

Supreme Court of India

Ranjit Kumar Bose & Anr vs Anannya Chowdhury & Anr on 7 March, 1947

Author: A K Patnaik

Bench: A.K. Patnaik, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3334 OF 2014
(Arising out of SLP (C) No. 15165 of 2010)

Ranjit Kumar Bose & Anr.

... Appellants

Versus

Anannya Chowdhury & Anr.

... Respondents

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

Facts of the Case

2. The appellants have inducted the respondents as tenants in respect of a shop room measuring 600 sq. feet at HA-3, Sector-3, Salt Lake City, Kolkata, and paying a monthly rent to the appellants. In respect of the tenancy, the appellants and the respondents have executed an unregistered tenancy agreement which has been notarized on 10.11.2003. On 06.03.2008, the appellants, through their Advocates, served a notice on the respondents terminating the tenancy and asking them to vacate the shop premises and the notice stated that after April, 2008 the relationship of landlord and tenant between the appellants and the respondents shall cease to exist and the respondents will be deemed to be trespassers liable to pay damages at the rate of Rs.500/- per day for wrongful occupation of the shop. The respondents, however, did not vacate the shop premises and the appellants filed Title Suit No.89 of 2008 against the respondents for eviction, arrears of rent, arrears of municipal tax, mesne profit and for permanent injunction in the Court of the Civil Judge (Senior Division), 2nd Court at Barasat, District North 24-Parganas in the State of West Bengal. In the suit, the respondents filed a petition under Section 8 of the Arbitration and Conciliation Act, 1996 (for short 'the 1996 Act') stating therein that the tenancy agreement contains an arbitration agreement in clause 15 and praying that all the disputes in the suit be referred to the arbitrator. By order dated 10.06.2009, the learned Civil Judge dismissed the petition under Section 8 of the 1996 Act and posted the matter to 10.07.2009 for filing of written statement by the defendants

(respondents herein).

3. Aggrieved, the respondents filed an application (C.O. No.2440 of 2009) under Article 227 of the Constitution of India before the Calcutta High Court and contended that the tenancy agreement contains an arbitration agreement in Clause 15, which provides that any dispute regarding the contents or construction of the agreement or dispute arising out of the agreement shall be settled by Joint Arbitration of two arbitrators, one to be appointed by the landlords and the other to be appointed by the tenants and the decision of the arbitrators or umpires appointed by them shall be final and that the arbitration will be in accordance with the 1996 Act and, therefore, the learned Civil Judge rejected the petition of the respondents to refer the disputes to arbitration contrary to the mandate in Section 8 of the 1996 Act. The appellants opposed the application under Article 227 of the Constitution of India contending inter alia that the dispute between the appellants and the respondents, who are landlords and tenants respectively, can only be decided by a Civil Judge in accordance with the provisions of the West Bengal Premises Tenancy Act, 1997 (for short 'the Tenancy Act'). By the impugned judgment dated 16.04.2010, the High Court has held that in view of the decisions of this Court in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* [(2003) 6 SCC 503], *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* [(2007) 3 SCC 686] and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavalata & Anr.* [(2009) 10 SCC 103], the Court has no other alternative but to refer the disputes to the arbitrators to be appointed by the parties as per the arbitration agreement. The High Court, however, has observed in the impugned judgment that if any dispute is raised regarding arbitrability of such dispute before the arbitral tribunal, such dispute will be decided by the arbitral tribunal. Contentions of the learned counsel for the parties

4. Learned counsel for the appellants submitted that in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums*, *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavalata & Anr.* (supra), this Court has not decided as to whether the dispute between the landlord and the tenant could be decided by the arbitrator in accordance with the arbitration agreement between the landlord and the tenant and the provisions of the 1996 Act or by the appropriate forum in accordance with the law relating to tenancy. He cited the decision of this Court in *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.* [(1981) 1 SCC 523], wherein it has been held that Court of Small Causes alone and not the arbitrator as a matter of public policy has been empowered to decide disputes between the landlord and the tenant under the Bombay Rent Act. He also relied on the observations of this Court in *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors.* [(2011) 5 SCC 532] in para 36 at page 547 that eviction or tenancy matters governed by a special statute where the tenant enjoys statutory protection against eviction can be decided by specified courts conferred with the jurisdiction to grant eviction and such disputes are non-arbitrable.

5. Learned counsel for the respondents, on the other hand, relied on the decisions of this Court in *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums*, *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* and *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavalata & Anr.* (supra) to support the impugned judgment. He submitted that there can be no doubt that the Tenancy Act will determine the rights of the landlord and the tenant in this

case, but when there is an arbitration agreement between a landlord and a tenant, instead of the Civil Judge, the arbitrator will decide the disputes between the landlord and the tenant by applying the provisions of the Tenancy Act.

