



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

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Judgment reserved on: 04.07.2024

Judgment delivered on: 09.07.2024

+ FAO 200/2024 & CAV 286/2024 & CM APPL. 36461-36462/2024

MUKESH KHURANA

.....Appellant

VERSUS

RAHUL CHAUDHARY

.....Respondent

Memo of Appearance

For the Appellant: Mr. Tanmay Mehta, Mr. Akshat Gupta, Mr. Pranav Jain & Ms. Sakshi Tikmany, learned Advocates

For the Respondents: Mr. Lalit Gupta, Ms. Surbhi Mehta & Mr. Ankit Singh, learned Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Appellant has taken exception to order dated 29.04.2024 passed by learned Trial Court whereby his application moved under Section 8 of Arbitration & Conciliation Act, 1996 has been dismissed.
2. For the sake of convenience and as per the nomenclature of the parties in the suit in question, I would be referring appellant herein as 'defendant' and respondent herein as 'plaintiff' in the present order.
3. Facts lie in a very narrow compass.
4. Plaintiff had filed a suit¹ for possession, recovery of arrears of rent, damages/mesne profits along with interest.

¹ Civil Suit No. 523/2022 titled Rahul Chaudhary Vs. Mukesh Khurana
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5. In context of the controversy in question, it is imperative to take note of following relevant averments made by the plaintiff in such plaint:-

- i. Plaintiff claimed himself to be sole and absolute owner of suit property².
- ii. Defendant approached him in the year 2012 and requested him to let out the suit property for residential purpose and accordingly, suit property was let out vide lease deed dated 17.09.2012.
- iii. The duration of the lease was from 01.02.2013 to 31.01.2019 and the rate of rent was fixed as Rs. 2,75,000/- per month.
- iv. Such unregistered lease deed, admittedly, contained arbitration clause.
- v. Lease deed stood terminated on 31.01.2019 due to efflux of time and on the basis of request made by the defendant, the plaintiff agreed to let him occupy the let-out portion of suit property on payment of revised monthly rent of Rs. 3,25,000/-.
- vi. Plaintiff requested the defendant to execute a fresh lease agreement to capture their understanding but he did not come forward and, therefore, in the absence of any fresh written contract between the parties, suit property was let out on month-to-month basis w.e.f. 01.02.2019 for a rent of Rs. 3,25,000/- per month.

² Side Portion of Farm No. 10, Ram Mandir Road, Vasant Kunj, New Delhi
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- vii. There was default in payment of rent and when the arrears accumulated to a substantial amount, keeping in mind the dilatory tactics adopted by the defendant in making payment of rent, plaintiff served him with legal notice dated 08.07.2022 directing him to handover peaceful and vacant physical possession of the suit property and asked him to pay arrears of rent.
- viii. The arrears are sought w.e.f. 01.02.2019.

6. Defendant filed application under Section 8 of the Arbitration and Conciliation Act, 1996 contending that there was a clause in the 'lease agreement' which provided settlement of disputes by an Arbitrator. Contention of the defendant was that after the expiry of the initial term of lease on 31.01.2019, the parties had "orally agreed" to extend the lease deed for another period of three years in terms of Clause 1(a) of the lease deed and thereafter it was further extended, once again, in the similar manner in March, 2022 for a further period of three years till 31.03.2025. Thus, according to the defendant, there were two verbal extensions and since defendant was acknowledged and permitted to continue to use the suit premises as tenant, lease agreement also stood extended and since lease deed did contain arbitration clause in writing, plaintiff ought to have taken steps for appointment of Arbitrator.

7. Learned Trial Court, after hearing both the sides came to the conclusion that there was no subsisting and written arbitration agreement between the parties and dismissed such application.



8. Such order is under challenge.

9. According to Mr. Tanmay Mehta, learned counsel for the defendant (appellant herein), the parties had orally agreed to extend the lease deed for a further period of three years twice and on the basis of such verbal understanding, defendant continued to use the premises in question as tenant and such verbal extensions kept all the terms of the written lease agreement alive and, therefore, Clause 16 of the lease agreement which, even otherwise, constituted a separate and independent agreement, remained in existence, despite efflux of time. It is submitted that the learned Trial Court should have allowed the application moved under Section 8 of Arbitration and Conciliation Act, 1996 and should have referred the dispute to Arbitrator. It is contended that such lease agreement is valid and subsisting agreement and even if there was no fresh written agreement, in view of the clear-cut verbal understanding between the parties, the arbitration clause never perished and since the subject matter of the suit, essentially, pertains to the aforesaid tenancy created under the lease agreement, the impugned order is unsustainable. He has relied upon *Ashapura Mine-Chem Limited Vs. Gujarat Mineral Development Corporation*³, *Lufthansa German Airlines Vs. Airport Authority of India*⁴, *Unique Décor (India) Private Limited Vs. Synchronized Supply Systems Limited*⁵ and *Re: Interplay between*

