
(2008) 04 P&H CK 0137
In the Punjab And Haryana At Chandigarh

Dr. Jasbir Singh Mann

APPELLANT

Vs

Mrs. Ana Cidaliza Columna Ohri and Others

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2009) 3 CivCC 44 : (2009) 154 PLR 288 : (2009) 2 RCR(Civil) 940 : (2009) 1 RCR(Rent) 514

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Judgement

Ranjit Singh, J.—This order will dispose of two Civil Revision Nos. 2227 of 2007 (Dr. Jasbir Singh Mann v. Mrs. Ana Cidaliza Columna Ohri and Ors.) and 3592 of 2007 (Dr. Jasbir Singh Mann v. Mrs. Ana Cidaliza Columna Ohri and Ors.). The facts are being taken from Civil Revision No. 2227 of 2007.

2. Prayer made in the present revision petition is for setting aside the order dated 20.3.2007, passed by Rent Controller, Jalandhar. Through the impugned order, the Rent Controller has rejected the prayer for referring the dispute to the arbitrator.

3. Respondent No. 1 Mrs. Ana Cidaliza Columna Ohri rented out the demised premises to petitioner Dr. Jasbir Singh Mann for a period of five years in terms of the registered lease deed dated 20.3.2006. Clause 29 of the lease deed provides as under:

That the lessee agrees not to involve any third party in respect of any grievance against the lessors or in respect of any dispute concerning the tenancy and any such grievances/disputes shall be resolved through mutual discussion only. However, if the parties are unable to resolve the dispute amicably the same shall be referred for arbitration to Shri Inderjit Singh Bhatia, Advocate.

4. An application u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short "Rent Act") was filed by respondent No. 1 before the Rent Controller,

Jalandhar. Relying upon Clause 29 of the lease deed, the petitioner moved an application for referring the dispute to the arbitrator as nominated in the above noted clause of lease deed. In the petition, ejectment of the petitioner is sought on the ground of non-payment of rent since 1.7.2006, impairing the value and utility of the tenanted premises, sub-letting of the various portions without the consent of the applicants etc.

5. In reply filed to this application, respondent No. I has opposed the prayer for referring the ejectment petition to Arbitrator. It is stated that the relations between the parties are governed by the provisions of Rent Act and under this Act only the Rent Controller has got jurisdiction to adjudicate upon the dispute between the parties. It is further pleaded that the law would not permit parties to enter such like contracts which nullifies the rights conferred on the tenants by the Act and, thus, the parties cannot be permitted to contract out the legislative mandate. It is further pleaded that the respondents, who have allegedly been inducted as sub-tenants, are not party to the lease deed and to the arbitration agreement and as such this matter cannot be referred to the arbitration in terms of Clause 29 of the lease deed. The prayer thus made is to dismiss the application.

6. Parties made detailed submissions before the Rent Controller. Reliance was placed on various judgments by the respective parties appearing before the Rent Controller. Rent Controller ultimately rejected the prayer of the petitioner for referring the matter to arbitration, which is now impugned in the present revision petition.

7. Mr. M.L. Sagar, the learned Senior Counsel appearing for the petitioner has referred to various provisions of the Arbitration Act, 1996 to urge that the provisions of the Act are mandatory and once the agreement has been admitted, the parties would be left with no option but to seek adjudication through arbitration. The counsel has urged that the plea of jurisdiction can very well be raised before the arbitrator and in case the respondents have any objection in regard to the jurisdiction of the arbitrator on the grounds as urged, these can very well be so agitated before the arbitrator. To seek support, the counsel has referred to *S.S. Fasteners v. Satya Paul Verma* (2003)126 P.L.R. 598. It is noticed that in this case the Arbitrator gave his award on 28.7.1997 which acquired the position of a Civil Court decree as it was not challenged u/s 34 of the Arbitration Act. In this context, it is observed that the finding given by the arbitrator having become final between the parties, the petitioners before the Court could not be allowed to urge that they are tenants over the portion in question. This objection apparently was raised before the executing court saying that the decree could not be executed. In this context, it is observed that the executing court cannot go behind the decree between the parties. It is also observed that until the decree was set aside in appeal or revision and even if it be erroneous was still binding between the parties. The objection apparently was raised before the executing Court that the arbitrator did not have jurisdiction or

his jurisdiction was barred under the Rent Act. This plea was not accepted on the ground that the arbitrator had the jurisdiction to decide this question, but it was never raised before him and, thus, the executing Court cannot enter into this question and go behind the decree being barred on that ground. From the observation made in the background. Mr. Saggar, has attempted to seek support for his submission that plea regarding the objection to the jurisdiction of the arbitrator can very well be raised before the arbitrator and hence the parties could be directed to raise this plea regarding jurisdiction of the arbitrator before the arbitrator, who can then decide if he would have jurisdiction to entertain this plea of ejectment or not. The counsel thus would challenge the order passed by the Rent Controller accordingly. It is also contended that Rent Controller would be covered by the terms "Judicial Authority" used in Section 8 of the Arbitration Act, and that law would not forbid the parties from entering into contract in such like cases and as such the plea in regard to jurisdiction can more appropriately be raised before the arbitrator itself.

