

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(107)

ARB-416-2022

Date of decision:- 01.05.2024

CSJ Infrastructure Private Limited

... Petitioner

Versus

M/s Talwar Jewellery House

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Anil Mehta, Advocate and
Ms. Sukriti Kaur, Advocate for the petitioner.

Mr. Anish Setia, Advocate for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. By way of instant petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”), petitioner has approached this Court for appointment of an Arbitrator to adjudicate the disputes and differences between the parties.

2. Counsel for the petitioner submits that the petitioner leased out a commercial premises to the respondent and a lease deed dated 12.11.2014, Annexure P-2, was executed. Counsel submits that the respondent defaulted in the payment of the lease money and the petitioner issued a notice dated 24.09.2020, Annexure P-5, and part payment was made. Counsel submits that by notice dated 02.11.2020, Annexure P-7, lease was terminated and the petitioner approached the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949 (for short “the Rent Act”) seeking his eviction. Counsel submits that respondent filed an application under Section 10 of the Rent Act for restoration of electricity and the petitioner simultaneously filed

applications under Section 5 and 8, respectively, of the Arbitration Act for referring the dispute to an Arbitrator. Counsel submits that by order dated 05.02.2021, Annexure P-9, both the applications were decided by the Rent Controller and the parties were referred to Arbitration. Counsel submits that an appeal filed by the respondent was dismissed and a revision petition (CR-2682-2021) was dismissed as having been rendered infructuous by this Court vide order dated 03.07.2023. Counsel submits that in the meanwhile, the Rent Controller passed eviction order dated 20.01.2022, Annexure P-8, and the possession of the premises was handed back to the petitioner on 19.02.2022. As the lease amount and maintenance charges w.e.f. 01.03.2020 were due, a notice dated 09.08.2022, Annexure P-12, was served invoking the Arbitration Clause, which has remained unresponded.

3. Upon notice, petition has been contested by the respondent by filing a reply, wherein it has been *inter-alia* submitted that the respondent filed an application under Section 8 of the Arbitration Act for the stay of the eviction proceedings in view of the arbitration clause, which was rejected by order dated 14.09.2021, Annexure P-11. Counsel for the respondent places reliance upon paras 48 and 49 of the judgment of the Supreme Court in ***Vidya Drolia and others Versus Durga Trading Corporation, (2021) 2 SCC 1*** as well as judgment of this Court in ***Mala Kshetrapal through Attorney Kanwal Preet Singh Bindra Versus Gunveen Singh 2023 (4) PLR 339*** to submit that as the dispute falls within the jurisdiction of the Rent Controller, provisions of the Rent Act are applicable and it is not arbitrable.

4. I have heard counsel for the parties and considered their respective submissions.

5. In ***Harpreet Singh Versus M/s International Cars and Motors Ltd. and another, 2009 (2) R.C.R. (Civil) 887***, this Court held that a detailed procedure has been envisaged under the Rent Act giving the grounds on which eviction of a tenant can be claimed at the hands of the landlord. Noticing the claim raised by the petitioner, this Court held that as he is neither claiming enhancement of rent, nor ejection of the respondent, the claim does not even remotely fall with the provisions of the Rent Act. This Court held that as the claim was for recovery of the lease amount, in furtherance of the lease deed, which contains an Arbitration Clause, the dispute was clearly arbitrable. In ***Sunil Kumar Sharma Versus M/s Perfexa Solutions Pvt. Ltd., (2009) SCC Online P&H 889***, this Court reiterated this position and held that as the petitioner is not claiming eviction of the tenant on any of the grounds available to the landlord under the provisions of the Rent Act and has sought recovery of arrears of lease money, such dispute does not fall in the exclusive jurisdiction of the Rent Controller.

6. Still further in ***Rohit Sawhney Versus DLF Power and Services Ltd., (2022) SCC Online P&H 4271***, another Co-ordinate Bench of this Court after noticing the judgment in ***Vidya Drolia's*** case (supra) as also arguments similar to the contentions raised by counsel for the respondent in the instant matter, came to the conclusion that the claim of the petitioner in respect of recovery of arrears of lease does not fall within the ambit of the Rent Act as he is not claiming eviction on any of the grounds available under the said Act. As recovery of lease amount has been sought in terms of the agreement because of the Arbitration Clause, such dispute would be adjudicated by the Arbitrator. The judgment of this Court in ***Mala***

Kshetrapal's case (supra) relied upon by the respondent would not help him as after noticing the Supreme Court's judgment in *Vidya Drolia's* case (supra), this Court referred the parties to the Arbitrator.

7. The present case has to be decided in the light of the above settled legal position. A perusal of the notice, Annexure P-12, whereby Arbitration Clause has been invoked, shows that the petitioner is claiming rent as also maintenance charges. He is not seeking eviction and in any case, premises has been vacated. The dispute, therefore, clearly falls within the jurisdiction of the Arbitrator. In so far as the order, Annexure P-11, passed by the Rent Controller is concerned, its examination shows that the Rent Controller had also come to the conclusion that the petition for eviction has to be tried by him and on that ground dismissed the application filed by the respondent. For the reasons given herein-above, this Court is of the view that the dispute is clearly arbitrable and the prayer made in the petition deserves merits acceptance.

8. Accordingly, petition is allowed. Mr. Justice (Retd.) Harjinder Singh Bhalla, a former Judge of this Court, resident of H.No. 433, Sector 16, Panchkula, Mobile No. 9815709797 is requested to act as an Arbitrator to adjudicate the dispute between the parties, subject to compliance of statutory provisions.

9. Parties are directed to appear before the learned Arbitrator on date, time and place to be fixed by him at his convenience.

10. Liberty is granted to the parties to raise all claims, counter claims, defences, pleas etc. before the Arbitrator.

11. Needless to mention that all the questions arising between the parties in this matter shall remain open for determination in the arbitral

proceedings and any observation made hereinabove will not be binding on the learned Arbitrator.

12. A request letter alongwith a copy of the order be sent to Mr. Justice (Retd.) Harjinder Singh Bhalla.

01.05.2024
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No