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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 28.03.2024

+ **FAO (COMM) 61/2024 and C.M. Nos. 18920-922/2024**

M/S KPAR LED PVT. LTD.

..... Appellant

Through: Ms Renuka Arora, Mr Tejas Chhabra,
Mr Imran Khan and Ms Priya
Chauhan, Advocates.

versus

DN MENDHEKAR & ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL)

1. This appeal is preferred against the judgment and order dated 07.06.2023 passed by the learned District Judge (Commercial Court)-01, North-West District, Rohini Courts, Delhi.
2. There are several impediments in the way of the appellant. One of which is the delay of 224 days in filing the appeal.
3. Concededly, in the interregnum, a decree for possession has been passed by the concerned Court, i.e. District Judge (Commercial Court)-02, North-West District, Rohini Courts, Delhi.
- 3.1 The judgment and decree for possession was rendered on 18.03.2024, based on an application filed by the respondents/ plaintiffs under Order VIII



Rule 10 of the Code of Civil Procedure, 1908 [in short “CPC”].

4. Insofar as the impugned judgment and order is concerned, the appellant seeks to assail the same as it has resulted in dismissal of its application under Section 8 of the Arbitration and Conciliation Act, 1996 [in short “1996 Act”].

5. Insofar as the explanation for delay in filing the appeal is concerned, it is pivoted on the following facts and circumstances.

5.1 The record shows that on 17.05.2023, arguments were heard in the application filed under Section 8 of the 1996 Act by the appellant, i.e. the defendant in the suit. The order sheet of that date, i.e. 17.05.2023, discloses that the predecessor Judge (“First Judge”) had indicated that the matter be posted on 07.06.2023 “for further arguments, if any and/ orders”.

5.2 We may note that on 17.05.2023, respondents/plaintiffs were represented by a counsel, whereas the appellant/defendant was represented by an authorized representative, i.e. one, Mr Sahil.

5.3 The record also discloses that on 07.06.2023, the suit action stood transferred to another Judge (“Second Judge”). This is reflected in the proceedings of 07.06.2023. On that date, none of the parties were represented.

6. As indicated hereinabove, the impugned judgment and order, on the application preferred by the appellant/defendant under Section 8 of the 1996 Act, was also passed by the First Judge on the said date, i.e. 07.06.2023. On the same day, after calling out the matter several times, the second Judge, in the interest of justice, listed the matter for further consideration on 28.07.2023.



7. Significantly, on 28.07.2023, the respondents/ plaintiffs were represented by a counsel, one, Ms Jayanti, who was the proxy for counsel-on-record for the respondents/ plaintiffs.

7.1 Notably, once again, there was no representation on behalf of the appellant/defendant. The proceedings sheet of 28.07.2023 records the submission advanced by Ms Jayanti to the effect that the respondents/ plaintiffs would want to move an application under Order VIII Rule 10 of the CPC. After recording this submission, the second Judge adjourned the matter to 30.09.2023.

8. We are informed by Ms Renuka Arora, learned counsel, who appears on behalf of the appellant/defendant, that since 30.09.2023 was declared a holiday, the matter was thereafter posted for further proceedings on 03.10.2023.

8.1 The proceedings sheet of 03.10.2023 shows that both parties were represented by their respective counsel and upon request being made, the matter was adjourned to 09.01.2024.

9. On 09.01.2024, counsel for the respondents/ plaintiffs presented an application under Order VIII Rule 10 of the CPC. Consequently, the appellant/ defendant was granted four (04) weeks to file a reply *qua* the said application. The matter was made returnable on 07.03.2024.

9.1 As indicated right at the beginning, on the application preferred by the respondents/ plaintiffs under Order VIII Rule 10 of the CPC, a decree for possession has been passed, which is dated 18.03.2024.

10. Ms Arora says that because the matter was transferred from the First Judge to the Second Judge on 07.06.2023, the appellant was not represented



before the Second Judge.

10.1 It is Ms Arora's contention that the appellant/ defendant became aware of the fact that the impugned judgment and order has been passed on the application filed under Section 8 of the 1996 Act only on 09.01.2024.

11. Quite frankly, we are unable to accept the stand taken on behalf of the appellant/defendant by Ms Arora. Clearly, on 07.06.2023, the parties did not present themselves even in the Court of the First Judge. The position insofar as the second Judge was the same.

12. What is inexplicable is that while on the subsequent date, i.e. 28.07.2023, the respondents/ plaintiffs were represented, however, the appellant/ defendant chose not to appear even on that date. This position was remedied only on 03.10.2023 when both parties were represented. However, for some strange reason, [something that we have not been able to decipher], according to Ms Arora the appellant/ defendant became aware of the impugned judgment and order only on 09.01.2024.

12.1 As indicated at the outset, this complicated the matter beyond resolution. The reason being that on 18.03.2024, based on the respondent's/plaintiff's application under Order VIII Rule 10 of the CPC filed on 09.01.2024, a decree of possession has been passed in the suit action.

13. Therefore, whichever way one would look at the explanation given for the delay in approaching this Court, one finds it difficult to condone the same for the reason that in the interregnum, circumstances have changed and any order that we may pass will be detrimental to the interests of the respondents/ plaintiffs.



