

2023:PHHC:154798

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

ARB-342-2021 (O&M)
Date of Decision:-5.12.2023

ZIZO Food India Private Limited ... Petitioner

Versus

DLF Cyber City Developers Limited ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Kunal Mulwani, Advocate for the petitioner.

Mr. Rajeev Anand, Advocate for the respondent.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking appointment of an Arbitrator in terms of provisions of Section 11(6) of Arbitration and Conciliation Act, 1996.
2. It is not in dispute that the respondent - DLF Cyber City Developers Limited had leased out the office premises to the petitioner - ZIZO Food India Private Limited on rent and in respect of which the petitioner had deposited an amount of Rs.56,78,345/- as security. The lease period of the aforesaid premises was of 3 years. According to the petitioner, the petitioner had offered to hand over the possession of the aforesaid premises to the respondent upon expiry of lease in the year 2018, but the respondent did not take over the possession and it was only in the month of June, 2019 that the possession of the aforesaid premises was taken over. It is further the case of the petitioner that despite the fact that the respondent itself chose to defer

taking over possession of the premises in question, the respondent has deducted an amount of Rs.29,42,103/- towards rent for the period beyond December, 2018 and has also deducted the remaining amount towards other dues, whereas no such amount ought to have been deducted and the entire security amount of Rs.56,78,345/- ought to have been returned back. It is further the case of the petitioner that clause No.44 of the lease/agreement dated 18.4.2016 (Annexure P-1) specifically provides for resolving of the dispute by way of arbitration and, as such, a dispute having arisen, the petitioner invoked arbitration and served a notice dated 16.1.2020 (Annexure P-7) upon the respondent, but to no avail.

3. Opposing the petition, learned counsel representing the respondent has submitted that although there was a lease/agreement, which specifically provided for arbitration, but the dispute in the present case is in the nature of a tenant-landlord dispute and is in the nature of recovery of some amount by the tenant from the landlord and which would not be arbitrable particularly in view of ratio of judgment of Hon'ble the Supreme Court rendered in Vidya Drolia Versus Durga Trading Corporation, (2021) 2 SCC 1, Civil Appeal No.2402 of 2019 decided on 14.12.2020. The learned counsel, in this regard, has drawn the attention of this Court to para No.49 of the said judgment, which reads as under:

“49. 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.”

4. This Court has considered the aforesaid submissions and has also gone through the judgment relied upon by learned counsel for the respondent.
5. Learned counsel for the petitioner, in order to rebut the aforesaid contention of the respondent, has placed reliance upon a judgment passed by this Court rendered in ARB No.160 of 2021 titled Rohit Sawhney Versus M/s DLF Power and Services Limited, decided on 9.11.2022, wherein the aforesaid judgment of Hon’ble the Supreme Court has been dealt with.
6. A perusal of the aforesaid judgment passed by Hon’ble the Supreme Court in Vidya Drolia’s case (supra) would indicate that Hon’ble the Supreme Court held that 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 and that such rights and obligations can only be adjudicated by the specified Court. It needs to be mentioned here that in the instant case, it is neither a case of the landlord seeking ejectment nor a case of the landlord seeking any recovery of arrears of lease amount, but it is a case where the tenant is disputing the withheld security amount, which is stated to have been adjusted by the landlord towards rent and other dues. This Court in Rohit Sawhney’s case (supra), wherein also a similar contention had been raised on the strength of Vidya Drolia’s case (supra), held as under:

“19. Keeping in view the nature of controversy involved in the both the cases, I find that the claim of the petitioner in respect of recovery of arrears of lease amount does not fall under the ambit of Rent Act, 1973 as the petitioner is not claiming any eviction of the respondent on the grounds available under the provisions of

Rent Act, 1973. Petitioner has sought recovery of lease amount in terms of the agreement and such dispute does not fall within the exclusive jurisdiction of Rent Controller, rather can be adjudicated by the Arbitrator. Tentative value of the claim as set up by the petitioner in ARB No.160 of 2021 is Rs.47,32,949/- and in ARB No.161 of 2021 is Rs.35,47,343/- along with interest subject to the final adjudication to be done by the Arbitrator.”

7. During the course of arguments, learned counsel for the respondent also submitted that the dispute in question would be covered by provisions of Section 7 of Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as ‘*the Act*’), which reads as under:

“7. Rent which should not have been paid may be recovered.-

Where any sum has, whether before or after the commencement of this Act, been paid which sum by reason of the provisions of the Act should not have been paid, such sum shall, at any time within a period of six months after the date of payment, be recoverable by the tenant from the landlord who received the payment or his legal representative, and may, without prejudice to any other method of recovery, be deducted, within such six months, by such tenant from any rent payable by him to such landlord.

Explanation.- In this section the expression "legal representative" has the same meaning as is assigned to it in the Code of Civil Procedure, 1908, and includes, in the case of joint family property, the joint family of which the deceased person was a member.”

8. Upon perusal of the aforesaid provision, this Court finds that the said provision has been incorporated to enable adjustment of the excessive rent as may have been paid by the tenant, in the future rent to be paid, whereas in the instant case the tenancy had already come to an end. As such, the aforesaid Section 7 of the Act is not attracted to the respondent.

9. In view of the discussion made above, this Court finds that there is a dispute amongst the parties, wherein some factual position is also disputed by the respondent and is arbitrable, particularly in view of the arbitration clause specifically provided in the agreement.
10. The instant petition, as such, is accepted. Accordingly, Mr. G.S.Bajwa, Advocate, is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Mr. G.S.Bajwa, Advocate under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.
11. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.
12. The Arbitrator may conduct proceedings at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
13. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 22.12.2023 at 11:00 A.M. or any other date suitable to all concerned.
14. A copy of this order be sent to the appointed Arbitrator at the given address :
- H.No.319, Pb. & Hry. H.C. Advocates Co.op H.B. Society,
Sector 49-A Chandigarh.
Phone Nos.0172-2674739, 9814103628
15. The petition is accordingly disposed of in the above mentioned terms.

5.12.2023

pankaj

**(Gurvinder Singh Gill)
Judge**Whether speaking /reasoned
Whether ReportableYes / No
Yes / No