

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

CR No.2357 of 2015
Date of Decision: 25.7.2019

Amritsar Health and Hospitality Services Petitioner

Versus

Jatinder Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Samrath Sagar, Advocate, for the petitioner.

Mr. Prateek Sodhi, Advocate, for respondents No.1 to 4.

NIRMALJIT KAUR, J. (ORAL)

The present revision petition is filed by the petitioner-company against the order dated 24.2.2015, vide which, application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act'), filed by the petitioner-company was dismissed.

While praying for allowing the present petition and seeking setting aside of the order dated 24.2.2015, learned counsel for the petitioner contended that the Arbitrator had been appointed to adjudicate all the dispute arising out of the lease deed between the parties and that the Rent Controller had no jurisdiction to adjudicate the matter between them.

As per the relevant facts of the case, respondents No.1 to 4, who are the landlord of the property in question had entered into an agreement on 21.6.2013 with the petitioner-company for leasing out the property in question @ ₹5,50,000/- per month. After working out the modality, the sale deeds dated 5.9.2013 and 3.2.2014 were executed. As per Clause 25 of the sale deed dated 5.9.2013, disputes arising out the said sale deed, would be referred to the Arbitrator. Clause 25 of the sale deed dated

5.9.2013 reads as under:-

“25. That in the event of any dispute or differences arising out of or in connection with the interpretation or implementation of this agreement, or out of or in connection with the breach, or alleged breach of this agreement, such dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996.”

The dispute arose between the parties towards the payment of rent as also regarding duties arising out under the lease agreement and their respective entitlement. After various efforts for appointment of the Arbitrator, finally an Arbitrator came to be appointed by the High Court vide order dated 16.1.2015.

Learned counsel for the petitioner submitted that the Rent Controller has erred in failing to appreciate that as per the Section 5 read with Section 8 of the Act, all the judicial authorities are barred from entertaining any disputes, which are subject matters of an arbitration agreement. A perusal of these provisions leads to the legal conclusion that all judicial authorities are under a mandatory statutory obligation to refer the parties to arbitration, in case they find that the disputes before them are governed by an existing arbitration agreement. In the present case the petitioner-firm had clearly and specifically raised the issue of there being an arbitration agreement between the parties, governing the disputes, which already stood invoked and relevant proceedings under Section 11(6) of the Act are already pending before the Court. Therefore, the only course left with the Rent Controller was to dismiss the petition of the respondents and direct them to raise their grievance before the Court where the application under Section 11(6) of the Act is pending.

the payment of rent from March 2014 to September 2014. It has already been settled qua the months of March, April and May 2014 and the respondents has already filed a separate petition qua the months from June 2014 to September 2014. The respondents have participated in the arbitration proceedings, therefore, they are accepting the arbitration Clause. Hence, they cannot take recourse to two separate remedies qua the same dispute.

Reliance was placed Vidya Drolia and others vs. Durga Trading Corporation, 2019(2) RCR (Civil) 542 to contend that the issue involved is a subject matter before the Hon'ble Apex Court and the same has been referred to the Larger Bench.

Learned counsel for the parties were heard at length.

The arguments raised by learned counsel for the petitioner have no merit in the facts of the present case. The dispute before the Arbitrator is with respect to the right of obligation under the agreement and an issue of compensation raised by the petitioner-firm towards the expenditure incurred on account of the failure of the respondents to abide by their obligations as also the alleged violation of the agreement and the dispute with respect to the claim of the rental raised by the respondents-landlords.

On the other hand, a suit is filed by the respondents-landlord under Section 13 of the East Punjab Urban Restriction Act III of 1949 (as amended) (for short, 'the Rent Act') for ejectment of the petitioner-company on account of non-payment of rent for the period as specified in the petition. Second application was filed on account of non-payment of rent for the subsequent months. It is settled proposition of law that the civil suit filed by the landlord for eviction is maintainable despite the parties agreeing to the

dispute arising on account of the lease deed to be decided by the Arbitrator.

The Hon'ble Apex Court in the case of Himangni Enterprises vs. Kamaljeet Singh Ahluwalia, 2017(2) RCR (Rent) 517 while also following the judgment rendered in the case of Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd., (2011) 5 SCC 532 held in para No.23 and 24 as under:-

“23. Yet in another case of Booz Allen & Hamilton Inc. (supra), this Court (two Judge Bench) speaking through R.V.Raveendran J. laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable:

“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.” (emphasis supplied)

24. Keeping in view the law laid down by this Court in aforementioned two decisions and applying the same to the facts of this case, we have no 12 hesitation to hold that both the Courts below were right in dismissing the appellant's application filed under Section 8 of the Act and thereby were justified in holding that the civil suit filed by the respondent was maintainable for grant of reliefs claimed in the plaint despite parties agreeing to get the disputes arising therefrom to be decided by the arbitrator.”

Thus, it is a settled proposition of law that there is no estoppel

against the suit. It is only the Rent Controller, who can pass an order of eviction of the tenant on the proof of grounds made under Section 13 of the Rent Act. Possession of the tenanted premises can only be ordered by a Civil Court under the suit. Therefore, the relief of eviction claimed in the suit before the Civil Court in the present case is not claimed in the proceedings before the Arbitrator, which are two different aspects. Section 13 of the Rent Act bars any other Court from trying ejectment petition. The right to seek the ejectment arises from the provisions of the Rent Act.

In view of the above, the present revision petition is dismissed being devoid of merit.

(NIRMALJIT KAUR)
JUDGE

25.7.2019
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No