



* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on: 13th September, 2022
Decided on: 12th October, 2022

+ ARB.P.869/2022

KUSH RAJ BHATIA

Rio C-8, Friends Colony,
Near Mata Ka Mandir on Main Road
Sriniwaspuri S.O South Delhi-11 0065

..... Petitioner

Through: Mr. Akhil Sachar, Ms. Sunanda
Tulsyan & Mr. Sangram Singh,
Advocates.

Versus

M/S DLF POWER AND SERVICES LIMITED

(Erstwhile M/s DLF Utilities Limited)
10th Floor, Gateway Tower, Phase-III,
DLF Cyber City, Gurugram-122002
Through its Director

..... Respondent

Through: Ms. Meghna Mishra, Mr. Ankit
Rajgarhia & Mr. Tarun
Sharma, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

NEENA BANSAL KRISHNA, J

1. The petitioner has filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'A&C Act, 1996'*),



seeking appointment of an independent and impartial arbitrator for adjudication of disputes having arisen between the parties.

2. Facts in brief are that the petitioner is an absolute owner of the Retail/Commercial Space bearing No. MS0312 having an approximate super area of 322.37 sq. mts. which includes approximately 216.010 sq. mts. of specific area on the 3rd Floor in the Commercial Building known as DLF Mega Mall, DLF City, Phase-I, Gurgaon, Haryana (*hereinafter referred to as "subject property"*). The said property was purchased by the petitioner from M/s DLF Utilities Limited, the predecessor of the respondent, *vide* Registered Conveyance Deed with Sub-Registrar, Gurgaon as Document No. 7847 dated 13th July, 2005.

3. The petitioner *vide* Registered Lease Deed dated 16th May, 2011 gave the subject property to the respondent w.e.f. 01st March, 2011 to 30th June, 2022 with the lock in period expiring on 30th June, 2022.

4. It is submitted that in terms of Clause 3 of the Lease Deed dated 16th May, 2011, the rent of Rs. 1,90,650/- per month was to be paid in advance by 10th of each month. In terms of Clause 11 of the Lease Deed, the respondent had paid a sum of Rs. 5,20,500/- as Interest Free Refundable Security Deposit to be refunded by the petitioner to the respondent at the time of surrender of possession on "as-is-where-is basis". In terms of Clause 13 of the Lease Deed, it was agreed that the respondent shall pay the maintenance on demand along with the actual electricity consumption and water charges, from the date of commencement of the Lease Deed till its expiry.

5. Clause 48 provided for the determination of disputes which may arise from the Lease Deed which reads as under:



“Clause 48 –

All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modification thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor. The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as the appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator.”

6. It is asserted that the respondent has defaulted in payment of rent after 31st March, 2020 for the reasons best known to it. The rent is due for the period w.e.f. from 01st April, 2020 till 30th April, 2022. Despite repeated requests, the respondent has failed to clear the outstanding rent. Surprisingly, the respondent served a Legal Notice dated 03rd July, 2020 to allegedly terminate and revoke the Lease Deed with immediate effect from 03rd July, 2020 onwards.



7. It is claimed that determination/termination/revocation of the Lease Deed w.e.f. 03rd July, 2020 is in material breach of the terms and conditions of Clause Nos. 2, 11, 32 and 46 of the Lease Deed. There was a lock-in period upto 30th June, 2022 and the respondent is not entitled to determine the Lease Deed before 30th June, 2022.

8. It is submitted that the respondent is liable to pay to the petitioner the arrears for 13 months from 01st April, 2020 to 30th April, 2022 amounting to Rs. 38,96,687.47/- along with interest calculated @18% per annum from the due date of payment. In addition, the respondent is also liable to pay the GST charges in the sum of Rs. 19,82,377.81/- to M/s Mega Mall Condominium Association w.e.f. 01st April, 2020 till 31st March, 2022. The water and electricity charges are also liable to be paid.

9. In these circumstances, the petitioner was constrained to issue Legal Notice dated 19th April, 2022 invoking Arbitration Clause No. 48 of the Lease Deed dated 16th May, 2011 and had proposed the name of an Advocate as the Sole Arbitrator to adjudicate the disputes. In response to the Legal Notice dated 19th April, 2022, the respondent sent an evasive reply *vide* Letter dated 24th May, 2022 through its Advocate making unfounded, baseless and vague averments.

