

Shrey Chouksay vs Raghuwar Dayal Singhal on 22 September, 2022

Author: P. Sam Koshy

Bench: P. Sam Koshy

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBR No. 19 of 2018

1. Shrey Chouksay Mukesh Chouksay, Aged About 26 Years R/o Near Jalaram Mandir Tikrapara, Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
----Applicant

Versus

1. Raghuwar Dayal Singhal Late Shiv Dayal Singhal, Aged About 68 Years R/o Singhal Sadan Link Raod, Bilaspur Chhattisgarh. (One Of The Panchwati Inn Bilaspur Chhattisgarh.),
2. Gopal Krishan Singhal, Raghuwar Dayal Singhal, Aged About 50 Years R/o Singhal Sadan Link Raod, Bilaspur, Chhattisgarh. (One Of The Partners Of M/s Panchwati Inn Bilaspur, Chhattisgarh.)
--Respondents

For Applicant	: Mr. Bidya Nand Mishra, Advocate.
For Respondent.	: Mr. Anurag Dayal Shrivastava, Advocate

Hon'ble Shri Justice P. Sam Koshy
Order On Board

22.09.2022

1. Present is an application under Section 11(6) of the Arbitration and Conciliation Act 1996 filed by the applicant. The prayer made by the applicant in the instant application is for appointment of a sole Arbitrator for adjudication of dispute arising out of a tenancy agreement entered into between a tenant and landlord.

2. The facts in briefs is that at Link Road Bilaspur near Tarbahar Chowk, there is a building owned by the respondents which was earlier named as Hotel PANCHWATI INN. The respondents entered into an agreement with the applicant herein for letting out the said premises on rent. The original rent agreement was entered into between the parties on 19.08.2014. The initial period of agreement was 7 years from 01.11.2014 till 31.10.2021. The initial agreement entered into between parties dated

19.08.2014 is marked as (Annexure A-1) with the application. As per the said agreement, the premises was handed over to the applicant by the respondents and upon obtaining the possession of the said premises, the applicant started operating the said premises in a different name and it was thereafter being operated as "RASOI INN".

3. In terms of the said agreement dated 19.08.2014, it was agreed by the applicant to pay a rent of Rs. 4 lac a month with increase of 15% every 3 years, in addition a security amount of Rs. 28 lacs by way of cheque to be deposited with the land-lord.

4. In the said agreement, there was a clause inserted as clause 14 dealing with arbitration. For ready reference the said Clause-14 is reproduced here-in-under.

"14- fookpu [k.M ,oa e/;LFk dh fu;q f Dr%& mHk;&i{k ds e/; mDr Hkou&iflj@gksV y&iflj vFkok fdjk;k ls lac af /kr dksb Z Hkh fookn dk fujkdj.k fookpu ,oa e/;LFk ds QS l ys ls fd;k tkosx k] rrlac a/ k esa mHk;&i{k lger gS] rFkk mHk;&i{k dh vksj ls mHk;&i{k ds e/; orZ e ku fdjk;knkjh] fdjk;k foy[s k] fdjk;k iflj ls lac af /kr fdlh Hkh fookn ftlesa fdjk;knkjh iflj [kkyh djokuk Hkh 'kkfey gS] ds fy;s ,dy e/;LFk ds :i esa Jh misU nz Hkkjr] vf/koDrk] tsy jksM] fcykliq j N-x- dks fu;q D r fd;k tkrk gS A ,d e/;LFk }kjk mHk;&i{k ds e/; fdlh Hkh fookn dk fujkdj.k e/;LFkrk ,oa lq y g vf/kfu;e 1996 ds iz k o/kkuksa ds rgr~ fd;k tkosx kA "

5. After the applicant had taken possession of the said premises, there appears to have been some dispute that arose between the applicant and the respondents in respect of the rent agreement. In terms of the Cause-14 of the agreement dated 19.08.2014, the dispute as agreed went before the sole Arbitrator Shri Upendra Bharat, Advocate at Bilaspur, The said sole Arbitrator conducted the arbitration proceedings between the parties and passed an award on 27.10.2014 whereby in addition to extending of the rental agreement between the two parties from 7 years which was initially agreed, to 12 years i.e. up-till 31.12.2026 and had also awarded the periodical rent that would be payable by the applicant to the respondent-landlord. Based upon the said arbitration award dated 27.10.2014, an amended rent agreement was executed between the parties on 27.10.2014 itself extending the rental agreement and the periodical rent payable by the applicant to the respondent-landlord. Subsequently, there appears to have been again certain dispute that arose between the parties in respect of, the premises which was let by the respondents to the applicant. The applicant again moved an application for appointment of an Arbitrator for resolving of the dispute between the parties. The said dispute now seems to be in respect of non-granting of the entire premises which was initially agreed upon by the respondents to the applicant and also in-respect-of the other fringe benefits and for providing of other infrastructural facilities like fire fighting facility etc. This request by the applicant was not exceeded to by the respondents which led to filing of the instant application under Section 11(6) of the Act of 1996 for appointment of a sole Arbitrator.

