cannot be said that the Legal Services Authority would not have any jurisdiction.

In rebuttal, Mr. Sharma, Advocate submitted that the housing services utility cannot be read in restricted manner but in wider spectrum, for, the expression “services” would mean there had already been an

allotment but for redressal of some defects in the material or any other services provided by the developer.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force in the merit in the submissions of Mr. Sanjeev Sharma, learned senior counsel for the petitioner as the order is not sustainable for the reasons, which are not one, but many :-

1. It would be an apt of extract the definition of Section 8 of 1996 Act :-

“8. Power to refer parties to arbitration where there is an arbitration agreement.—1 [(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.] (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof: 2 [Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by

the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.] (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

Sections 2(aaa) and 19(5) of the Legal Services Authorities Act, 1987 also reads as under :-

2(aaa) :- “court” means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;

19(5) :- A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of— (i) any case pending before; or (ii) any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised: Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.”

On conjoint reading of definition of the Court, it would

be Civil, Criminal, Revenue and including the Tribunal Authority by reading the expression 'authority' in conjunction with the judicial authority as enumerated in Section 8 of 1996 Act. Thus, in my view the provision of Section 8 would also apply to a petition moved before the Legal Services Authority while invoking the jurisdiction under 1987 Act. The impugned order do not advert to the provision of Section 8 of the 1996 Act.

2. Relevant para 11 of the Conveyance Deed (Annexure P-5) reads as under :-

“11. That Vendee on its own volition has executed/duly endorsed an irrevocable undertaking in favour of the Vendor and has undertaken, inter alia, to pay all taxes, levied/leviable now or in future and also to pay the club charges as and when demanded by the Vendor. Copy of the undertaking is attached herewith as Annexure-IV. The said undertaking shall remain in full force till the liability of the Vendee under the same is fully paid and settled by the Vendee or the Vendor discharges the Vendee in writing from the liability of the Vendee under the said undertaking, whichever is earlier. The Vendee has agreed that the management and the operations of the club shall vest with the Vendor and/or its nominee(s), which shall run, operate, upkeep and maintain the same after charging the applicable fees and/or usage charges, etc. and on such other terms and conditions as may be

mutually agreed. All or any dispute arising out of or touching upon or in relation to clauses hereinabove, including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996, or any statutory amendments, modifications or re-enactment thereof by a sole arbitrator to be appointed by the Vendor. The proceedings shall be held at New Delhi or at any appropriate place to be decided by the said arbitrator. The Vendee hereby confirms that he shall have no objection to such appointment even if the person so appointed, as the Arbitrator, is an employee or advocate of the Vendor or is otherwise connected with the Vendor and the Vendee confirms that notwithstanding such relationship/connection and the holding of hearings at the registered office of the Vendor in New Delhi, the Vendee shall have no doubts as to the independence or impartiality of the said Arbitrator and shall not challenge the same.”

Once the parties had set their hands for adjudication of the dispute through the medium of 1996 Act in my view it cannot take the benefit of 1987 Act. The PLA has also in my view read the provision of Section 20 and 25 of 1987 Act in a strict sense to form an opinion that all other acts had overruling effect. I am afraid that the said finding is not correct appreciation of law. If the aforementioned provisions have to be

applied even the matters between the landlord and tenant can also be agitated before the Legal Services Authority despite constitution of Tribunal. The examples may be many but I need not delve as it may further affect the merits and de-merits of the matter.

Resultantly, the impugned aforementioned is not sustainable. The application Annexure P-10 under Section 8 is allowed as a necessary corollary the Legal Services Authority would not have jurisdiction to try the petition moved under Section 22(c) leaving open to the parties to take recourse of appointment of the Arbitrator either through consensus or under the amended provisions of 1996 Act.

The revision petitions are allowed in the aforesaid terms.

February 08, 2018  
Vijay Asija

( AMIT RAWAL )  
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No