
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 16 OF 2024

Satishchandra Soman ...Petitioner

Versus

Caltherm Thermostats India Pvt. Ltd. ...Respondent

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**Mr. Aniesh S. Jadhav, a/w Mr. Mahadji Phalke, Shyam K. Singh,
Rushikesh Kekane, for Petitioner.**

**Mr. Ashish Kamat, Senior Counsel a/w Mr. Harsh Moorjani i/b
Negandhi Shah & Himayatullah, for Respondent.**

CORAM : SOMASEKHAR SUNDARESAN, J.

Reserved on : March 27, 2025

Pronounced on : August 12, 2025

Judgement:

Context and Factual Background:

1. This Petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under a lease deed dated August 8, 1988 (***“Lease Deed”***), whereby the Petitioner, Satishchandra Soman (***“Soman”***) has granted a 999-year lease for a monthly rental of Rs. 450

to Caltherm Thermostats India Pvt. Ltd. (“**Caltherm**”) in relation to land admeasuring 60 acres in Pune District.

2. The arbitration agreement is contained in Clause 7 of the Lease Deed (found at Page 44 of the Petition). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

3. It is apparent from the record that the arbitration agreement was invoked by Soman on August 11, 2023 through an advocate. Soman claimed that there has been no payment of the lease rentals at all since 1988 and called upon Caltherm to pay a sum of Rs. ~17.08 lakh along with interest at the rate of 10% per annum compounded; damages of Rs. 75 lakh; legal expenses of Rs. 5 lakh; and return of peaceful possession of the leased land. Violation of Section 108 of the Transfer of Property Act, 1882 (“**Transfer of Property Act**”) was alleged.

4. In response, by letter through an advocate, Caltherm issued a bland denial of all contentions in the invocation notice but also enclosed demand drafts towards the lease rentals from August 1988 to March 2024. What is relevant for purposes of this Petition is that Caltherm took a position that disputes between lessors and lessees are not arbitrable.

5. I have heard Mr. Aniesh Jadhav, Learned Advocate for Soman and Mr. Ashish Kamat, Learned Senior Advocate for Caltherm. That there is an arbitration agreement contained in the validly executed Lease Deed is not in dispute. The core objections by Mr. Kamat is that the disputes are not arbitrable and that the jurisdiction for such disputes is vested exclusively in the Small Causes Court established under the Provincial Small Cause Courts Act, 1887 (“***Small Cause Courts Act***”). Contentions on the premise of limitation are also raised. He would submit that Soman has refused to encash the demand drafts and therefore seeks to recover possession of the leased land, which is not arbitrable.

6. Mr. Jadhav would counter such objections by contending that the Section 11 Court must confine its examination to the existence of an arbitration agreement and cannot delve into the facet of whether the dispute is arbitrable. That apart, he would submit, the Lease Deed is a bilateral lease under the Transfer of Property Act, 1882 and Caltherm is not a protected tenant under the Maharashtra Rent Control Act, 1999 (“***Rent Act***”).

7. Mr. Jadhav would also point to the land in question being open land without any structure on it for it to be regarded as “premises” to attract the provisions of the Rent Act. He would go further to point out

that there is no Small Causes Court in Pune with jurisdiction in the matter and the parties have consciously chosen arbitration as a means of dispute resolution.

8. Moreover, referring to ***Vidya Drolia***¹, he would submit that the issue is no longer *res integra* considering that the Lease Deed is a lease under the Transfer of Property Act, and it is now clear that disputes relating to bilateral lease deeds are arbitrable, involving no declaration of issues *in rem*.

Analysis and Findings:

9. Having heard the parties, I find that I must remain mindful of the scope of examination permitted to the Section 11 Court by explicit intervention by Parliament in the form of Section 11(6A), which necessarily confines the scope of examination to the existence of a validly executed arbitration agreement. Whether or not the disputes involved are arbitrable is a matter left to the Arbitral Tribunal by an appropriate application to be filed under Section 16 of the Act.

10. It is now trite law, with particular regard to the decisions of a seven-judge Bench in the ***Interplay Judgement***² followed by multiple

¹ *Vidya Drolia & Ors. Vs. Durga Trading Corporation – (2021) 2 SCC 1*

² *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

others, including *SBI General³* and *Patel⁴* that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

11. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid Lease Deed to arbitration by a Sole Arbitrator.