6. The counsel for the applicant submits that admittedly the applicant is the tenant of the respondents in terms of the rent agreement entered into between the parties. However certain facilities were demanded by the applicant like having clear access to the area where the transformers

are installed and also in-respect-of parking area of the said Hotel and for making arrangement like necessary fire safety equipments and other mandatory requirements. According to the counsel for the applicant, all these demands that the applicant had raised from the respondents, were strictly flowing from the rental agreement entered into between the parties. Therefore, for resolving of the same, an Arbitrator was sought to be appointed which has been refused, and therefore the present request has been made to the High Court to appoint an Arbitrator to Arbitrate between the parties.

7. The contentions which the counsel for applicant at this juncture raises is that firstly there is a clear categorical arbitration clause available in the rent agreement between the parties i.e. clause 14 which stands reproduced in the preceding paragraph. Secondly, in terms of the said arbitration clause-14, an earlier dispute between the parties was in- fact made to the sole Arbitrator and whose name is reflected in the said agreement and the said Arbitrator thereafter has also passed an award on 27.10.2014, which was acceptable to both the parties.

8. According to the counsel for the applicant, since both the parties on an earlier occasion from the same rental agreement, had availed the arbitration clause and had resolved the dispute, any subsequent dispute also need to be decided in the same manner.

9. Meanwhile, another development that took place is that the sole Arbitrator agreed upon between the parties, subsequently had expressed his reluctance to act as an Arbitrator, as he has meanwhile said to have provided certain professional services to the respondents, and thereby expressing his dissent to act as an Arbitrator any further. The applicant meanwhile had also suggested three names as per notice (Annexure A/5) dated 19.04.2018.

10. Learned counsel for the applicant in support of his contentions has relied upon, the judgment of the recent full Bench of the Bombay High Court in the case of Gautam Landscapes Private vs Shailesh S Shah in Arbitration Petition No. 466 of 2017 along with other connected applications which stood decided on 04.04.2019. The order passed by the Division Bench of this High Court in the case of CLOUD RETAIL SOLUTIONS PVT LIMITED Vs. THRIVING KITCHEN PRIVATE LIMITED, in Arbitration Appeal No. 73 of 2021 decided on 17.03.2021 and the recent decision of the Hon'ble Supreme Court in the case of Vidya Drolia and Ors vs. Durga Trading Corporation and others reported in 2021 (2) SCC 1.

11. Learned counsel appearing for the respondents, however, on the other hand opposing the appeal, submits that it is a case which arises out of a pure rental dispute between the applicant and the respondents. The relationship between the applicant and the respondents is that of a tenant and landlord. The relationship stands governed between the parties from a tenancy agreement which was initially entered into on 19.08.2014 and which was subsequently amended on 27.10.2014.

12. According to the learned counsel for the respondents, since the dispute flows from a tenancy agreement, the matter is one which would not come within the purview of the Arbitration and that the remedy in fact is available under the Rent Control Law prevailing in the State of Chhattisgarh. It was also contended by the counsel for respondents that the respondents had already approached the Rent Controlling Authority in respect of the dispute between the parties seeking eviction as also for

arrears of rent.

13. In the garb of the instant application filed under the Arbitration Act, the applicant has stopped payment of monthly rent for a considerable period of time running into years and as such there is a clear default of payment of rent on the part of the applicant. Therefore, for these reasons, the Arbitration application at this juncture should not be entertained and would not otherwise be maintainable.

14. It was the further contention of the counsel for the respondents that the documents on the basis of which the applicant seeks to invoke the Arbitration Clause is not sufficiently stamped or is deficit of the requisite stamp duty. That on this ground also, it would not be proper to entertain the Arbitration Application without further complying with the Section 33 and 35 of the Indian Stamp Act at 1899.

15. According to the counsel for the respondents, unless the documents are duly stamped, the documents would not become enforceable and an application under Section 11(6) in respect of an unenforceable document should not be entertained. Moreover, the said tenancy deal entered into between the parties, also is not a registered document because of which, it would also amount to violation of the provision of Section 107 of the Transfer of Property Act, as any lease deed entered into between the parties on year to year basis has to be a registered document.