14. That said, since Ms Arora has, with some rigour, argued the merits of the case as well, the same are considered hereafter.

15 The application preferred under Section 8 of the 1996 Act is founded on Clause 18 of the lease agreement dated 26.11.2019 [hereafter referred to as the “lease agreement”] obtaining between the parties. For convenience, Clause 18 of the lease agreement is set forth hereafter:-

“That if any dispute may arise in regard to interpretation and/or implementation of terms and conditions of this Deed, the same shall be referred to the Arbitrator under Arbitration & Conciliation Act, 1996, whose decision shall be final and binding on both the parties and/or the same may be defended subject to Delhi Courts jurisdictions only.”

15.1 The lease agreement also contains another clause i.e., Clause 20, based on which the respondents/ plaintiffs were, perhaps, advised to file the instant suit action that reads as follows:-

“That if the Lessee violates and infringes the terms and conditions of this agreement, then the Lessor is fully entitled to get the said demised premises vacated through court of law under the suit for specific performance/possession at the costs and expenses of the lessee.”

16. It is Ms Arora’s contention that since Clause 18 in seriatim appears before Clause 20, it should be given precedence. Apart from this, Ms Arora says that there are several reliefs claimed in the suit action which are beyond a pure and simple suit for possession and therefore, in the given circumstances, Clause 18 would have no applicability.

16.1 In support of her submission, Ms Arora has relied upon a judgment of the learned Single Judge, rendered in ***Sunita Garg versus Scraft Product Private Limited***, 2023/DHC/001285. It is Ms Arora’s contention that although the said judgment was rendered in the context of Section 11 of the



1996 Act, since the facts in Sunita Garg's case are *pari materia* with those obtaining in the instant case, it would be applicable to the present appeal as well.

17. We have heard Ms Arora at some length. We are unable to persuade ourselves that this is a matter in which interference is warranted on account of delay or merits. As far as the aspect concerning delay is concerned, we have already given our view hereinabove. The condonation of delay in a matter like this would severely degrade the interests of the respondents/plaintiffs.

17.1 What makes the matter worse is that arrears concerning rent remain outstanding. Ms Arora has not disputed this aspect of the matter.

18. Insofar as the merits of the case are concerned, we are unable to agree with Ms Arora's contention that since Clause 18 appears before the other clause, i.e. Clause 20, it should be given weight.

18.1 According to us, the principle that should apply is one of harmonious construction to the clauses appearing in the same lease whereby, *qua* certain aspects, arbitration is invokable, while for other aspects, the respondents/plaintiffs have the right to approach the court of law.

19. A close perusal of Clause 18 would show that the arbitral mechanism is available to the parties where a dispute arises with regard to "interpretation and/or implementation" of the terms and conditions contained in the lease agreement.

19.1 We have looked at the application filed under Section 8 of the 1996 Act. The appellant/ defendant has not, with specificity, indicated as to which clause of the lease agreement requires interpretation.



19.2 Insofar as implementation is concerned, quite clearly, the appellant/defendant had to allege with reference to clause(s) which remained unimplemented, giving rise to an arbitral dispute, requiring adjudication by an arbitrator.

20. More particularly, Clause 20 of the lease agreement carves out an area which cannot be referred to an arbitrator, that area being a suit action concerning the relief of possession. Had this clause not been agreed to by the parties, perhaps, Ms Arora was right that the matter could have been referred to an arbitrator upon appropriate steps being taken in accordance with the law.

21. The respondents/plaintiffs, having regard to the frame of Clause 20, have filed a suit for possession. Ms Arora's submission that there are reliefs claimed in the suit action beyond possession does not impress us as a careful perusal of the prayers made in the suit would show that these are consequential reliefs which a Court could grant once it concluded that the respondents/ plaintiffs are entitled to possession.

21.1 The relief that the respondents/ plaintiffs have claimed are concerning issuance of a decree of permanent injunction against the appellant/defendant from creating third party rights, relief with regard to arrears of rent/ damages and mesne profits and for interest on the monetary claims made with regard to rent/ damages and mesne profits.

22. Insofar as the judgment rendered by the learned Single Judge in **Sunita Garg's** case is concerned, as indicated hereinabove, it has dealt with an action preferred under Section 11 of the 1996 Act. The learned Single Judge, for the reasons given in the said judgment, referred the parties to an



arbitrator.

22.1 What is not discernible from the judgment is the exact nature of the disputes that the parties may like an arbitral tribunal to rule on.

23. As far as the present case is concerned, the appellant/ defendant had preferred a petition under Section 8 of the 1996 Act, whereby it sought reference of the disputes raised in the suit action to an arbitral tribunal. Clearly, Section 8 of the 1996 Act would not lie in this case in view of the ambit and scope of Clause 20 of the lease agreement, which specifically carves out from the arbitral arena a suit for possession.

24. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned judgment. The appeal is, accordingly, dismissed, both on the ground of delay as well as on merits.

**RAJIV SHAKDHER
(JUDGE)**

**AMIT BANSAL
(JUDGE)**

MARCH 28, 2024

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