

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMAT 85 of 2021

(Through Video Conference)

Reserved on: 18.11.2021

Pronounced on: 25.11.2021

M/s. Dbar Code Restro Bar and Club LLP

...Appellant

-Vs-

Siddhant Commotrade Private Limited and Another

...Respondents

Present:-

Mr. Partha Chakraborty,

Ms. Sharmistha China, Advocates

... for the appellant

Mr. Sabyasachi Chaudhary,

Mr. Satadeep Bhattacharya,

Mr. Rajesh Upadhyay, Advocates

... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this appeal under Section 37 of the Arbitration Conciliation Act, 1996, (hereinafter referred to as 'the Act') defendant in the suit has challenged order of the Trial Court dated 28.02.2020 whereby, the application filed by the appellant/defendant for appointment of arbitrator under Section 8 of the Act has been dismissed.

2. The facts in nutshell are that the respondent/plaintiff had filed the suit for eviction with the plea that the appellant was inducted as tenant in the suit premises and certain dispute and difference arose between the parties in view of the alleged misutilisation of the suit premises by the defendant and there was also allegation in respect of

default in the payment of rent, electricity bill, etc. Therefore, the prayer was made to pass a decree of eviction and handing over of the khas, peaceful and vacant possession of the suit premises. The appellant had filed an application under Section 8 of the Act for appointment of arbitrator on the ground that the agreement contains arbitration clause. This application was opposed by the respondents and the same has been dismissed by the Trial Court by the impugned order.

3. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the Trial Court has rejected the application on the sole ground that the dispute in a case of recovery of possession does not come within the domain of arbitration. Learned Counsel for the appellant placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Suresh Shah vs. Hipad Technology India Private Limited, (2021) 1 SCC 529** has submitted that now it is settled that the dispute is arbitrable if it relates to lease/tenancy agreements/deeds and eviction thereunder, if such a lease is governed by the Transfer of Property Act, 1882 and not under any established statute extending statutory protection to the tenant.

4. Learned Counsel for the respondent does not dispute the above position in law and he has fairly accepted that since the present case is not a case covered under the special statute but it is a case of Transfer of Property Act, 1882 therefore, the dispute is arbitrable.

5. In view of the above, the Trial Court was not justified in rejecting the application filed under Section 8 of the Act on the sole ground that the dispute is not arbitrable.

6. Learned Counsel for the respondent has also tried to raise other issues by contending that there is no arbitration clause in the agreement, the arbitration agreement is not properly stamped, the original arbitration agreement has not been filed before the Trial Court, by referring to certain judgments on these issues but a perusal of the impugned order reveals that none of these issues have been examined by the Trial Court. In fact, while noting the objection of the stamp duty and registration of the lease deed, the Trial Court has observed that the same will be subsequently decided. The position in respect of the filing of the original agreement is also disputed before this Court as learned Counsel for the appellant has stated that the agreement has been filed before the Trial Court along with the plaint itself. In these circumstances, we are of the opinion that the Trial Court is now required to decide the application under Section 8 of the Act afresh in accordance with law and in that process, both the parties will have an opportunity to raise all permissible arguments/objections.

7. Hence, we set aside the impugned order passed by the Trial Court with the direction to the Trial Court to decide the application under Section 8 of the Act afresh in accordance with law keeping in view the observations made above.

8. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.11.2021

PA(RB)