16. Learned counsel for the respondents relies upon the decisions rendered by the Hon'ble Supreme Court in the case of Garware Wall Ropers Ltd. vs Coastal Marine Constructions & Engineering Ltd. reported in 2019 (9) SCC 209 (AIR 2019 SC 2053), in the case of N. N. Global Mercantile Private Ltd. Vs. Indo Unique Flame Ltd., and Ors., reported in 2021 (4) SCC 379 and in the case of Vidya Drolia (supra).

17. Learned counsel for the respondents further submits that initially the Rent Control Authority before whom the respondents had approached seeking for an order of eviction and arrears of rent, was dismissed on the ground that there is an arbitration clause in the tenancy agreement between the parties. The said order of the Rent Control Authority was subjected to challenge before the Rent Control Appellate Tribunal. The Rent Control Appellate Tribunal had allowed the appeal of the respondents setting aside the order of the Rent Control Authority dismissing the application on 18.03.2019 and remitted the matter back to the Rent Control Authority for deciding the case on merits afresh holding the proceedings before the Rent Control Authority to be maintainable between the parties.

18. The said order passed by the Rent Control Appellate Authority was challenged by the applicant herein before the High Court in a writ petition i.e. WP227 No. 545 of 2022. The Division Bench of this High Court vide its order dated 02.09.2022 has dismissed the said writ petition filed by the applicant holding that the landlord-tenant disputes covered and governed by the Rent Control Legislation, would not be Arbitrable and the Arbitration and Conciliation Act 1996 would not have a domino effect on tenancy. According to the Division Bench, the mere insertion of clause 14 in the tenancy agreement at the first instance on 19.08.2014 by itself would not amount to waiver on the

jurisdiction part so far as the forum to adjudicate upon the dispute arising between the parties.

19. For all these reasons, the respondents prayed for the rejection of the application under Section 11(6) by the applicant.

20. Taking the objections of maintainability of the application under Section 11(6) of the Act of 1996 in-respect-of the dispute not being arbitrable as the dispute between the parties is being governed under the Rent Control Legislation framed by the State of Chhattishgarh, this Court tends to decide the said issue first, before going into the other grounds on merits.

21. It would be relevant also at this juncture to take note of certain provisions of the Chhattishgarh Rent Control Act 2011. The definition of accommodation under the said Act is defined in Section 2(i) which for ready reference is being reproduced herein under:-

(1) "Accommodation" means any building or part of a building, whether residential or non-residential, leased out by the landlord to the tenant and includes open space, staircase, grounds, garden, garage and all facilities and amenities forming part of the agreement between them of any land which is not being used for agricultural purposes;

22. The term "Agreement" is defined in Sub-Section 2 of Section 2. Likewise, The "Landlord and Tenant" are defined in Sub-Section 5 and Sub-Section 14 of Section 2. Section 4 deals with the "Tenancy Agreement" between the parties which again for ready reference, these definitions are being reproduced here in under:-

2(2). "Agreement" means the written agreement executed by the landlord and the tenant as required under this Act; 2(5) "Landlord" means a person who for the time being is receiving or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the accommodations were let to a tenant;

2(14) "Tenant" means- (i) the person by whom or on whose account or behalf rent is, or but for, a contract express or implied, would be payable for any accommodation to his landlord including the person who is continuing its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and

(ii) in the event of death of the person referred to in sub-clause (i)-

(a) in case of accommodation let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such accommodation as member of his family up to his death;

(b) in case of accommodation let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such accommodation as member of his family up to his death.

4. Tenancy Agreement.- (1) Notwithstanding anything contained in Section 107 of the Transfer of Property Act, 1882 (Central Act 4 of 1882), no person shall, after the commencement of this Act, let or take on rent any accommodation except by an agreement in writing. (2) Where, in relation to a tenancy created before the commencement of this Act,-

(a) an agreement in writing was already entered into shall be filed before the Rent Controller.

(b) no agreement in writing was entered into, the landlord and the tenant shall enter into an agreement in writing with regard to that tenancy and file the same before the Rent Controller; Provided that where the landlord and the tenant fail to present jointly a copy of tenancy agreement under clause (a) or fail to reach an agreement under clause (b) such landlord and the tenant shall separately file the particulars about such tenancy. (3) Every agreement referred to in sub-section (1) or required to be executed under sub-section (2) shall be in such format and in such manner and within such period as may be prescribed.

23. Section 7 of the said Act of 2011 deals with establishment of the Rent Controller. Section 9 prescribes the powers and functions of the Rent Controller. For ready reference both Section 7 and Section 9 are reproduced herein under:-

7. Establishment of Rent Controller. - (1) For every district, the State Government shall appoint one or more officers not below the rank of a Deputy Collector, as Rent Controller with territorial jurisdiction as to be specified by the District Collector.