³ (2015) 8 SCC 193

⁴ (2012) 11 SCC 554

⁵ 2023 SCC OnLine Del 3289
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*Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899*⁶

10. All such contentions have been refuted by Mr. Lalit Gupta, learned counsel for the plaintiff (respondent herein).

11. According to Mr. Lalit Gupta, learned counsel, lease deed had come to end by efflux of time. He contends that plaintiff was always interested in entering into a fresh written agreement but defendant is to be blamed as he never came forward and, therefore, the oral arrangement was merely to the effect that the tenant was permitted to use the suit premises and the rent was agreed @ Rs. 3,25,000/- per month. It is contended that earlier rate of rent was Rs. 2,75,000/- per month and the verbal understanding, evidently, constituted a new contract and, therefore, lease agreement which had earlier been executed in writing stood substituted by said verbal arrangement. According to him, there was neither any extension nor novation of the earlier written lease agreement and since as per the specific statutory provision, arbitration agreement has to be in writing, learned Trial Court was fully justified in dismissing the application in question. In order to buttress his argument, he has referred to *Union of India and Ors. Vs. Roshan Lal Makkar*⁷, *Ravinder Nath Vs. Best Entertainment (P) Ltd.*⁸ and *Unique Décor (India) Private Limited* (supra).

⁶ 2023 SCC OnLine SC 1666

⁷ 2010 SCC OnLine Del 4250

⁸ 2011 SCC OnLine Del 2637

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12. Before appreciating the aforesaid rival contentions, it would be appropriate to have a glimpse over the relevant clauses of said lease deed as well as the statutory provisions.

13. Lease deed was executed between the parties on 17.09.2012. It was, admittedly, never got registered. Lessor is Rahul Chaudhary (plaintiff) and lessee is Mukesh Khurana (defendant). The purpose of user of demised premises has been mentioned as residential with the duration of lease of six years. Relevant clauses of lease deed are as under: -

1. *TERM*

(a) *The term of this Lease be operative for a period of 6 (six) years which shall start on 01.02.2013, and end on 31.01.2019 initially. As in accordance to the present condition of the demised premises, there is requirement of the necessary renovations/suitable alternations in the premises, expenses related to which are to be incurred by the Lessee with respect to renovate the demises premises inhabitable as per the choice and taste of the Lessee. The execution of this Lease deed shall expressly be considered to be the written consent of the Lessor to the Lessee to go ahead with the necessary renovations. The extent, scope and the drawings of the proposed renovations have been separately agreed and signed by the Lessor and the Lessee. The duration of the lease shall be 06 (six) years. However, subject to mutual understanding, consent and acceptance the term of the lease can further be extended for next 03 years with a mutually agreed increase in the monthly rent and on signing a new lease deed for the extended period of three years.*

(b) *That the Lease agreement shall be for a period of 6 (Six) years commencing from 1st February 2013 and shall terminate on 31st January 2019.*

2. *RENT*

(a) *That the rent shall commence and be payable with effect from 1st day of February, 2013, after a fitment period of 120 days for the purpose of renovation, which shall commence from 25.09.2012 date.*



The lessee shall pay to the lessor, the agreed monthly rent of Rs. 2,75,000/- (Rupees Two Lakh Seventy Five Thousand Only) in advance by the 7th of each Calendar Month.

16. DISPUTE RESOLUTION

In case of any difference or dispute arising between the Lessor and the Lessee out of the operation of this lease deed or anyway relating to the rights and liabilities of the Lessor and the Lessee thereunder, shall be settled by arbitration by Mr. Lahet Kumar, Advocate, at his office: C-56, Jangpura Extension, New Delhi-110014, and the decision of the Arbitrator shall be binding upon the Lessor and the Lessee. However, during the pendency of the dispute, in case the Lessee enjoys the benefits of the demised Premises, the Lessee shall not stop payment of Rent and the other charges mentioned herein. The seat of Arbitration shall be Delhi. The provisions of this Article shall survive the term/termination of this Agreement. Each party shall bear its own cost of the arbitration.