10. It is submitted that considering that the disputes have arisen between the parties and there is a valid Arbitration Agreement, the Sole Arbitrator may be appointed for adjudication of the disputes.

11. **The respondent in its Reply has taken** an objection that the dispute involves a landlord-tenant relationship which is governed by a special Statute i.e., the Haryana Urban (Control of Rent and Eviction) Act, 1973. The present petition is not maintainable in view of the Judgement of the



Hon'ble Supreme Court in Vidya Drolia & Ors. vs. Durga Trading Corporation (2021) 2 SCC as the dispute is not arbitrable. Furthermore, the parties have specifically agreed upon the jurisdiction of the Civil Court at Gurgaon and the High Court at Chandigarh in terms of Clause 49 of the Lease Deed and this Court has no jurisdiction to entertain the present petition.

12. Learned counsel on behalf of the respondent has placed reliance on the decisions of the Hon'ble Supreme Court in Mankastu Impex Private Limited vs. Airvisual Limited (2020) 5 SCC 399, Brahmani River Pellets Limited vs. Kamachi Industries Limited (2020) 5 SCC 462, this Court in Carvants Media Private Limited vs. Jharkhand State Co-operative Milk Producers Federation Ltd. and Ors. ARB.P. 915/2021 decided on 06th December, 2021, and on the decision of Allahabad High Court in Hasmukh Prajapati vs. Jai Prakash Associates Ltd. MANU/UP/0333/2022 and on the decision of the Hon'ble Supreme Court in A.B.C. Laminart Pvt. Ltd. and Ors. vs. A.P. Agencies, Salem AIR 1989 SC 1239. It is submitted that the present petition is, therefore, not maintainable and is liable to be dismissed.

13. **Submissions heard.**

14. The first objection taken on behalf of the respondent is that the dispute pertains to landlord-tenant relationship which is governed exclusively by the Haryana Urban (Control of Rent and Eviction) Act, 1973. However, the dispute raised in the present case pertains to recovery of rent for which there is no provision under the rent legislation. Necessarily for recovery of rent, it is only the Civil Court which has jurisdiction. This argument taken about the bar under the Haryana Urban (Control of Rent and Eviction) Act, 1973 is



therefore not tenable, and the dispute in regard to recovery of rent is arbitrable.

15. The main argument is in respect of the jurisdiction of this Court to entertain the petition under Section 11 of A&C Act, 1996. It is claimed that under Clause 49 of the Lease Deed, it has been clearly provided that the Civil Court at Gurgaon and High Court at Chandigarh alone shall only jurisdiction. Clause 49 reads as under:

That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction."

16. Sections 16 to 20 of Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) define the jurisdiction where a Civil Suit may be filed. Section 20 of CPC, 1908 provides that a Suit other than for an immovable property may be filed where the defendant resides, carries on business or works for gains or where whole or any part of cause of action has arisen. Many a times, the conflicts have arisen in regard to the jurisdiction of the courts and the parties often select a particular court to the exclusion of all other courts and such court gets exclusive jurisdiction to determine the disputes. It is a settled proposition of law that under the civil law where more than one courts have territorial jurisdiction, the parties may choose and elect one court to the exclusion of all other courts to be of competent jurisdiction. It is further settled that the parties by mutual consent cannot confer jurisdiction on a court which otherwise lacks jurisdiction.

17. However, under the arbitration law, this position has undergone a change. The Hon'ble Supreme Court in A.B.C. Laminart Pvt. Ltd. and Ors. vs. A.P. Agencies, Salem (supra) has explained that for the purpose of arbitration proceedings, the settled principles of CPC, 1908 as contained in



Sections 16 to 20 may not be applicable. The arbitration proceedings can be seated on a neutral venue even when a particular venue may not have the jurisdiction to entertain the dispute i.e., the cause of action may not have arisen at that place. However, this would not invalidate the seat of arbitration and oust the jurisdiction of the courts exercising supervisory jurisdiction over such a seat.