(2) Rent Controller shall be subordinate to the Rent Control Tribunal.

9. Powers and functions of Rent Controller. - (1) The Rent Controller shall exercise such powers, perform such functions and discharge such responsibilities within its territorial jurisdiction, as the Government may by notification vest in him, which shall include the following :-

(a) Reconciling dispute(s) between landlord and tenant.

(b) Securing the rights of landlords and tenants as available to them under this Act.

(c) Enforcing the obligations enjoyed upon landlords and tenants under this Act.

(2) All proceedings before the Rent Controller shall ordinarily conclude within six months from the date of first appearance of the respondent in response to the summons issued for his appearance in the case or from the date on which the respondent is set ex-parte.

24. Likewise, Section 6 deals with Constitution of a Rent Control Tribunal and Section 8 deals with the Powers and Functions of the Rent Control Tribunal. For ready reference Section 6 and Section 8 are also being reproduced herein under:-

6. Constitution of the Rent Control Tribunal. - (1) The State Government shall by notification constitute, within thirty days of this Act, a Tribunal in terms of Article 323-B of the Constitution, to be called as Chhattisgarh Rent Control Tribunal, to give effect to the provisions of this Act, and for the adjudication or trial of any disputes, complaints, or offences with respect to rent, its regulation and control and tenancy issues including the rights, title and obligations of landlords and tenants.

Explanation. - Matters relating to transfer of property and/or disputes regarding title over any property shall continue to be considered under relevant laws by the courts of law.

[(2) The State Government shall appoint the Chairman of the Rent Control Tribunal, a retired Judge of the High Court or serving or retired District Judge not below the rank of Super Time Scale.

(3) The Tribunal shall have such members with such qualification, as the State Government may prescribe.

(4) The State Government shall appoint an officer as the Registrar of the Tribunal, who shall not be below the cadre of Civil Judge Class-I or the rank of Deputy Secretary to the State Government.] (5) From the date, the Tribunal becomes functional, which date shall be published in the State Gazette, the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136 [and High Courts under Articles 226 and 227] of the Constitution, shall stand excluded in respect of all matters falling within the jurisdiction of the Tribunal :

Provided, however, that all cases pending before any court or authority immediately before the establishment of the Tribunal, shall continue to be processed under the old Act, as amended from time to time.

[(6) The Tribunal shall have its headquarters at Raipur and the State Government may, by notification, fix such other places for hearing of matters by the Tribunal, as it deems fit.

(7) The terms and conditions of the service of the Chairman and members of the Tribunal shall be such as may be prescribed by the State Government.] 8 Powers and functions of Rent Control Tribunal.- (1) The Rent Control Tribunal, shall have such powers as the Government may by notification vest in it, which shall include the following :-

(a) Enabling and ensuring the active existence of Rent Controller(s) at all times for due fulfillment of the purposes of this Act.

(b) Functioning as Appellate Authority, to consider applications of all person(s) aggrieved by any order of the Rent Controller.

Explanation. - The Rent Control Tribunal shall exercise such powers as was exercised by the High Court in adjudicating matters under the repealed Act.

(2) The Rent Control Tribunal shall have powers to punish for contempt of its authority, as if it were a High Court.

25. The plain reading of the aforesaid provisions would clearly reflect that the State of Chhattisgarh by way of enactment of the said Act of 2011, has enacted a provision with an intention and object of resolving the dispute between a landlord and a tenant inclusive of the disputes regarding to the payment of Rent etc.

26. It is pertinent also at this juncture to mention that the respondents herein had already raised a dispute before the Rent Control Authority for eviction of the premises as also for arrears of Rent. The applicant herein moved an objection under Order 7 Rule 11 as regards the maintainability of the proceedings under the Rent Control Act as there was an arbitration clause in the agreement. The Rent Controlling Authority upheld the said objection and dismissed the main application filed by the land-lord vide order dated 18.03.2019. The land-lord challenged the said order dated 18.03.2019 passed by the Rent Controlling Authority before the Rent Control Tribunal.

