

21

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

**ARB-DC No.1 of 2021 (O&M)
Date of Decision: 18.11.2022**

MEENA BAZAR

.....Petitioner

Vs

AMBIENCE DEVELOPERS INFRASTRUCTURE PVT. LTD.

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sushil K. Tekriwal, Advocate
for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. R. Kartikeya, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The Petitioner has filed the present petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as 'the Act') for appointment of an independent Arbitrator to adjudicate the the dispute between the parties arising out of lease deed dated 25.07.2017/04.08.2017.

[2]. The petitioner is a proprietorship firm and is involved in the business of women ethnic wear. The respondent is a Company and is being managed by its Directors. A registered

lease deed was executed between the parties on 25.07.2017 for the property in question i.e. S 217-A, Second Floor of the Ambience Mall building for a period of nine years ending on 07.05.2026. A refundable security was deposited with the respondent to the tune of Rs.23,10,000/-. The petitioner also paid an amount of Rs.5,28,000/- towards Common Area Maintenance (CAM) security refundable to its sister concern thereby totalling an amount of Rs.28,38,000/-.

[3]. The respondent represented before the petitioner that it is the lawful owner in possession of the building on free hold basis and title to the Mall is absolute being sole owner of the entire space. The respondent also represented that it is competent to enter into the lease agreement as there is no impediment/injunction with regard to the space which would be given to the lessee. In view of the aforesaid background/assurance, the petitioner entered into the lease agreement and invested huge amount towards construction, interiors, stock, logistics investment and renovation of the shop.

[4]. According to the petitioner, the rent was being paid regularly till March 2020 as well common area maintenance (CAM) till the commencement of lock-down period without any default. The petitioner has been paying the electricity bill upto date without there being any default.

[5]. A dispute arose between the parties, when the petitioner came to know that the Mall and its sister concern have been declared illegal structure by the Division Bench of this Court vide order dated 10.07.2020 passed in CWP No.20330 of 2015. The High Court has also ordered CBI inquiry in the matter. The petitioner became apprehensive of its legal status as the subject property was taken on rent for a period of nine years believing absolute title with the respondent. The respondent never informed the petitioner about the pending litigation which was filed prior to taking up the shop on rent.

[6]. Learned counsel for the petitioner submits that the prayer in this petition is for the appointment of an independent Arbitrator in view of dispute between the parties as the petitioner has already invoked the arbitration clause No.25 of the lease deed, but this case be adjourned for a future date so as to await the decision of pending Special Leave to Appeal (C) No.11480 of 2020 filed against the order dated 10.07.2020 passed in CWP No.20330 of 2015. No stay has been granted by the Hon'ble Apex Court.

[7]. The petitioner has already moved an application for impleadment/intervention in the aforesaid Special Leave to Appeal (C) No.11480 of 2020 and the same is still pending. By referring to the number of orders passed in the aforesaid appeal

by the Hon'ble Apex Court, learned counsel for the petitioner submits that the pending appeal in the Hon'ble Apex Court has definite bearing on the present case.

[8]. On 08.08.2022, following order was passed by the Co-ordinate Bench of this Court:-

“Prayer in the petition (i.e. ARB-DC-1-2021) is for appointment of an Arbitrator to adjudicate the dispute between the parties arising out of lease deed dated 25.07.2017/04.08.2017. However, learned counsel for the petitioner contends that decision of this Court dated 10.07.2020 in CWP No.20330 of 2015 holding order delicensing part of the residential area for commercial purpose on which Ambience Mall is situated, was without authority of law leading to issuance of the following directions:-

“(a) Delicensing orders dated 18.10.2001 (Annexure P-9), orders granting license/permission vide order dated 16.10.2001 (Annexure P-10) and dated 01.09.2010 (Annexure P-13) passed after submission of Deed of Declaration on 25.03.2009 (Annexure P-8) are hereby quashed;

(b) In view of our findings in the foregoing paragraph, the State shall take necessary consequential steps forthwith;

(c) In view of the fact that the responsibility has to be fixed it is further directed that the Central Bureau of Investigation would investigate the entire issue after registering a formal FIR by a

team of Officers to be chosen by the Director, CBI within six weeks from today. An effort shall be made to complete the entire investigation within six months and a status report be submitted in sealed cover within three months.

