
(2014) 04 AHC CK 0324
In the Allahabad High Court
Case No : C.M.W.P. No. 53261 of 2012

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(1), 8
Contract Act, 1872 — Section 62

Citation : (2014) 5 ADJ 644 : (2014) 4 ALJ 506 : (2014) 104 ALR 458 : (2014) 3 ARBLR 135 : (2014) 6 AWC 5617

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Suneet Kumar and Devi Shanker Shukla, Advocate for the Appellant;
Ashok Kumar Pandey, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Petitioners (hereinafter in short "B.S.N.L.") through its Regional Manager have challenged the order of the Civil Judge dated 3.3.2012 passed in Original Suit No. 206 of 2011 by which the application of the B.S.N.L. u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") has been rejected and the order dated 29.8.2012 passed by the Additional District Judge dismissing the revision arising therefrom. The B.S.N.L. entered into an agreement on 14.6.2005 with the respondent Ashok Kumar (hereinafter "Ashok Kumar") who is the owner and landlord of a plot of land of 100 sq. meters of Kharsra No. 166 situate in Ukharsi, Muradnagar, Pargana Jalalabad, Tehsil Modi Nagar, district Ghaziabad for the use of the aforesaid land for a period of five years w.e.f. 14.5.2005 till 13.5.2010 on a rent of Rs. 2,400/- per month for installation of a telecommunication tower. On the expiry of the above period B.S.N.L. was supposed to hand over the possession of the land to Ashok Kumar.

2. The aforesaid agreement, inter alia, vide Clause 17 provides that if at any time any dispute or difference in respect of right, duties and liabilities of parties

arise between them the same shall be referred to the sole arbitration of the Chief General Manager, Telecom, U.P. (West) Meerut.

3. The agreement expired on 13.5.2010. It was not extended or renewed. On the expiry of the agreement period, B.S.N.L. failed to vacate the said plot and handover its possession to Ashok Kumar. Thus, Ashok Kumar instituted Original Suit No. 206 of 2011 for a decree of possession after evicting B.S.N.L. from the said land and for damages at the rate of Rs. 1000/- per day for the use and occupation of the said land w.e.f. 14.5.2010.

4. In the said suit, B.S.N.L. moved application u/s 8 of the Act contending that in view of arbitration clause contained in the agreement the dispute be referred to arbitration. The said application was rejected by the Court below holding that the agreement containing arbitration clause has come to an end and, therefore, the dispute is not liable to be referred to arbitration. The order has also been affirmed in revision.

5. I have heard Sri Devi Shankar Shukla, learned Counsel for the B.S.N.L. and Sri Ashok Kumar Pandey, learned Counsel appearing for Ashok Kumar both of whom agreed for final decision of the petition for the reason that no factual dispute is involved in it and the pleadings exchanged between the parties are sufficient.

6. There are no two opinions that where there is an arbitration clause in an agreement and a dispute in relation thereto arises between the parties in and an action in connection thereto is brought in a Civil Court, the court has no option but to refer the dispute to the arbitration u/s 8 of the Act.

7. A reference in this regard may be had to Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits and Wovens and Others, and Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, wherein it was laid down that section 8 of the Act is peremptory in nature and where an arbitration clause exists, the Court is obliged to refer the parties to arbitration in terms of the said agreement and once an application u/s 8 of the Act is filed the Civil Court has no jurisdiction to continue with the suit.

8. On the submission of Counsel for the parties, only two points arise for consideration in this writ petition; namely:

(i) whether with the agreement coming to an end, the arbitration clause contained therein perishes with it; and

(ii) whether the dispute raised by Ashok Kumar in the suit is covered by the aforesaid arbitration clause so as to necessitate its reference to the arbitration u/s 8 of the Act.

9. The first point which falls for consideration is whether on the agreement having lapsed or to come to an end, the arbitration clause therein survives or not.