27. The Rent Control Tribunal has set aside the order dated 18.03.2019 passed by the Rent Controlling Authority and remitted the matter back to the Authority for afresh adjudication of the dispute. The view of the Rent Control Tribunal was that the agreement between the parties would not take away the jurisdiction of the Statutory Authority under the aforementioned Act of 2011. The order of the Rent Control Tribunal was further subjected to challenge by the applicant herein before this High Court under Writ Jurisdiction. The Division Bench of this High Court in WP227 No. 545 of 2022 vide its judgment dated 02.09.2022 dismissed the petition filed by the applicant affirming the order passed by the Rent Control Tribunal and in paragraphs 10 to 13, the Division Bench has held as under:-

"10 Section 2 (3) of the Arbitration and Conciliation Act, 1996, (for short Act of 1996) carves out and read that the part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration. Therefore, the object of the Act of 2011 when are read with Section 2 (3) of the Act of 1996, it do not give an over riding effect rather is the operation has been made separate. Therefore, the Arbitration and Conciliation Act, 1996 would not have a domino effect on other law. The Hon'ble Supreme Court in the matter of Vidya Drolia (supra) while deciding the similar nature of lis has held that landlord-tenant disputes covered and governed by the rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/ forum, and not through arbitration.

11. Para 49 of the Vidya Drolia (supra) is reproduced hereinbelow:-

49. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

12. The Act of 2011 would show that Section 7 speaks about establishment of Rent Controller that for every district, the State Government shall appoint Rent Controller and Section 6 is about constitution of Rent Control Tribunal. Therefore, special forum has been created to decide the rights and obligations of landlord and tenant which is enveloped under Section 12 of the Act of 2011, wherein Schedule 2 purports about landlord rights which includes the right to seek eviction of the tenant on various grounds likewise schedule 4 which is made of Section 12 (4) of the Act 2011 creates an obligation on the part of the tenant. The reliance placed by the learned counsel for the petitioner in case of Brij Raj Oberoi (supra) would not be of any help for the reason that obligation of the tenant under Schedule 4 under the Act of 2011 do not confer seeking an enhancement for the part of tenancy. Therefore, on facts of the case, when eviction is sought for by land-lord against tenant the ratio of the case supra would not be applicable.

13. Therefore, the forum having been created under the statute and it being a special legislature for particular purpose this statute provision cannot be diluted by the act of parties as has been held in the case of Supdt. of Taxes, Dhubri and Ors. Vs. M/s. Onkarmal Nathmal Trust reported in AIR 1975 SC 2065 and further in the case of Harshad Chiman Lal Modi Vs. D. L. F. Universal Ltd. And another reported in AIR 2005 SC 4446:: 2005 AIR SCW 5369 while deciding the jurisdiction of the court has held that jurisdiction can neither be waived nor created by consent.

28. It would also be relevant at this juncture to take note of the observation of the Hon'ble Supreme Court in the case Vidya Drolia (supra) dealing with the aforesaid subject matter, particularly dealing with the issue of landlord and tenant. The Hon'ble Supreme Court while deciding the said landmark decision in paragraph 79 and 80 touching the dispute of landlord and tenant has held as under:-

"79. Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have erga omnes effect or require centralized adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the

State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

80. In view of the aforesaid, we overrule the ratio laid down in Himangni Enterprises and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration."

29. The plain reading of paragraphs reproduced here-in-above would clearly indicate that the Hon'ble Supreme Court was very specific while holding that under the normal circumstances, if there is no Rent Control Legislation applicable in the concerned State, a dispute between a landlord and tenant would be Arbitrable. At the same time the Hon'ble Supreme Court has also emphatically in Paragraph 80 held that where a Rent Control Legislation exists, the landlord and tenant dispute which are covered and governed under the Rent Control Legislation enacted, then the landlord-tenant dispute would not be Arbitrable. This view of the Hon'ble Supreme Court was on account of the fact that there is a specific Court or forum with exclusive jurisdiction and with appellate remedies available for redressal of disputes. Therefore, it would be only these forums and Courts which would have the jurisdiction to adjudicate upon the dispute and not through arbitration.

30. In view of the specific order of the Hon'ble Supreme Court in the case of Vidya Drolia (supra) on the landlord-tenant issue making it non-Arbitrable, in the event of a Rent Control Legislation being in force, this Court finds sufficient force in the objections raised by the respondents as regard the maintainability of the present application.

31. As a consequence, the application under Section 11 (6) filed by the applicant which admittedly is a dispute between the landlord and tenant and the dispute flowing from a tenancy agreement and because of the fact that in the State of Chhattisgarh, the Government has specifically enacted a Rent Control Legislation known as Chhattisgarh Rent Control Act of 2011, the dispute between the parties becomes non-arbitrable.

32. The application also now would not be further maintainable on the ground that the Division Bench of this High Court in WP227 No. 545 of 2022 vide its order dated 02.09.2022 has clearly held that the dispute between the parties is one which is non-arbitrable. Hence, the application of the applicant deserves to be and is accordingly rejected.

Sd/-

P. Sam Koshy) Judge Jyoti