The original record of HUDA be retained in the safe custody of Registrar (Judicial). CBI shall be at liberty to move an application for obtaining the record after it begins its proceedings.”

and the same is the subject matter of SLP No.11480 of 2020 which is listed for hearing on 08.09.2022, therefore, the instant petition be adjourned to a date beyond the said date.

The same is vehemently opposed by learned Senior Counsel assisted by Mr. R. Kartikeya, Advocate. Learned Senior Counsel states that arbitration has been sought by the petitioner in terms of Clause 25.1 and pendency of the SLP against the decision in CWP No.20330 of 2015 has got no bearing on the claim in the instant petition which is with regard to appointment of an arbitrator in terms of lease deed dated 25.07.2017/04.08.2017 and that it would always be open to the petitioner if so advised to raise a claim before the Arbitrator qua losses, if any, suffered by him as a consequence of upholding of the order of the Writ Court by Hon'ble the Supreme Court.

Learned counsel for the petitioner requests for a short adjournment to argue the matter.

Adjourned to 19.09.2022.

To be taken up after the list of urgent cases.

Photocopy of this order be placed on the file of the connected case.

(B.S. Walia)
Judge

08.08.2022
'Amit'

[9]. On the other hand, learned Senior counsel for the respondent submits that the respondent has no objection in case an independent Arbitrator is appointed by this Court in order to resolve the dispute between the parties. All the pleas can be considered by the Arbitrator on the basis of material to be produced by the parties.

[10]. Learned Senior counsel for the respondent further submits that the decision of pending appeal in the Hon'ble Apex Court has no bearing on the present arbitration case and even after the decision of the Hon'ble Apex Court, the respondent (being the land owner) would have the right to recover the pending rent from the petitioner. The petitioner itself has prayed for appointment of an independent Arbitrator after annexing different orders passed by the Hon'ble Apex Court at different stages of the pending appeal. No order has been passed so far on the application for becoming intervenor in the pending appeal. The said application was filed by the petitioner in the Hon'ble Apex Court on 30.06.2021 and the present petition came to be filed on 10.07.2021. The Arbitrator is

competent to decide his jurisdiction and the alleged intervening circumstance on the basis of CBI inquiry is no ground to keep the present proceedings pending, because the respondent has no objection for the appointment of an independent Arbitrator.

[11]. I have considered the submissions made by learned counsel for the parties.

[12]. Learned counsel for the petitioner has tried to argue the subject matter of pending appeal in the Hon'ble Apex Court which in my considered opinion is not the scope of consideration by this Court in the present petition. On the basis of lease deed and arbitration clause, the petitioner has already invoked the arbitration clause and, therefore, doctrine of frustration is not attracted to the facts of the present case.

[13]. Since the petitioner itself has come forward by way of filing the present petition for appointment of an independent Arbitrator, therefore, the petitioner cannot be allowed to say that the issue will become non-arbitrable till the decision of pending appeal in the Hon'ble Apex Court. The petitioner cannot be allowed to breath hot and cold at the same time by saying that at the time of filing of the petition, the issue was arbitrable in nature for which the petitioner has also invoked the arbitration clause and with the initiation of the CBI proceedings, the same

has become non-arbitrable till decision by the Hon'ble Apex Court.

[14]. Evidently, the petitioner itself has invoked the arbitration clause on the basis of lease deed and the respondent has no objection for the appointment of an independent Arbitrator, therefore, I deem it appropriate to appoint **HMJ Rameshwar Singh Malik (Retd.) R/o House No.280, Advocates Society, Sector 49-A, Chandigarh, Mobile No.7837049206** as the sole Arbitrator, to resolve the dispute/difference between the parties. The appointment of the Arbitrator shall be subject to the declaration to be made by him as required under Section 12 of Arbitration and Conciliation Act, 1996 in respect of his independence and impartiality to settle the dispute between the parties.

[15]. The Arbitrator would complete the proceedings within the specified time in terms of Section 29-A of the said Act. The Arbitrator shall be paid fee in accordance with the IVth Schedule of the Act as amended from time to time. The fee shall be borne by both the parties equally.

[16]. Venue of the Arbitration shall be the place to be disclosed by the Arbitrator according to his convenience.

[17]. A copy of this order be dispatched to the Arbitrator at

the following address:-

HMJ Rameshwar Singh Malik (Retd.)
R/o House No.280, Advocates Society, Sector 49-A,
Chandigarh, Mobile No.7837049206

[18]. Petition stands disposed of accordingly.

November 18, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No