8. Per contra Mr. Vijay Lath, the learned Counsel appearing for the respondents would seriously contest the contentions raised on behalf of the petitioners. He would place strong reliance on the contents of Section 13 of the Rent Act, which according to the counsel, confers certain statutory rights to the landlord to seek ejectment on the grounds mentioned in Section 13 of the Rent Act. The counsel has with emphasis, referred to the contents of Section 13(1) which provides that a tenant in possession of a building or a rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this Section. According to the counsel, this provision would in effect exclude the jurisdiction of any other authority to act in rent related disputes. The counsel, thus, would urge that the order passed by the Rent Controller in declining the application of the petitioner is fully justified. To substantiate his submission, the learned Counsel has relied upon certain judgments of the Hon''ble Supreme Court, which according to the counsel would fully cover his case. He also relies upon Sub-section (3) of Section 2 of the Rent Act, which is as under:

This 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.

9. Having heard the counsel for the parties, I am of the considered view that no interference in the impugned order is called for. In Sukanya Holdings Pvt. Ltd. Vs. Jayesh H. Pandya and Another, , the Hon''ble Supreme Court has interpreted the provisions of Section 8 of the Arbitration and Conciliation Act, 1996. In this case, while interpreting the word "matter" appearing in Section 8, the Hon''ble Supreme Court has held that this would indicate the entire subject matter of suit and the language would clearly show that the entire subject matter of the suit should be subject to arbitration agreement. It is in this context further held that bifurcation of a cause of action i.e. subject matter of suit or in some cases

bifurcation of suit between parties who are parties to arbitration agreement and others is not permissible. As per the counsel for the respondents, the sub-tenants are not parties who are parties to arbitration agreement and others is not permissible. As per the counsel for the respondents, the sub-tenants are not parties to the agreement and the dispute that is prayed to be referred to the arbitration would not cover the case against sub-tenants, which would not be open to be bifurcated. Reference is also made to Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd., wherein the Hon''ble Supreme Court clearly held that the matter relating to winding up of a company cannot be referred to an arbitrator. While so holding, it is observed that the power to order winding up of a company is contained under provisions of Companies Act and is conferred on the Court. It is then observed that an arbitrator, notwithstanding any agreement between the parties, would have no jurisdiction to order winding up of a company. Referring to Section 8(1) of the Arbitration Act, the Hon''ble Supreme Court observed that this postulates that what can be referred to the arbitrator is only the dispute or a matter which the arbitrator is competent or empowered to decide. The word "Judicial Authority" as appearing in Section 8 is also taken note of and in this context it is held that this, however, postulates what can be referred to arbitrator is only the dispute or a matter which the arbitrator is competent or empowered to decide. The learned Counsel for the respondents would thus draw an analogy to say that as in the case of company petition, the rent petitions would also have a special enactment and ejection can only be ordered under the said Act which may not be open to be decided by the arbitrator even if the dispute is referred to him. Reference is also made to the case of Natraj Studios (P) Ltd. v. Navrang Studios and Anr. AIR 1981 SC 537. This is a case under the Bombay Rents, Hotel and Lodging House Rates Control Act. Dealing with the provisions of the Arbitration Act, 1940 and that of Bombay Rent Act, it is observed by the Hon''ble Supreme Court that public policy requires that contracts to the contrary which nullify, the rights conferred on tenants by the Act cannot be permitted. It is further observed that the public policy requires that parties can not also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by Special Courts constituted by the Act. It is in this context observed that the arbitration agreements between the parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a Court of law. This judgment would fully apply and cover the case in hand. Like Bombay Rent Act the provisions of East Punjab Urban Rent Restriction Act are a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. As noticed by the Hon''ble Supreme Court it is a matter of public policy and the scheme of the Act shows that the conferment of exclusive jurisdiction on certain courts is pursuant to the social objective at which legislation aims. It is in this context observed that the public policy requires that the contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. It is thus observed that the arbitration agreements between the parties whose rights are regulated by the Bombay Rent Act cannot be recognized by a Court of law.

10. I have not been able to appreciate the line of reasoning adopted by Mr. Saggar. His submission that the arbitration award now is to be treated as a decree of the court and thus executable would not mean that the provisions of Rent Act, which is a specialized legislation can be given a go-bye. The grounds on which the ejectment of a tenant can be sought are provided under the Rent Act. Similarly, the plea that the arbitrator is now well empowered to decide the question of his jurisdiction would not mean that the same plea is bound to be raised before him alone. The petitioner had moved an application for referring the ejectment petition to the arbitrator. The Rent Controller could not have declined to exercise its power to decide the same simply because the plea in regard to jurisdiction of the arbitrator can be raised before the arbitrator and as such the matter is required to be referred to arbitration. The Rent Controller is justified in relying upon the ratio of law as laid down in the case of Natraj Studios (P) Ltd. (supra), where there is a special legislation, it has to prevail, specially so when the provisions of Section 13 of the Rent Act would bar any other court from trying an ejectment petition. The right to seek ejectment of the petitioner by the respondents flows from the provisions of the Rent Act. Whether the arbitrator would have power to direct ejectment would also be open to debate. As already noticed, whenever any special enactment is made governing the rights of different parties, this is bound to prevail. The authority in case it is needed in this regard, can be had from the ratio of law laid down by the Hon'ble Supreme Court from the cases of Haryana Telecom Ltd. (supra) and Natraj Studio (supra).

There is no infirmity noticed in the impugned order, which may call for any interference.

The, revision petitions are accordingly dismissed.