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

**CR-6890-2011(O&M)
Date of decision: 22.01.2020**

**M/s Huges Communication India Ltd.**

**.......Petitioner**

Versus

**M/s Imaging Solutions Pvt.Ltd**

**......Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Ashwani Kumar Chopra, Sr. Advocate and
Mr. Arun Jain, Sr. Advocate with
Mr. Aashish Chopra,
Mr. Dharmesh Misra and
Ms. Rupa Pathania, Advocates for the petitioner

Mr.R.S.Rai, Sr. Advocate with
Mr. Divanshu Jain, Advocate for respondent

***ANIL KSHETARPAL, J.***

The petitioner company (M/s Huges Communications) has filed this revision petition against order passed by learned Rent Controller dated 3.11.2011 dismissing application filed by the petitioner under Section 8 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') read with Order 7 Rule 11 CPC.

On hearing learned senior counsel for the parties, this Court is of the view that the question which this Court is called upon to answer is **whether proceedings seeking eviction of a tenant pending before the Court of Rent Controller should be allowed to continue, particularly, when the Arbitrator in its award has already declared that the tenancy in question has come to an end or in other words,**

**the relationship of tenant and landlord cease to exist.**

Some facts are required to be noticed. Immovable property comprised in plot no.1 Sector 18, Electronic City Gurgaon was allotted to respondent no.1-M/s Imaging Solutions Pvt. Ltd. on 3.6.1997. On 23.3.2001, the petitioner entered into an agreement with the owner M/s Imaging Solutions Pvt. Ltd. (hereinafter referred to as 'respondent No.1'). The terms of lease in brief are as under:-

(i) the lease was to commence from 1.6.2000 and a rent of Rs.3,60,000/- per month was to be paid by the Hughes Communications for the first three years and thereafter the rent was to be revised to Rs.4,17,600/- for the balance duration of 7 years.

(ii) The Hughes Communications was to construct a building on the suit premises in accordance with the previously approved building plan.

(iii) A sum of Rs.20 Lakhs was paid as a Security Deposit which was to be refunded to the Hughes Communications or upon earlier determination of lease (Clause 4); significantly, the said amount was refunded to the Hughes Communications at the end of 3 years.

(iv) An arbitration clause to refer all disputes to a named Arbitrator Mr. Vijay Dhar

(v) An irrevocable option to purchase

> at any time after completion of six years of the lease term, at its sole discretion at a pre-determined price of Rs.1,50,00,000/-. Since HUDA did not permit sale of such properties, the clause was inserted for the security of the Hughes Communications, and the understanding was it would never be exercised."

The petitioner constructed the building as per the agreement. The petitioner also continued paying rent.

It is the claim of the petitioner that it had exercised its irrevocable option to purchase the piece of land underneath the building at a pre-determined price of Rs.1,50,00,000/- (Rs. 1.5 crore) as per the agreement on completion of six years of the term of the lease. Since the parties had agreed to get their dispute resolved through arbitration, therefore, Mr. Justice Anil Dev Singh (Retd.) was appointed as an Arbitrator. The award has been made and pronounced on 4.10.2018 by the sole Arbitrator, copy whereof is Annexure R-2 on the record.

Learned Arbitrator has recorded following findings while examining the option clause of the aforesaid agreement between petitioner and respondent no.1. The relevant observations are

> "**Re. Whether option clause in the aforesaid agreement constitutes an agreement to sell?**
>
> 71. Learned counsel for the claimant submitted that the mere fact the agreement is described as the lease agreement is not decisive of the nature of the agreement. According to him it's a composite agreement of lease and purchase. He

invited my attention to clause 6 of the agreement according to which the claimant could exercise option to purchase on expiry of six years from the effective date. Clause 6 reads as follows:-

