

(2013) 07 DEL CK 0075

In the Delhi High Court

Case No : CM (M) No. 73 of 2011 and C.M. No. 1609 of 2011

Delhi Tourism and Transportation Development Corporation
Limited

APPELLANT

Vs

Chander Prakash Gupta

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2013) 07 DEL CK 0075

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : R.K. Dhawan, Ms. Sheweeta Joshi and Ms. Richa Dhawan, for the Appellant; N.S. Dalal and Mr. H. Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The petitioner has challenged the order dated 18th November, 2010 whereby the petitioner's application u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter called the "Act") was dismissed. The petitioner is the defendant in the suit for recovery of possession and damages etc. filed by the respondent/ plaintiff Chander Prakash Gupta. Brief facts are that the respondent Chander Prakash Gupta R/o. H. No. C-4/138, Safdarjung Development Area, New Delhi entered into a license agreement dated 25th March, 1982 which provided for arbitration clause.

2. The respondent filed a suit for possession, mesne profits/damages and injunction against the petitioner before the District Judge, Saket Courts, New Delhi.

3. On issuance of notice of the suit filed, the petitioner/defendant did not file a written statement but filed an application u/s 8 of the Act for referring the parties to arbitration.

4. The respondent filed reply to the aforesaid application on 19th October, 2010 by which he objected to listing of matter for arbitration.

5. Vide order dated 18th November, 2010, learned ADJ Sh. Inderjit Singh dismissed the said application filed u/s 8 of the Act.

6. Against the impugned order dated 18th November, 2010, the petitioner filed the present petition under Article 227 of the Constitution of India read with Section 151 of CPC.

7. SUBMISSIONS OF THE PETITIONER

(i) The plaintiff/respondent in the plaint made mention of the license agreement between the defendant/petitioner and the plaintiff/respondent binding on both the parties and also filed the same along with the plaint but concealed a material fact that clause 15 of the agreement contains an arbitration clause. The said clause clearly states that the dispute arising between the parties shall be referred to and resolved by arbitration and that such reference to arbitration shall be deemed to be a submission within the meaning of Arbitration Act, 1940 or any other statutory modifications or re-enactment thereof.

(ii) As the subject matter pertained to arbitration agreement, therefore, in view of the statutory provision contained in Section 8 of the Act, it was prayed by the defendant/petitioner to refer the parties to arbitration in terms of clause 15 of the license agreement.

(iii) The following cases were relied upon by the petitioner:-

a) Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, - During the existence of Arbitration Clause in the Agreement, the dispute could be referred to arbitration being arbitrable dispute. In this regard, the defendant/petitioner submitted that the plaintiff is inescapable from the agreement being relied upon by him.

b) Smt. Kalpana Kothari Vs. Smt. Sudha Yadav and Others, - Scope of Section 8 of Arbitration and Conciliation Act was discussed. It mandates that the judicial authority before whom the subject matter of arbitration is brought, it may be referred to arbitration. In the present case, the matter is required to be referred to arbitration in terms of Clause 15 of the Act.

8. RESPONDENT'S CASE

(i) That the application u/s 8 of the Act filed by the defendant/petitioner was not maintainable due to there being no cause of action for filing the said application.

(ii) The defendant/petitioner filed a false and frivolous application in order to delay the proceedings of the case.

(iii) The license agreement executed between the parties has expired since long as it was only for a limited period of one year and after the expiry of the said agreement, there was neither a fresh agreement executed between the parties

nor the said agreement was extended. After the expiry of the agreement, all the terms and conditions came to an end and therefore, arbitration agreement cannot be enforced.

(iv) After 1983, the premises remained in occupation of the Defendant-Petitioner on the basis of orally created lease which was renewed on monthly basis. The lease deed which itself was not registered and also not properly stamped, all its terms including arbitration clause would be inadmissible.

9. Even, the said agreement was not registered and not properly stamped. It is well settled that in case of lease of immovable properties, if the time period of lease is one year or more, lease deed is required to be compulsorily registered. As the contract in itself was inadmissible under law, every clause of it including arbitration clause would be inadmissible and cannot be enforced. When the written lease deed came to an end and new oral lease was entered into between the parties, the arbitration clause of the earlier one cannot be invoked.

10. In the case of National Textile Corporation Ltd. and Another Vs. Ashval Vaderaa, , it was held that when a lease deed containing an arbitration clause came to an end and new oral lease was entered into between the parties, the arbitration clause in the original deed cannot be involved in the oral tenancy entered into subsequently. In the present case, the petitioner/defendant cannot invoke arbitration clause for the want of written agreement or arbitration agreement between the parties.

11. In the above referred case, it has also been held that if a contract is not admissible in law, every clause of it is inadmissible in law including arbitration clause. Similar view has been taken by the Supreme Court in The Union of India Vs. Kishorilal Gupta and Bros., and by Jammu and Kashmir High Court in Ghulam Hassan Dar Vs. Controller of Aerodrome and Another, as well as by Allahabad High Court in Krishna Veer son Shri Veer Narain (In Jail) Vs. The State of U.P., .

12. The petitioner has not denied that there was neither a fresh agreement executed between the parties nor the licensing agreement was extended. The petitioner has also not denied that the agreement was not registered and not properly stamped. Further, it is well settled that in case of lease of immovable properties, if the time period of lease is one year or more, lease deed is required to be compulsorily registered. Coming to the present case, the termination of the license agreement, therefore, does not entitle the petitioner to take the advantage of Clause 15 of the said agreement, i.e. arbitration clause. The agreement after termination would stand inadmissible in law for the reasons mentioned above. Thus, I am of the view that the impugned order does not suffer from any infirmity which call for interference by this Court. The petition is, therefore, dismissed. No costs.