

Himangni Enterprises vs Kamaljeet Singh Ahluwalia on 12 October, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5137, AIR 2018 SC (CIVIL) 329, (2017) 4 JLJR 372, (2018) 1 JCR 11 (SC), (2017) 179 ALLINDCAS 119 (SC), (2017) 12 SCALE 565, (2018) 1 WLC(SC)CVL 347, (2018) 1 CAL HN 15, (2018) 1 PAT LJR 1, (2017) 2 RENCRA 517, (2018) 1 ALL RENTCAS 522, (2017) 2 CLR 1018 (SC), (2017) 2 RENTLR 576, 2017 (10) SCC 706, (2017) 6 ARBILR 35, 2018 (127) ALR SOC 30 (SC)

Author: Abhay Manohar Sapre

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 16850 OF 2017
(@ S.L.P.(c) No.27722/2017)
(D.No.21033/2017)

Himangni EnterprisesAppellant(s)

VERSUS

Kamaljeet Singh Ahluwalia ...Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1) Delay condoned. Leave granted.

2) This appeal is filed by the defendant against the final judgment and order dated 27.07.2016 passed by the High Court of Delhi at New Delhi in F.A.O. No.344 of 2016 whereby the High Court dismissed the appeal filed by the appellant herein and upheld the order dated 11.04.2016 of the Additional District Judge-05, South East Dist., Saket Courts, New Delhi in C.S. No. 132 of 2016.

3. The question involved in the appeal is short. It arises on the facts, which lie in a narrow compass.

4. The question, which arises for consideration in this appeal, is whether the two Courts below were justified in rejecting the application filed by the appellant herein under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") in a pending civil suit filed by the respondent seeking appellant's eviction from the premises in question and for claiming some ancillary reliefs therein.

5. The appellant is the defendant whereas the respondent is the plaintiff in a civil suit out of which this appeal arises.

6. The respondent has filed a suit being C.S. No. 132/2016 against the appellant on 17.08.2015 in the Court of ADJ-05, South East Dist., Saket Courts, New Delhi.

7. The suit is filed essentially to seek appellant's eviction from Shop No. SF-2 measuring around 317.29 Sq. ft. situated at 2 nd floor in a Commercial Complex known as "Omaxe Square" in Block No.14, Non-Hierarchy Commercial Center, District Center Jasola, New Delhi (hereinafter referred to as "the suit premises") and for recovery of unpaid arrears of rent and grant of permanent injunction.

8. According to the respondent, the suit premises was leased out to the appellant vide lease deed dated 31.08.2010 executed between the appellant and the respondent's predecessor-in-title for a period of three years from 07.10.2010. The lease period stipulated in the lease deed, however, expired by efflux of time and no fresh lease deed was executed thereafter between the parties for extension of the time period. The appellant's tenancy was monthly and started from 1st of every month and ended on the last day of each month.

9. The appellant, on being served with the notice of the civil suit, filed an application under Section 8 of the Act. According to the appellant, since the suit was founded on the lease deed dated 31.08.2010, which contained an arbitration clause (9.8) for resolving the dispute arising out of the lease deed between the parties, and when admittedly the disputes had arisen in relation to the suit premises, the same were governed by the terms of the lease deed. It was contended that the civil suit to claim the reliefs in relation to the suit premises was, therefore, not maintainable and, in fact, barred and the remedy of the respondent to get such disputes resolved is to submit themselves to the jurisdiction of the arbitrator by taking recourse to the procedure prescribed in clause 9.8 of the lease deed.

10. In other words, the contention of the appellant, in support of their application, was that since the disputes for which the civil suit is filed arise out of the lease deed dated 31.08.2010 which contained an arbitration clause (9.8) for their adjudication through the arbitrator, the civil suit to get such disputes decided by the Civil Court was barred.

11. The respondent opposed the application essentially on two grounds. First, the lease period initially fixed in the lease deed having come to an end by efflux of time, such lease deed was no longer enforceable by the appellant and second, the disputes, which are subject matter of the civil suit, are incapable of being referred to an arbitrator. It was contended that the respondent has, therefore, rightly filed the civil suit in Civil Court seeking appellant's eviction from the suit premises

and other ancillary reliefs arising therefrom and the same has to be tried by the Civil Court.

12. The Trial Court, vide order dated 11.04.2016, upheld the objections of the respondent and dismissed the appellant's application. The defendant, felt aggrieved, filed appeal before the High Court.

13. By impugned judgment, the High Court dismissed the appeal and upheld the order of the Trial Court giving rise to filing of the special leave to appeal by the defendant (appellant herein) before this Court.

14. Heard Ms. Geeta Luthra, learned senior counsel for the appellant and Mr. Dhruv Mehta, learned senior counsel for the respondent.

15. Though learned senior counsel for the appellant (defendant) argued the point involved in the appeal at great length and also cited several decisions such as, Anjuman Taraqqi Urdu (Hind) vs. Vardhaman Yarns & Threads Ltd., ILR(2012) II Delhi 770, M/s Lovely Obsessions Pvt. Ltd., Gurgaon vs. M/s Sahara India Commercial Corp. Ltd. Gurgaon, (2012) SCC Online P&H 11449, Reva Electric Car Company Pvt. Ltd. vs. Green Mobil, (2012) 2 SCC 93, Harishchandra Hegde vs. State of Karnataka & Ors., (2004) 9 SCC 780 and Khadi & Village Industries Commission vs. Saraswati Ramkrishna Dalmia & Ors., (2013) 3 Mh.L.J. 250 contending that the application filed by the appellant under Section 8 of the Act should have been allowed by the Courts below and the respondent should have been relegated to submit themselves to the jurisdiction of an arbitrator in terms of clause 9.8 of the lease deed for determination of the disputes by the arbitrator instead of filing the civil suit for their determination by the Civil Court.