18. There is no reference to either seat or venue but it only mentions about the “place” where the arbitration may take place. Much controversy over a period of time has arisen in regard to the concept of seat and venue which needs to be considered. The Act does not define the term 'Seat' or 'Venue'. Section 20 merely defines the ‘place of arbitration’ which is often used interchangeably with the term 'Seat' and 'Venue' which often leads to controversy. It has been ascertained in various judgments but the controversy keeps arising in different factual settings and become subject matter of decisions by the Courts. The terms 'Seat' is of utmost importance as it connotes the *situs* of arbitration. The term ‘Venue’ though often confused with the term 'Seat', is more of a place chosen as convenient location by the parties to carry out the arbitration proceedings, but it should not be confused with 'Seat'. The term 'Seat' carries more weight than 'Venue' or ‘place’.

19. In an English judgment of *Shashoua (2009) EWHC 1957*, it was held that Seat of arbitration has to have an exclusive jurisdiction over all proceedings that arise out of arbitration. To the contrary, “*Indicia Test*” for a place of arbitration lays down that a stipulation that the place of arbitration shall be the Seat of arbitration and consequently determines the ‘*lex fori*’ in the absence of any significant contrary indicia. This position was confirmed



by the Division Bench of Hon'ble Supreme Court of India in the case of *Roger Shashoua Vs. Mukesh Sharma*.

20. The Court of appeal in England in *Naviera Amazonica Peruana S.A. vs. Compania International de Seguros del Peru (1988) 1 Lloyd's Rep 116 (CA)*, explained that there is only one "place of arbitration". This will be the place chosen by or on behalf of the parties and it will be designated in the arbitration agreement, or the terms of reference or the minutes of proceedings or in some other way as "place or Seat of arbitration". It does not, however, mean that the Arbitral Tribunal must hold all its meetings and hearings at such place of arbitration.

21. In the context of arbitration law, the first aspect which needs to be dwelled upon is the distinction between the seat and venue. There is no such distinction between these two terms under A&C Act, 1996, the only relevant Section concerning this aspect is Section 21 which reads as under:

"Section 21—Commencement of arbitral proceedings. —Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

22. In *Bharat Aluminium Co. vs. Kaiser Aluminum Technical Services Limited (2012) 9 SCC 552*, the Supreme Court relied on the principal of concurrent jurisdiction stating that two Courts can have jurisdiction over arbitration application viz. (i) Courts possessing the Subject matter/cause of action jurisdiction and (ii) Court when the place/seat of arbitration was designated. It was observed that existence of multiple venues was only perceived to be a matter of convenience.



23. The Supreme Court in *BALCO (supra)*, referred to the definition of the Court in Section 2(1)(e) of Arbitration and Conciliation Act to observe that the term “subject matter of the arbitration” cannot be confused with the “subject matter of the suit”. The term “subject matter” in 2(1)(e) is confined to Part 1. Its purpose is to identify the Court having supervisory control over the arbitration proceedings. It was observed that the Legislature has intentionally given jurisdiction to two Courts i.e. the Courts which have jurisdiction where course of action is located and Courts where the arbitration takes place. It was observed that on many occasions it may be necessary to provide for Seat of arbitration at a place which would be neutral to both the parties. Therefore, Courts where the arbitration takes place would be required to exercise supervisory control over the arbitral proceedings. This would be irrespective of the fact that the obligation to be performed under the Contract was at different places, like it was to be performed either at Mumbai or at Calcutta and only the arbitration was to take place in Delhi. In some situation it is the Court at Delhi that would have jurisdiction i.e. the Courts within the jurisdiction of which the Seat of arbitration is located. The principal as enunciated in *Balco (Supra)* were revisited by the Supreme Court in *BGS SGS Soma JV vs. NHPC (2020) 4 SCC 234*.

24. The Supreme Court in *Mankastu Impex Pvt. Ltd. vs. Airsual Ltd. (2020) 5 SCC 399* observed that the Arbitration Agreement did not use the word “Seat or Venue”. It provided that the arbitration would be administered in Hong Kong and the place of arbitration would be Hong Kong. It further stated that the governing law was Indian Law and the Courts of New Delhi would have jurisdiction. It was held that the Seat of arbitration and Venue of arbitration cannot be used interchangeably. Mere expression “place of



arbitration” cannot be the basis to determine the intention of the parties that they have intended that place as the "Seat of Arbitration". The intention of the parties as to “Seat” should be determined from other clauses in the Agreement and the conduct of the parties. It was further explained that “Seat of arbitration” is a vital aspect of any arbitration proceedings and it determines the law applicable when deciding the arbitration proceedings and the arbitration procedure as well as judicial review over the arbitration Award. Seat of arbitration is not just about where an institution is placed or where the hearings shall be held, but it is about which Court would have supervisory power over such proceedings. It was thus held that an agreement between the parties choosing Hong kong as place of arbitration would not lead to the conclusion that Hong kong would also be the Seat of arbitration.

