

09.11.2022  
Court No.12  
Item no.34  
Aloke Dutta

**C.O 1693 of 2019**  
**With**  
**CAN 1 of 2019 (Old CAN No.8583 of 2019)**  
**(application is not with file)**

**M.L Sahgal & Co. (Resources) Pvt. Ltd.**  
**Vs.**  
**Ruma Bandopadhyay**

Mr. Rohit Banerjee,  
Mr. Arindam Paul

.... For the petitioner

Mr. Pinak Ranjan Mitra,  
Mr. Ashim Kr. Roy

.... For the O.P

The present revisional application under Article 227 of the Constitution of India arises out of Order No.15 dated 07.05.2019 as passed in Title Suit No.108 of 2018 by the learned Judge, 5<sup>th</sup> Bench, City Civil Court at Calcutta whereby and whereunder the said Court in the said proceeding has been pleased to dismiss the defendant's application under Sections 5 and 8 of the Arbitration and Conciliation Act. 1996 dated 26.04.2018.

The defendant being aggrieved has thus preferred this instant revisional application. In order to dispose of the instant revisional application fairly and effectively, the facts relating to filing of the instant application for revision is required to be dealt with in a nutshell.

The opposite party being plaintiff filed Title Suit

No.108 of 2018 against the present revisionist for recovery of possession of the suit property and for other ancillary reliefs before the learned Trial Court.

It is the plaint case that in between the plaintiff and the defendant time to time licence agreements were executed in respect of the suit property and the defendant used to pay rent at the rate of Rs.48,000/- per month to the plaintiff who is the opposite party in the instant revisional application. It is the further plaint case that the tenancy of the defendant was terminated by a notice dated 22.12.2017 and in spite of the receipt of the same, the defendant failed and neglected to delivery khas and vacant possession of the suit property to the plaintiff and thus, finding no other alternative the plaintiff before the learned trial Court filed Title Suit No.108 of 2018 praying for relief(s) as mentioned hereinabove.

It is pertinent to mention herein that the defendant after entering into appearance in the said Suit before the learned trial Court filed an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act') praying, inter alia, that since there is an arbitration clause in the agreement as executed by and between the plaintiff and the defendant, the matter may be referred to arbitration by staying all further proceedings of Title Suit No.108 of 2018. The said application was opposed by the

plaintiff, the opposite party herein by filing his affidavit-in-opposition and after hearing both the sides learned trial Court passed the impugned order.

In support of the instant revisional application learned advocate for the petitioner/defendant draws attention of this Court to the impugned order. Attention of this Court is also drawn to the petition under Section 8 read with Section 5 of the said Act. It is contended on behalf of the petitioner/defendant that the impugned order as passed by the learned trial Court deserves to be set aside since learned trial Court has miserably failed to take note that in between the plaintiff and the defendant there exists no relationship of landlord and tenant within the meaning of West Bengal Premises Tenancy Act, 1997. It is contended further that while passing the impugned order learned trial Court failed to visualize that the relationship between the plaintiff and the defendant is governed under the Transfer of Property Act since it is admitted position that the monthly rent of Rs.48,000/- as payable by the defendant in favour of the plaintiff bars the invocation of the provisions of West Bengal Premises Tenancy Act, 1997 since the monthly rent of the suit property exceeds Rs.10,000/-.

It is, thus, submitted that it is a fit case for allowing the instant revisional application by setting aside the impugned order. It is further submitted that an

appropriate order may be passed allowing the petitioner/defendant's application under Section 8 read with Section 5 of the said Act.

At the time of argument learned advocate for the opposite party/plaintiff practically accepts the contention of the learned advocate for the petitioner/defendant. While relying upon a decision reported in **(2021)2 SCC 1, (Vidya Drolia & Ors., vs. Durga Trading Corporation)** it is submitted that the Hon'ble Apex Court of our country has clearly stated in the said reported decision that the landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. It is, thus, submitted that appropriate order may be passed in the instant revisional application.

This Court has perused the petition under Art. 227 of the Constitution of India as filed by the petitioner as well as the other documents as placed in support of the instant revisional application. This Court has given its anxious consideration over the submissions of learned advocates for both the sides. This Court has meticulously gone through the reported decision of **Vidya Drolia** (supra). In considered view of this Court for effective adjudication of the instant revisional application the relevant portion of the aforesaid reported decision may be looked into and the same is reproduced herein:

*"In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant*

*disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.”*

In view of the aforesaid proposition of law as enunciated in the case of Vidya Drolia (supra), this Court has got no hesitation in mind that landlord-tenant disputes is very much arbitrable if their relationship is governed under the Transfer of Property Act. On perusal of the photocopy of the plaint as filed in Title Suit No.108 of 2018 it reveals that it is the plaint case that defendant used to pay monthly rent of Rs.48,000/- to the plaintiff. Such being the position, there cannot be any hesitation that such quantum of rent clearly attracts the Transfer of Property Act and thus, the relationship between the parties herein is not governed under the West Bengal Premises Tenancy Act, 1997.

Sufficient materials have been placed before this Court that in between the petitioner/defendant and the opposite party/plaintiff an agreement was entered into on 19.05.2010 and that clause 21 of such agreement bears arbitration clause.

In view of such, there cannot be embargo in referring any matter of dispute covered under the said agreement dated 19.05.2010 to arbitration.

In view of the discussions made hereinabove, this Court, thus, finds sufficient merits in the instant revisional application. As a result, the instant revisional

application succeeds. The impugned order no.15 dated 7.5.2019 as passed by learned Judge, 5<sup>th</sup> Bench, City Civil Court at Calcutta in Title Suit No.108 of 2018 is hereby set aside. Consequently, the petition under Sections 5 and 8 of the Arbitration and Conciliation Act, 1996 as filed by the present petitioner/defendant in Title Suit No.108 of 2018 is hereby allowed on contest. All further proceedings of Title Suit No.108 of 2018 are hereby stayed. Liberty is given to the opposite party/plaintiff herein to refer the matter in dispute as involved in Title Suit No.108 of 2018 to arbitration in accordance with law.

Let a copy of this order along with the L.C.R, if received in the mean time, be sent down.

Revisional application is, thus, disposed of.

In view of disposal of the revisional application itself, the connected application being CAN 1 of 2019 (Old No.8583 of 2019) (application is not with file) is also disposed of.

Urgent Xerox certified copy of this order, if applied for, be given to the parties.

**(Partha Sarathi Sen, J.)**