16. In reply, learned senior counsel for the respondent(plaintiff) supported the impugned judgment and contended that it does not call for any interference and hence the appeal deserves dismissal.

17. Having heard learned senior counsel for the parties at length and on perusal of the record of the case, we find no merit in the appeal.

18. In our considered opinion, the question involved in the appeal remains no longer res integra and stands answered by two decisions of this Court in Natraj Studios (P) Ltd. vs. Navrang Studios & Another, 1981(1) SCC 523 and Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532 against the appellant and in favour of the respondent.

19. So far as Natraj Studio's case (supra) is concerned there also, the landlord had filed a civil suit against the tenant in the Small Causes Court, Bombay claiming therein the tenant's eviction from the leased premises. There also, the tenant was inducted pursuant to "leave and license" agreement executed between the landlord and the tenant.

20. The tenant filed an application under Section 8 of the Arbitration Act, 1940 contending therein that since the "leave and license" agreement contained an arbitration clause for resolving all kinds of disputes arising between the parties in relation to the "leave and license" agreement and the

disputes had arisen between the parties in relation to the “leave and license” agreement, such disputes could only be resolved by the arbitrator as agreed by the parties in the agreement. It was contended that the civil suit was, therefore, not maintainable and the disputes for which the suit has been filed be referred to the arbitrator for their adjudication.

21. This Court (Three Judge Bench) speaking through Justice O. Chinnappa Reddy rejected the application filed by the tenant under Section 8 of the Act and held, inter alia, that the civil suit filed by the landlord was maintainable. It was held that the disputes of such nature cannot be referred to the arbitrator.

22. This is what Their Lordships held as under:

“24. In the light of the foregoing discussion and the authority of the precedents, we hold that both by reason of Section 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and by reason of the broader considerations of public policy mentioned by us earlier and also in *Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain*, the Court of Small Causes has and the arbitrator has not the jurisdiction to decide the question whether the respondent-licensor landlord is entitled to seek possession of the two Studios and other premises together with machinery and equipment from the appellant-licensee tenant. That this is the real dispute between the parties is abundantly clear from the petition filed by the respondents in the High Court of Bombay, under Section 8 of the Arbitration Act seeking a reference to Arbitration. The petition refers to the notices exchanged by the parties, the respondent calling upon the appellant to hand over possession of the Studios to him and the appellant claiming to be a tenant or protected licensee in respect of the Studios. The relationship between the parties being that of licensor-landlord and licensee tenant and the dispute between them relating to the possession of the licensed demised premises, there is no help from the conclusion that the Court of Small Causes alone has the jurisdiction and the arbitrator has none to adjudicate upon the dispute between the parties.”

23. Yet in another case of *Booz Allen & Hamilton Inc. (supra)*, this Court (two Judge Bench) speaking through R.V.Raveendran J. laid down the following proposition of law after examining the question as to which cases are arbitrable and which are non-arbitrable:

“36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.” (emphasis supplied)

24. Keeping in view the law laid down by this Court in aforementioned two decisions and applying the same to the facts of this case, we have no hesitation to hold that both the Courts below were right in dismissing the appellant's application filed under Section 8 of the Act and thereby were justified in holding that the civil suit filed by the respondent was maintainable for grant of reliefs claimed in the plaint despite parties agreeing to get the disputes arising therefrom to be decided by the arbitrator.

25. Learned counsel for the appellant, however, argued that the provisions of the Delhi Rent Act, 1955 are not applicable to the premises by virtue of Section 3(c) of the Act and hence the law laid down in the aforementioned two cases would not apply. We do not agree.

26. The Delhi Rent Act, which deals with the cases relating to rent and eviction of the premises, is a special Act. Though it contains a provision (Section

3) by virtue of it, the provisions of the Act do not apply to certain premises but that does not mean that the Arbitration Act, ipso facto, would be applicable to such premises conferring jurisdiction on the arbitrator to decide the eviction/rent disputes. In such a situation, the rights of the parties and the demised premises would be governed by the Transfer of Property Act and the civil suit would be triable by the Civil Court and not by the arbitrator. In other words, though by virtue of Section 3 of the Act, the provisions of the Act are not applicable to certain premises but no sooner the exemption is withdrawn or ceased to have its application to a particular premises, the Act becomes applicable to such premises. In this view of the matter, it cannot be contended that the provisions of the Arbitration Act would, therefore, apply to such premises.

27. We have gone through the decisions cited by the learned counsel for the appellant in support of her contention. Having gone through the same, we are of the considered opinion that firstly, some decisions are rendered by the High Court; Secondly, remaining decisions are distinguishable on facts and lastly, in the light of two authoritative decisions of this Court, which are directly on the point and continue to hold the field, no reliance can be placed by the learned counsel for the appellant on any decision of the High Court. Indeed, any such decision of the High Court, which has taken view contrary to the view of this Court, the same stands overruled. Such is the case here.

28. We, therefore, need not deal with any other submissions of learned counsel for the appellant which, in our opinion, really do not arise in the light of what we have held supra.

29. In view of foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed.

30. We accordingly direct the concerned Civil Court which is seized of the civil suit to proceed with the trial of the suit on the merits in accordance with law uninfluenced by any of our observations made herein, expeditiously.

.....J. [R.K. AGRAWAL]

.....J. [ABHAY MANOHAR SAPRE] New Delhi;

October 12, 2017