17. ENTIRE AGREEMENT

This Lease shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease is hereby superseded. This Lease may be modified only by a writing signed by both Lessor and Lessee.

14. Section 7, Section 8 and Section 16 of the Arbitration & Conciliation Act, 1996 read as under: -

7. Arbitration agreement. —

(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;



(b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

8. Power to refer parties to arbitration where there is an arbitration agreement. —

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof: 2

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

16. Competence of arbitral tribunal to rule on its jurisdiction.—



(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

15. Section 116 of Transfer of Property Act, 1882 reads as under: -

116. Effect of holding over.—*If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.*



16. Admittedly, lease deed was initially executed in writing and the rate of rent was agreed as Rs. 2,75,000/- per month.

17. Lease period was from 01.02.2013 to 31.01.2019.

18. It is also admitted case of the parties that no new lease deed in writing was executed after 31.01.2019.

19. Case of the plaintiff is very specific.

20. In his plaint, he has very categorically averred that the lease stood terminated on 31.01.2019 due to efflux of time and he permitted defendant to use the premises on a revised rent and even requested him to execute fresh lease deed but he did not come forth. It is averred that in the absence of written contract between the parties, the suit property had been thus let out, on month-to-month basis w.e.f. 01.02.2019 with monthly rent of Rs. 3,25,000/-.

21. The aforesaid extracted clause of the lease deed is very clear and as per clause 1(a), duration of the lease was six years but it was decided that subject to mutual understanding, it could be extended for next three years on increased monthly rental and on signing a new lease deed for the extended period of three years.

22. Thus, the parties had, knowingly and consciously, agreed that the 'extension' was subject to signing a new lease deed only.

23. There is no qualm with respect to the fact that any property can be let out on verbal understanding as well. There is no legal embargo in creating verbal tenancy.

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By: SONIA TAPLIYAL
Signing Date: 09.07.2024
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24. Obviously, as per Section 116 of Transfer of Property Act, if any lessee remains in possession after the determination of the lease and the lessor accepts the rent, the lease, in the absence of an agreement to the contrary, is renewed from year to year or from month to month. Since it was not a lease of immovable property for agricultural or manufacturing purpose, it is to be deemed a lease from month-to-month basis, terminable on the part of either of the parties by 15 days' notice.

25. Mr. Tanmay Mehta, learned counsel for defendant has contended that in terms of the earlier lease agreement, defendant was permitted to continue to use the premises as lessee though on increased rent but by necessary inference, the other terms & conditions of the earlier lease deed stood extended and even if there was no execution of fresh lease deed in writing, it cannot be said that the arbitration clause had perished altogether.

26. Thus, the sole question before this Court is to evaluate the exact nature of such verbal arrangement – whether it constitutes a new agreement altogether or whether it is suggestive of mere extension of the earlier agreement, *in toto*.

27. Of course, the subject matter of the suit and the relief sought in the suit is also to be kept in mind.

28. There is no denying the fact that the arbitration agreement, contained in any lease agreement, can always be regarded as an independent agreement and such separate agreement continues to be in



existence, notwithstanding the invalidity and illegality or termination of such contract. Reference in this regard be made to *Re: Interplay* (supra).

29. Even Mr. Gupta, learned counsel for plaintiff does not dispute the aforesaid proposition.

30. Of course, lease agreement in question stood determined by efflux of time.

31. Let's assume a situation. Suppose, the parties do not take any step whatsoever for the purpose of execution of another agreement and also do not go for its extension or novation. In such a situation, though the lease deed stands determined by efflux of time, can it be said that the arbitration clause would be no longer available? The answer has to be in emphatic 'no'. For all purposes, it would still continue to remain in existence. Mere determination or termination of the contract would not *per se* make the arbitration clause disappear from the scene. Else, when any party, even for any valid reason, chooses to determine the agreement, such party or for that matter the other party would not be in any position to take resort to arbitration even for seeking relief pertaining to subject matter of such agreement, on the premise that the contract stood determined and thus arbitration clause also stood extinguished. This can never be the intention of the parties behind incorporating clause related to arbitration. Reference in this regard be also made to *Lufthansa German Airlines* (supra). In that case also, Hon'ble Supreme Court has very categorically observed that merely because the contract, which



contained the arbitration clause, had come to end by the efflux of time, would not itself put to an end the arbitration clause.