10. The above point is no longer res integra as His Lordship of the Supreme

Court in National Agricultural Co-op. Marketing Federation India Ltd. Vs. Gains Trading Ltd., has considered the above aspect and has held that the proposition when a contract comes to an end the arbitration clause which forms part of the contract also comes to an end has never been accepted in law; meaning thereby that even if any agreement between the parties containing an arbitration clause comes to an end the arbitration clause contained therein survives for the limited purpose of resolving dispute arising under or in connection with the contract. This view was expressed by his Lordship on the basis of section 16(1) of the Act which provides that an arbitration clause which forms part of a contract has to be treated as an agreement independent of the other terms of the contract.

11. A Division Bench of the Supreme Court has expressed similar view in N. Srinivasa Vs. Kuttukaran Machine Tools Ltd., observed that it is well settled that even if an agreement ceases to exist, the arbitration clause remains in force and any dispute pertaining to the agreement ought to be resolved according to the conditions mentioned in the arbitration clause.

12. The above principle was reiterated by the Supreme Court in The Branch Manager, Magma Leasing and Finance Limited and Another Vs. Potluri Madhavalata and Another, and it was held that the Arbitration Clause does not get perished and is not rendered inoperative with the contract coming to an end rather it survives for resolution of disputes "in respect of" or "with regard to" matters under the contract.

13. In view of the above, the first point is decided in favour of the B.S.N.L. and against Ashok Kumar and it is held that though the agreement between them had come to an end on 13.5.2010 the arbitration clause contained there continues to remain in force for the purposes of resolving all disputes between the parties arising in relation to the said agreement or rights or liabilities of the parties therein.

14. Now, the second point is whether the dispute as raised by Ashok Kumar in the suit is one which is covered by the above agreement.

15. In the suit, Ashok Kumar has claimed possession of the suit land from the B.S.N.L. after the period fixed by the agreement had expired and damages for its use and occupation thereafter. There is no claim with regard to the period during which the agreement was in subsistence and there is no dispute regarding the terms and conditions of the said agreement or its breach when it was in force.

16. On the expiry of the lease period B.S.N.L. remained in possession of the land and its possession thereof in law became that of a "tenant in sufferance". The "tenant in sufferance" is virtually an unauthorised occupant. The occupation of the unauthorised occupant may be recognized by the landlord by consenting to the occupation of the tenant or by accepting rent from him thereafter. In that situation the status of the tenant in sufferance would be converted into that of "tenant by holding over". The difference between the two would basically be that in the case of tenant in sufferance no fresh notice for bringing a suit for eviction

is required whereas in the case of tenant by holding over a suit for eviction can only be brought about after serving a notice. In either of the case, the status of the tenant changes to that of an unauthorised occupant with consent or without consent and a new contract comes into existence superseding the previous agreement of tenancy. Section 62 of the Contract Act provides that if the parties to the contract rescinds or alters a contract or agrees to substitute a new contract in place of the original or earlier contract, the said original contract need not be performed. It means once a contract is replaced by a new contract between the parties it will hold the place and the rights and liabilities of the parties to it would be governed and decided by its terms and conditions and not by the previous contract.;

17. In view of the expiry of the previous contract and the status of B.S.N.L. being converted into that of tenant by sufferance of holding over a new contract comes into existence between the parties which do not envisages for redressal of disputes between the parties through arbitration.

18. The dispute in the suit is not one which is connected with the original agreement rather is for recovering possession from the tenant in sufferance or by holding over which basically arises out of a new contract. It does not relate to any part of the earlier agreement which contemplates for a arbitration. Therefore, the cause of action of the suit is not covered by the agreement having an arbitration clause.

19. In view of the above, though the Courts below have non-suited the B.S.N.L. on the ground that the arbitration clause had perished as the agreement had ceased to exist, but as the cause of action in the suit does not relates to the said agreement, I am of the view that it is not covered by Clause 17 of the agreement and is therefore not referable u/s 8 of the Act. Accordingly, there is no cause for any intervention with the impugned orders in exercise of writ jurisdiction and the writ petition is dismissed with no orders as to costs.