12. That apart, the objections raised on behalf of Caltherm by Mr. Kamat are untenable. Mr. Jadhav is perfectly right in pointing to *Vidya Drolia*, in which the Supreme Court has categorically held that the law declared earlier by a two-judge bench in *Himangni⁵* (which was consistent with the submissions made by Mr. Kamat) is not good law. Dealing with a reference to a larger bench, *Vidya Drolia* has categorically ruled that not only are *in personam* bilateral disputes under lease deeds governed by the Transfer of Property Act, arbitrable, but also that the Section 11 Court must not get involved in such scrutiny.

³ *SBI General Insurance Co. Ltd. v. Krish Spinning* – 2024 SCC OnLine SC 1754

⁴ *Ajay Madhusudan Patel v. Jyotrindra S. Patel* – 2024 SCC OnLine SC 2597

⁵ *Himangni Enterprises vs. Kamaljeet Singh Ahluwalia* – (2017) 10 SCC 706

13. **Himangni**, in turn had been based on the law declared in **Natraj Studios**⁶ (involving disputes with a protectee under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947) and **Booz Allen**⁷ (which, while commenting on *in rem* disputes being non-arbitrable, referred to landlord-tenant disputes, but indicated that such non-arbitrability would arise in cases covered by: (i) special statutes; (ii) statutory protection for tenants; and (iii) specific courts with jurisdiction ousting other jurisdictions.

14. Mr. Kamat seeks to place copious reliance on a judgement of a Learned Single Judge of this Court in **Govindram**⁸ which is in fact a case based on the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Clearly, this is overtaken by the law declared in **Vidya Drolia**, which clarified how the law declared in **Natraj Studios**, based on that very legislation, would not apply to disputes relating to bilateral leases under the Transfer of Property Act.

15. Mr. Kamat also relies on another judgement dated February 12, 2024⁹ of a Civil Judge, Junior Division, Daund, Pune (the very area where the leased land is situated) to indicate that there is a designated

⁶ *Natraj Studios (P) Ltd. Vs. Navrang Studios – (1981) 1 SCC 523*

⁷ *Booz Allen & Hamilton Inc. Vs. SBI Home Finance Ltd. – (2011) 5 SCC 532*

⁸ *Govindram Bros. Pvt. Ltd. Vs. Alexander Benedict Joseph – 1995 (2) Bom C.R. 531*

⁹ *Prabhavati Sudhakar Vaidya vs. Ambadas and Anr. – CNR No. MHPU18-001196-2014 in Regular Civil Suit No. 92/2014*

court with jurisdiction in relation to tenancy disputes.

16. None of this is relevant to the situation at hand. ***Vidya Drolia*** did indicate that the Section 11 Court may conduct a *prima facie* examination to cut out the “dead wood” at the threshold, but on the erroneous premise that Section 11(6-A) of the Act had been omitted in 2019. While Section 11(6-A) had been intended to be omitted by Act 3 of 2016 that amended the Act, the provision omitting Section 11(6-A) was never notified. This error was specifically clarified in the ***Interplay Judgement*** including in a separate concurring judgement authored by the Learned Judge who had authored ***Vidya Drolia***. Therefore, judicial discipline demands that no further comment be made by me at this stage.

17. Suffice it to say, that in the facts of this case, *prima facie*, the disputes and differences relate to a bilateral lease deed under the Transfer of Property Act. Such disputes are eminently arbitrable pursuant to the ruling in ***Vidya Drolia***. That apart, the Section 11 Court must confine its examination of issues to the existence of a validly executed arbitration agreement and nothing more.

18. In these circumstances, this Petition deserves to be ***finally disposed of***, without further ado, which is done in terms of the following order:

A] Mr. Yuvraj Narvankar, a learned advocate of this Court is hereby appointed as the Sole Arbitrator (Email : yuvraj.narvankar@yahoo.com) to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;

B] A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Petitioner within a period of one week from the date on which this order is uploaded on the website of this Court. The Petitioner shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;

C] The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

D] The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings,

examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

E] All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

19. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

Costs:

20. Considering the time and energy that the Petitioner has had to expend on merely getting an arbitral tribunal constituted, on dealing with issues raised by Caltherm that are contrary to the law declared by multiple judgements of the Supreme Court, and that too after a seven-

judge bench of the Supreme Court clearly declared the law, in my opinion, costs must follow the event. Therefore, factoring in the scale of the dispute, costs are imposed in a reasonable sum of Rs. 15,000, which shall be paid within four weeks from the upload of this judgement on the website of this Court.

21. It is time for parties engaged in commerce to minimize expending time and resources on legal issues that are already squarely declared by Courts and also save the time of Courts to enable expending precious and limited time and resources on issues that are truly open and not covered by authorities. Considering that litigation often has a free run without any cost for raising of closed issues, the imposition of costs is an imperative so that commercial parties become aware that raising untenable issues comes at a price.

22. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]