

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE DIVISION
ORIGINAL SIDE**

**APO/54/2024
WITH
CS/19/2022**

**SHARAD GOENKA
VS
TARIT MITRA AND ANR**

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Meghnad Dutta, Adv.
Mr. Naresh Balodia, Adv.
Ms. Rashmi Choudhury, Adv.

For the Respondents : Mr. Sakya Sen, Sr. Adv.
Mr. Sukrit Mukherjee, Adv.
Ms. Somali Bhattacharya, Adv.
Ms. Megha Das, Adv.

HEARD ON : 20.04.2026
DELIVERED ON : 20.04.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against an order dated January 30, 2024 passed in GA/2/2022.
2. GA/2/2022 is an application under Sections 8 and 5 of the Arbitration and Conciliation Act, 1996. Such application was filed at

the behest of the appellant before us. The learned Single Judge dismissed such application.

- 3.** Learned Advocate appearing for the appellant refers to the plaint averments. He submits that, the suit is for eviction. Plaintiff's premised the suit for eviction on an agreement of tenancy. He refers to the pleadings in the plaint in this regard. He submits that, three agreements were entered into between the parties on January 27, 2006. All three agreements relate to the same tenancy. One agreement was for tenancy, another was for maintenance and next one was for service. He submits that, none of the three agreements provides any terminus for its expiry. The tenancy agreement provides that it was valid initially for a period of 5 years. The tenancy agreement does not stipulate the effect of the expiry of 5 years period.
- 4.** Learned Advocate appearing for the appellant submits that, all the three agreements dated January 27, 2006 contains arbitration clauses. According to him, as heirs and legal representatives of the deceased agreement holder, in all the three agreements, the plaintiffs are bound by the terms and conditions of such agreements. The plaintiffs are, therefore, bound by the arbitration clauses in the three agreements.
- 5.** Learned Advocate appearing for the appellant submits that, the learned Trial Judge, erred in dismissing the application under Sections 8 and 5 of the Act of 1996 on the ground that, three agreements expired by efflux of time. He submits that, the tenancy agreement does not stipulate a terminus of the same.

6. Learned Senior Advocate appearing for the respondents submits that, the appellant, initially filed a suit for specific performance of an agreement for sale. He refers to the plaint of the suit filed by the appellant before the learned City Civil Court at Calcutta. He submits that, none of the three agreements which are the subject matter of the present suit, can be construed to be agreement for sale.
7. Learned Senior Advocate appearing for the respondents submits that, the subject matter of the suit and the subject matter of the arbitration agreement are different. He submits that, the disputes that are the subject matter of the suit are not covered by the arbitration agreement between the parties.
8. Learned Senior Advocate appearing for the respondents submits that, a month by month tenancy was entered into between the parties. The subject agreements cannot be relied upon to decide the subject matter of the suit as, those agreements, did not create the monthly tenancies.
9. Learned Senior Advocate appearing for the respondent submits that, in the suit filed, the respondents filed an application under Chapter XIII A of the Original Side Rules. He draws the attention of the Court to the stand taken by the appellant in the affidavit-in-opposition filed to such application under Chapter XIII A of the Original Side Rules. He submits that, there, the respondents took the stand that, the subject agreements were manufactured.
10. Relying upon the **(2020) 17 SCC 419 (Zenith Drugs and Allied Agencies Private Limited Vs. Nicholas Piramal India Limited)**,

learned Senior Advocate appearing for the respondents submits that, when, the subject matter is altered by novation, the arbitration clause initially entered into will not cover the subject matter of the subsequent suit. According to him with the expiry of the tenancy agreement by efflux of time, a new tenancy came into being and therefore the arbitration agreement is no longer enforceable.

- 11.** Materials placed on record establish that, the appellant before us, as the plaintiff, filed Title Suit No. 433 of 2019 in the City Civil Court at Calcutta. The suit was for declaration, permanent and mandatory injunction as described in the plaint of such suit. It relates to the same immovable property as is the subject matter of the present suit from which, the appeal arises.
- 12.** In the plaint of such title suit, the appellant pleaded that, there was an agreement dated January 25, 2006 between the appellant and the predecessor-in-interest of the respondents with regard to the immovable properties involved.
- 13.** In the present suit, three agreements are pleaded by the respondents as plaintiffs are dated January 27, 2006. We find pleadings with regard to such agreement in paragraph 3 of the plaint of the instant suit.
- 14.** The dates of the agreements being different, the contention that, the appellant took a different stand in its suit before the learned City Civil Court at Calcutta and before this Hon'ble Court, cannot be accepted.

- 15.** So far as the three agreements dated January 27, 2006 are concerned and which are involved in the present suit, in the affidavit-in-opposition filed by the appellant, to the application under Chapter XIII A of the Original Side Rules, the appellant took a stand that “the said three agreements all dated 27th January, 2006 are manufactured”.
- 16.** The same appellant in its application under Sections 8 and 5 of the Act of 1996 is seeking to enforce the arbitration clauses contained in the three agreements. Given such averments, we requested the learned Advocate appearing for the appellant to clarify the stand of the appellant so far as the three agreements are concerned.
- 17.** Learned Advocate appearing for the appellant in response to our query submits that, the stand with regard to the validity and legality of the three agreements concerned, as raised by the appellant in answer to the application under Chapter XIII A of the Original Side Rules, should be decided by that Court. However, since, there are arbitration clauses in the three agreements, the subject matter of the suit should be referred to arbitration.
- 18.** With respect, we are not in a position to accept such stand of the appellant before us. In an application under Section 8 of the Act of 1996, the appellant is required to establish that there exists a valid arbitration agreement between the parties to the suit, covering the subject matter of the suit. The appellant is not taking a stand that, the agreements concerned, which contain the arbitration clauses are valid. In the affidavit-in-opposition, to the Chapter XIII A application,

the appellant took a stand that, the documents are manufactured. That stand goes to the root of the execution of the document itself. Therefore, the existence of the arbitration agreement is denied by the appellant. Moreover, in the same affidavit-in-opposition and in the same paragraph, the appellant went ahead to take a stand that, no proper stamp duty was paid in respect of such agreements and that, such agreement was not registered which is a mandatory requirement for tenancy for more than one year. On such aspect also, the appellant took a stand that, the agreements cannot be looked into by the Court and considered without proper stamp duty, not being paid.

19. The validity of the agreement, which, the appellant puts forth in its application under Section 8 of the Act of 1996, is contested by the appellant itself. It is not accepting that it executed such documents. Therefore, it would not be proper for a Court to rely on such agreements which are contested by the appellant itself, in an application made at the behest of the appellant, to refer the disputes forming the subject matter of the suit to arbitration.

20. Zenith Drugs and Allied Agencies Private Limited (supra) concerns an application made under Section 8 of the Arbitration and Conciliation Act, 1996 in a suit filed to enforce a compromise arising out of a pre-existing contract. In the facts and circumstances of such case, it was held, an application under Section 8 of the Act of 1996 can only be made if the subject matter of the suit is also the same as the subject of the arbitration.

- 21.** Since, we are of the view that, the applicant under Section 8 of the Act of 1996 itself not accepting the existence of the agreements in which, the arbitration clause exists, the question of invoking Section 8 of the Act of 1996 at the behest of such party does not arise.
- 22.** For the reasons as noted above, we are not minded to interfere with the impugned judgment and order.
- 23.** APOT/54/2024 is dismissed, without any order as to costs.

(DEBANGSU BASAK, J.)

- 24.** I agree.

(MD. SHABBAR RASHIDI, J.)