Findings of the Court

6. The relevant portion of Section 6 of the Tenancy Act 1997 is quoted hereinbelow:

“6. Protection of tenant against eviction.—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, except on a suit being instituted by such landlord on one or more of the following grounds:—” It will be clear from the language of Section 6 of the Tenancy Act 1997 quoted above that ‘notwithstanding anything to the contrary contained in any contract’, no order or decree for recovery of possession of any premises shall be made by the Civil Judge having jurisdiction in favour of the landlord against the tenant, ‘except on a suit being instituted by such landlord’ on one or more grounds mentioned therein. It is, thus, clear that Section 6 of the Tenancy Act overrides a contract between the landlord and the tenant and provides that only the Civil Judge having jurisdiction can order or decree for recovery of possession only in a suit to be filed by the landlord.

7. Part-I of the 1996 Act is titled ‘arbitration’. Section 8 of the 1996 Act is extracted hereinbelow:

“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 so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

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

(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.” A reading of sub-section (1) of Section 8 of the 1996 Act will make it clear that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall refer the parties to arbitration. Without ‘an arbitration agreement’, therefore, a judicial authority cannot refer the parties to arbitration.

8. In this case, there is an arbitration agreement in clause 15 of the tenancy agreement, which provides that any dispute regarding the contents or construction of the tenancy agreement or dispute arising out of the tenancy agreement shall be settled by arbitration in accordance with the provisions of the 1996 Act. But the words ‘notwithstanding anything in any contract’ in Section 6 of the Tenancy Act, will override the arbitration agreement in clause 15 of the tenancy agreement where a suit for recovery of possession of any premises has been filed by a landlord against the

tenant. Such a suit filed by the landlord against the tenant for recovery of possession, therefore, cannot be referred under Section 8 of the 1996 Act to arbitration. In fact, sub-section (3) of Section 2 of the 1996 Act expressly provides that Part-I which relates to 'arbitration' where the place of arbitration is in India shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Section 6 of the Tenancy Act is one such law which clearly bars arbitration in a dispute relating to recovery of possession of premises by the landlord from the tenant. Since the suit filed by the appellants was for eviction, it was a suit for recovery of possession and could not be referred to arbitration because of a statutory provision in Section 6 of the Tenancy Act.

9. In *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.* (supra), there was a leave and licence agreement between Natraj Studios (P) Ltd. and Navrang Studios. On 28.04.1979, Navrang Studios purported to terminate the leave and licence agreement and called upon Natraj Studios (P) Ltd. to hand over the possession of the studios to them. Natraj Studios (P) Ltd. filed a suit on 08.05.1979 in the Court of Small Causes, Bombay, for a declaration that Natraj Studios (P) Ltd. was a monthly tenant of the studios and for fixation of standard rent and other reliefs. Navrang Studios filed a written statement contesting the suit. Natraj Studios (P) Ltd. filed an application under Section 33 of the Arbitration Act, 1940 in the Bombay High Court for a declaration that the arbitration clause in the leave and licence agreement was invalid and inoperative. The High Court dismissed the application. Thereafter, Navrang Studios filed an application under Section 8 of the Arbitration Act, 1940 for appointment of a sole arbitrator to decide the disputes and differences between the parties under the leave and licence agreement. The High Court allowed the application and appointed a sole arbitrator. On appeal being carried to this Court by Natraj Studios (P) Ltd., this Court held that Section 28(1) of the Bombay Rent Act vests an exclusive jurisdiction in the Court of Small Causes to entertain and try any suit or proceeding between a landlord and tenant relating to the recovery of rent or possession of any premises. This Court further held that the Bombay Rent Act was a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways and public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted and it follows that arbitration agreements between parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a court of law. This decision in *Natraj Studios (P) Ltd. v. Navrang Studios & Anr.* (supra) supports our conclusion that the arbitration agreement between the landlord and tenant has to give way to Section 6 of the Tenancy Act which confers exclusive jurisdiction on the Civil Judge, to decide a dispute between the landlord and the tenant with regard to recovery of possession of the tenanted premises in a suit filed by the landlord.

10. The High Court, however, has relied on three decisions of this Court to hold that it is for the arbitral tribunal to decide under Section 16 of the 1996 Act whether it has the jurisdiction to decide the dispute between the appellants and the respondents. We may distinguish those cases from the facts of the present case.

