

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

ARB-378-2022 (O&M)
Date of Decision:-15.9.2023

Mala Kshetrapal Through Attorney Kanwal Preet Singh Bindra

... Petitioner

Versus

Gunveen Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sonal Anand, Advocate,
Mr. Aayush Sai and Ms. Surbhi Singh, Advocates,
for the petitioner.

None for the respondent.

GURVINDER SINGH GILL, J. (Oral)

CM-13054-CII-2023

The application was filed seeking preponement of the main case. However, the said application has already lost its currency and as such, has been rendered redundant and is disposed of as such.

CM-3088-CII-2023

Learned counsel submits that the instant application seeking service of the respondent by substituted process was filed in January, 2023, but since the respondent has been served as of now, he does not press the instant application.

In view of the above, the instant application is disposed of being not pressed.

ARB-378-2022 (O&M)

1. The instant petition has been filed by the petitioner under Section 11(6) of Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator so as to adjudicate on the dispute between the parties.
2. Notice of the petition had been issued to the respondent. Despite notices having been issued on several occasions the respondent could not be served. However, as per the office report dated 11.9.2023 *dasti* summons have now been received back served upon the respondent through Sonika who is stated to be a member of family of the respondent.
3. Learned counsel has further submitted that as a matter of fact the petitioner had also sent notices to the respondent on 27.10.2022 through his E-mail ID i.e. “gunveensingh25@gmail.com” and that the respondent had previously responded in respect of some other correspondence from the said e-mail ID as would be evident from Annexure P-8 which would show that the E-mail ID is being used by the respondent.
4. Learned counsel has further submitted that the petitioner as a matter of abundant caution also sent information regarding pendency of the present petition through WhatsApp. Learned counsel has today passed on photocopy of E-mail dated 27.10.2022 and also photocopies of the screenshots of the WhatsApp message sent to the respondent.
5. Having regard to the aforestated position particularly the fact that the respondent is stated to have been served physically through a member of his family namely Sonika, it is held that the respondent stands duly served. In this context Order 5 Rule 15 CPC is reproduced hereunder:

15. **Where service may be on an adult member of defendant's family.**-Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on his at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation. A servant is not a member of the family within the meaning of this rule.

6. In view of the aforesaid provisions and also the fact that respondent has also been physically served, and none has appeared on behalf of the respondent, the respondent is proceeded against *ex parte*.
7. A perusal of Clause 21 of the lease deed dated 15.1.2019 (Annexure P-3) would show that the parties had specifically agreed for resolution of the disputes through arbitration. A perusal of notice dated 9.6.2022 (Annexure P-15) would show that vide said notice the respondent had specifically been called upon for initiation of arbitration proceedings, but to no avail.
8. It may here be mentioned that the matter basically is in the nature of a landlord/tenant dispute and Hon'ble Supreme Court in its recent judgment rendered in Vidya Drolia and others Vs. Durga Trading Corporation 2020 SCC Online SC 1018 has held that even such disputes can be adjudicated by way of arbitration. The relevant portion of the judgment is reproduced herein under:

“78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan inter alia observing that allegations of fraud can (*sic* cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability. We have also set aside the Full

Bench decision of the Delhi High Court in HDFC Bank Ltd. which holds that the disputes which are to be adjudicated by the DRT under the DRT Act are arbitrable. They are non-arbitrable.

79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally- would not affect third-party rights or have erga omnes effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator

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would be bound by the provisions, including provisions which enure and protect the tenants.

80. 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.”

9. In view of the specific provision for arbitration in the lease deed and also that the requisite notice has also been issued, the petition merits acceptance and is hereby accepted.
10. Accordingly, Shri R.S.Virk, District and Sessions Judge (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the

declaration to be made by Shri R.S.Virk, District and Sessions Judge (Retd.) 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. As per agreement expressed by learned counsel for the petitioner, for the sake of the convenience of his respective client, as also of the Arbitrator, the venue for the Arbitration shall be 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 30.9.2023 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-7, Aaron Ville,
Fazilpur Road, Sector 48, Gurgaon
Phone Nos.0124-4378988 & 09582255555 .
15. The petition is accordingly disposed of in the above mentioned terms.

15.9.2023

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No