25. In *Enercon (India) Ltd. Enercon GmbH (2014) 5 SCC (1)*, it was observed by the Supreme Court that the location of the Seat will determine the Courts that will have exclusive jurisdiction to oversee the arbitration proceedings. It was further held that the seat normally carries with it the choice of that countries’ arbitration/curial law.

26. The term 'Seat of Arbitration' and 'Venue of arbitration' cannot be used interchangeably. In *Inus Mobile Distribution Pvt. Ltd vs. Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678*, it was held that the moment Seat is determined the fact that the seat is at Mumbai would vest the Mumbai Courts with exclusive jurisdiction for the purpose of regulating arbitral proceedings arising out of the agreement between the parties.

27. International Commercial Arbitration involves people of different nationality from different countries. In such circumstances it is not unusual



to hold the meetings or even the hearings in a place other than the designated place of arbitration, either for its own convenience or for the convenience of the parties or their witnesses. It may be more convenient for an Arbitral Tribunal sitting in one country to conduct its hearings in another country, but it does not mean that the Seat of arbitration changes. The Seat of arbitration remains as is initially agreed by or on behalf of the parties.

28. Having discussed the distinct concepts of ‘Seat’ and ‘Venue’, it may be examined how these two concepts have been interpreted and applied in various situations. In Isgec Heavy Engineering. Ltd. vs. Indian Oil Corporation Ltd. & Anr. Arbitration Petition No.164/2001 decided on 21.10.2021 by the Coordinate Bench of this Court, similar Clause came up for interpretation. The parties have agreed for venue of arbitration to be New Delhi, but in the other Clause, they had agreed that all actions and proceedings arising out of/related to the Contract shall lie in the Courts of competent jurisdiction at Guwahati. The Court held that since the Clauses of the Agreement expressly provided that the Courts at Guwahati would have exclusive jurisdiction, it was a contrary indicator coming within the exception as held by the Supreme Court in the case of *DSG SGS Souma* (supra).

29. Similarly, in Cravants Media Pvt. Ltd. vs. Jharkhand State Cooperative Milk Food Federation Pvt. Ltd. & Ors. Arbitration petition 915/2021 decided on 06.12.2021 by the Coordinate Bench, the Dispute Resolution Clause provided that the venue of arbitration shall be Ranchi, but any disputes arising out of this agreement shall be subject to the sole and exclusive jurisdiction of Courts in Delhi. It was held that the intention of the



parties was clear that the seat would be in New Delhi and the Court at New Delhi was held to have the jurisdiction.

30. In the facts in hand, the relevant Clause 48 and Clause 49 read as under:

48. *All or any dispute arising out of touching upon or in relation to the terms of the Lease Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Lessee and whose decision shall be final and binding upon Lessor.*

The Lessor hereby confirms that it shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or Advocate of the Lessee or is otherwise connected to the Lessee and the Lessor confirms that notwithstanding such relationship/ connection, the Lessor shall have no doubts as to the independence or impartiality of the said Arbitrator." That the Civil Courts at Gurgaon and



High Court at Chandigarh alone shall have jurisdiction.

49. *That the Civil Courts at Gurgaon and High Court at Chandigarh alone shall have jurisdiction."*

31. It is quite evident that there is a contraindication in the registered Agreement that while the venue of arbitration may be New Delhi, but the seat of arbitration shall be Gurgaon and High Court at Chandigarh. In the circumstances, it has to be held that this Court has no jurisdiction and it is the Courts at Gurgaon/High Court of Chandigarh which have the exclusive jurisdiction for entertaining the disputes arising out of the registered Lease Agreement.

32. The application is accordingly dismissed and the parties are at liberty to approach the appropriate Court of competent jurisdiction for the relief sought herein.

(NEENA BANSAL KRISHNA)
JUDGE

12th OCTOBER, 2022
S.Sharma/PA

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