32. However, any subsequent development cannot be sidelined.

33. As noted above, according to plaintiff, there was a verbal understanding between the parties and since any tenancy could always have been created on the basis of verbal understanding and since defendant did not come forward for executing fresh lease deed or extension of lease deed in writing, this verbal understanding gave rise to a 'new agreement' altogether. It is contended that the verbal agreement, therefore, has to be assumed as the one creating a 'fresh tenancy' on month-to-month basis keeping in mind the above provision of Transfer of Property Act and since there was a new agreement, the earlier lease agreement stood substituted and replaced and in such peculiar scenario, the Court cannot look into such previous agreement, for any purpose including for invoking arbitration.

34. Let us now come to the subject matter of the suit.

35. As per initial lease agreement, which was executed in writing, lease duration was six years which came to an end on 31.01.2019. As per specific case of plaintiff, he is seeking rent for a period w.e.f. 01.02.2019 and, therefore, it is very much clear that the scope of the suit is beyond the purview of the lease deed. Things could have been somewhat different had the plaintiff was also seeking arrears of the rent for any period falling between 01.02.2013 and 31.01.2019.



36. Mr. Tanmay Mehta, learned counsel for the defendant – appellant has strongly relied upon *Unique Décor (India) Private Limited* (supra). However, in that case, there were very two distinguishing features. Firstly, there were written communications on record whereby the parties had agreed to extend the initial rent agreement and secondly, the subject matter of that suit was seeking recovery of security deposit made in terms of the earlier rent agreement and it was observed that whether such security could be withheld or forfeited was a matter that was clearly in connection with the rent agreement which had otherwise determined by efflux of time and it was in that peculiar situation, parties were referred for arbitration.

37. There cannot be any dispute that when in doubt, it is always appropriate and apposite to refer the matter for arbitration.

38. Undoubtedly, the Arbitrator is also empowered to decide whether there exists any valid arbitration agreement or not. But at the same time, as per Section 8 of Arbitration & Conciliation Act, a matter should be referred to arbitration by a Court of Law *unless it finds that prima facie there is no valid arbitration agreement*.

39. In the case in hand, in context of the peculiar factual backdrop, unfortunately, no valid arbitration agreement is found to be in existence.

40. There was earlier a written lease deed which contained arbitration clause. It came to end by efflux of time. Plaintiff simply created a new tenancy which was on month-to-month basis with increased rate of rent.



Had the parties not taken any action whatsoever, it could have still been assumed that the previous lease deed and the arbitration clause remained alive and intact but since previous agreement was replaced and substituted by an oral agreement, defendant cannot be permitted to fall back upon any of the term contained in the earlier lease agreement, which has now ceased to exist.

41. No real advantage can be dug out from *Ashapura Mine-Chem Limited* (supra). In that case, Hon'ble Supreme Court observed that irrespective of the question or as to the fact, whether the MoU fructified into a full-fledged agreement, having regard to the non-fulfillment of any of the conditions or failure of compliance with any requirement by either of the parties stipulated in the other clauses of MoU, a specific agreement had been entered into by the appellant and the respondent under Clause 27 to refer such controversies as between the parties to the sole arbitrator by consensus. Therefore, when consensus was not reached at between the parties for making the reference, eventually it will be open for either of the parties to invoke Section 11 of the Act and seek for reference of the dispute for arbitration. Also, quite clearly in the above case, controversy clearly fell within the scope and ambit of the agreement which contained arbitration clause but here, as noticed already, tenancy, on month-to-month, basis was created afresh which was verbal in nature and since such verbal tenancy was determined by sending a 15 days' notice, plaintiff can always maintain and pursue the suit seeking possession and arrears of rent for subsequent period and



defendant is not justified in relying upon the arbitration clause which, unfortunately, in the present factual matrix, does not exist any longer.

42. There is no qualm that there was an oral agreement between the parties after the lease deed stood determined on 31.01.2019. Defendant also, very categorically, claimed in his application under Section 8 of Arbitration & Conciliation Act, 1996 that upon expiry of such term, parties had orally agreed to extend the lease deed for a period of three years. It is, however, difficult to believe that oral agreement was respecting the extension. Moreover, the term of the lease deed was very clear and specific and the extension was possible only on signing a new lease deed. Since defendant did not come forward and no fresh lease deed in writing was executed, his contention that verbal arrangement was regarding extension has no substance and is liable to be discarded outrightly.

43. Consequently, there is no merit and substance in the present appeal.

44. Same is dismissed. No order as to costs.

(MANOJ JAIN)
JUDGE

JULY 09, 2024/dr