11. In *Hindustan Petroleum Corporation Ltd. v. Pinkcity Midway Petroleums* (supra), Hindustan Petroleum Corporation Ltd. stopped supply of petroleum products to the dealer and the dealer filed a civil suit in the Court of Civil Judge, Rewari, for a declaration that the order stopping supply of

petroleum product was illegal and arbitrary. Hindustan Petroleum Corporation Ltd. filed a petition under Section 8 of the 1996 Act praying for referring the dispute pending before the Civil Court to the arbitrator as per Clause 40 of the Dealership Agreement. The Civil Judge dismissed the petition and Hindustan Petroleum Corporation Ltd. filed a revision before the High Court, but the High Court also dismissed the revision. Hindustan Petroleum Corporation Ltd. thereafter filed an appeal before this Court and this Court held that Section 8 of the 1996 Act in its clear terms mandates a judicial authority before whom an application is brought in a matter, which is the subject-matter of an arbitration agreement, to refer such parties to the arbitration. In this case, the arbitration agreement contained in Clause 40 of the Dealership Agreement was not hit by a statutory provision like the one in Section 6 of the Tenancy Act providing that the dispute shall be decided only by a Civil Judge in a suit notwithstanding a provision in the contract to the contrary.

12. In *Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens & Ors.* (supra), the parties had entered into a memorandum of understanding in relation to the business of export and the memorandum of understanding contained an arbitration clause that in case of any dispute between the two parties, the same shall be referred to arbitration, by two arbitrators, nominated by each of the parties and the award of the arbitrators shall be binding on both the parties. Agri Gold Exims Ltd. filed a suit in the District Court at Vijayawada for recovery of an amount of Rs.36,14,887/- and for future interest on a sum of Rs.53,79,149/-. Sri Lakshmi Knits & Wovens filed an application under Section 8 of the 1996 Act for referring the dispute to the arbitral tribunal in terms of the arbitration agreement contained in the memorandum of understanding. This application, however, was dismissed by the District Court, but on revision the High Court reversed the order of the District Court and referred the parties to arbitration. Agri Gold Exims Ltd. carried an appeal to this Court and this Court reiterated that Section 8 of the 1996 Act is peremptory in nature and in a case where there exists an arbitration agreement, the Court is under obligation to refer the parties to arbitration in terms of the arbitration agreement, relying on *Hindustan Petroleum Corporation Ltd.* (supra). In this case again, there was no statutory bar to arbitration like the one in Section 6 of the Tenancy Act providing that the dispute can only be decided by the Civil Judge in a suit.

13. In *Branch Manager, Magma Leasing & Finance Limited & Anr. v. Potluri Madhavalata & Anr.* (supra), Magma Leasing Limited Public United Company (for short 'Magma') and Smt. Potluri Madhavalata (for short 'hirer') entered into an agreement of hire-purchase for the purchase of a motor vehicle whereunder the hirer was required to pay hire- purchase price in 46 instalments. When the instalments were not paid, Magma seized the vehicle and sent a notice to the hirer saying that the hire-purchase agreement has been terminated. The hirer then filed a suit against Magma in the Court of the Senior Civil Judge for recovery of possession of the vehicle and for restraining Magma from transferring the vehicle. Magma filed a petition before the Civil Judge under Section 8 of the 1996 Act praying that the dispute raised in the suit be referred to an arbitrator in terms of Clause 22 of the Hire-Purchase Agreement, which contained the arbitration agreement. This Court reiterated that Section 8 is in the form of legislative command to the court and once the prerequisite conditions are satisfied, the Court must refer the parties to arbitration. In this case again, there was no statutory bar to arbitration like Section 6 of the Tenancy Act providing that the dispute can only be decided by a Civil Judge.

14. The High Court, therefore, was not correct in coming to the conclusion that as per the decisions of this Court in the aforesaid three cases, the Court has no alternative but to refer the parties to arbitration in view of the clear mandate in Section 8 of the 1996 Act. On the contrary, the relief claimed by the appellants being mainly for eviction, it could only be granted by the "Civil Judge having jurisdiction" in a suit filed by the landlord as provided in Section 6 of the Tenancy Act. The expression "Civil Judge having jurisdiction" will obviously mean the Civil Judge who has jurisdiction to grant the other reliefs: decree for arrears of rent, decree for recovery of arrears of proportionate and enhanced municipal taxes, a decree for mesne profits and a decree for permanent injunction claimed in the suit.

15. For the aforesaid reasons, we allow this appeal and set aside the impugned judgments of the High Court and the Civil Judge, Senior Division, and remand the matter to the learned Civil Judge, Senior Division, who will now give an opportunity to the respondents to put in their written statements and thereafter proceed with the suit in accordance with law. Considering the peculiar facts of this case, there shall be no order as to costs.

.....J.

(A. K. Patnaik)J.

(V. Gopala Gowda) New Delhi, March 07, 2014.