6. <u>Lessee's Option to Purchase</u>

In valuable consideration, sufficiency and receipt whereof is duly acknowledge, the Lessor doth hereby grant upon the Lessee and irrevocable option as hereafter stated. The Lessee may, at any time after completion of six years of the Lease term, at is sole discretion, convey in writing its acceptance of the option hereby granted by the Lessor and elect to purchase directly by itself through its nominee, the Demised Premises (including all land and building and easement rights) at a pre-determined price stated in Exhibit E hereto. The Lessor hereby agrees and undertakes, immediately upon exercise of such option by the Lessee to execute all documents including but not limited to a deed of conveyance, an agreement of sale a general and special power of attorney in favour of the Lessee or its designated nominee and such other deeds or documents as may be required by the Lessee in order to transfer title to the subject property into the Lessee consequent upon exercising its option to purchase. The Lessor shall obtain to the satisfaction of the Lessee, all applicable clearances and/or permissions from the concerned authorities including but not limited to the permission from the Haryana Urban Development Authority ("HUDA"), the Income Tax Authorities and complete all necessary acts, deeds or things as may be required or applicable in connection with the sale and transfer of the Demised Premises. The Lessor acknowledges the value added by the Lessee at substantial cost to the Demised Premises, specially structured to meet its building requirement and therefore, agree that in addition to all other remedies, the Lessee may seek specific performance to have this agreement enforced between the parties.

Reading of clause 6 leaves no manner of doubt that it provides the Claimant with an option to purchase the property after expiry of 6 years from the effective date. The title of the agreement says ' deed of Lease' but it cannot be determinative of the contents thereof as label is not decisive of the contents of the bottle. The nomenclature of the deed cannot be the deciding factor of its real nature. Taking a holistic view of the agreement, I am of the view that it is a hybrid agreement and gets transformed from a lease deed into an agreement to construct, sell and purchase

> on exercise of option by the lessee to purchase the property."

Learned Arbitrator, although, returned remaining findings in favour of the petitioner, however, held that the agreement cannot be specifically enforced. However, the same does not affect the entitlement of the claimant to be compensated for the expense incurred for raising the building on the land in question. The conclusion of the learned Arbitrator is in para 115 which is extracted as under:-

> "115. I am of the view that the agreement cannot be specifically enforced, but this cannot affect the entitlement of the claimant to be compensated for the expense incurred for raising the building on the land in question in respect of which compounding fee was paid by the Claimant as well as the Respondent in equal share under the agreement dated February 16, 2004. Thus, it can be safely assumed that the building was constructed with the agreement and concurrence of the respondent. The claimant has expanded substantial amount of money on the construction of the building and the fittings and fixtures. On a conservation estimate based on the statement of account filed by the claimant atleast a sum of Rs.4 crores (Exhibit CW 1/10 and CW 1/11) would have been incurred, though it is claimed by the Claimant that sum of more than Rs.8 crore was spend

on it. The building was constructed about 15 years back. Keeping in view the fact that in case, the said amounts spent on the building was kept in a fixed deposit it would have earned interest @ 6-7 % p.a for a period of 15 years. In the light of the aforesaid facts and circumstances, I hereby award a sum of Rs.7.5 crore in favour of the claimant and as against the respondent. The claimant shall also be entitled to simple interest from the date of award till the realization of the said amount @ 12% p.a."

Both the parties are stated to have filed objection petitions as provided under Section 34 of the Act of 1996 pending before the Delhi High Court.

It may be noted here that respondent no.1 has filed a petition seeking eviction of the petitioner under Section 13 of the Haryana Urban Rent (Control of Rent and Eviction) Act, 1973, on the ground of non-payment of rent, subletting, material impairment and nuisance. Question is whether this Court should permit the proceedings before the Rent Controller to go on or not. On consideration of the entire material placed on file and after hearing arguments of the learned senior counsel for the parties, this Court is of the considered view that the proceedings before the Rent Controller should not be permitted to continue, particularly, when the Arbitrator has declared that in view of hybrid agreement between the parties, the lease deed has now got transformed into an agreement to construct, sell and purchase on exercise of option by the lessee.

Keeping in view the aforesaid facts, it is directed that the Rent Controller would adjourn the proceedings sine die with an option to the parties to move an application for revival thereof on conclusion of the proceedings under Section 34 of the Act of 1996 stated to be pending before the Delhi High Court.

Petition stands disposed of.

**22.01.2020** **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned Yes / No
Whether Reportable Yes / No