

(2013) 04 DEL CK 0301
In the Delhi High Court
Case No : Arb.P. No. 25 of 2013

M/s. Desein Pvt. Ltd.

APPELLANT

Vs

M/s. Indian Institute of Planning and Management and
Another

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 16, 8
Transfer of Property Act, 1882 — Section 116

Citation : (2013) 04 DEL CK 0301

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Prashant Mehta and Ms. Priya Pathania, for the Appellant; Gursharan Singh and Mr. Som Prakash, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The abovementioned petition has been filed by the petitioner u/s 11 of the Arbitration and Conciliation Act, 1996 for appointment of a sole Arbitrator. The petitioner and the respondent No. 1 on 17th August, 2007 executed and registered the Lease Deed for property situated at Plot No. 79, Sector-32, Gurgaon. The term of the Lease Deed was for 4 years and further extendable to 2 years.

2. Two Rectifications Deeds dated 18th August, 2007 and 24th November, 2007 were further executed between the parties. For assignment of the Lease Deed an assignment deed dated 29th August, 2008 was entered into between the petitioner and both the respondents, wherein the respondent No. 1 assigned all its rights and obligation qua the property in favour of the respondent No. 2.

3. The said assignment deed further provided that in the event the respondent No. 2 fails to honour any of its obligations under the Lease Deed, the petitioner would be entitled to enforce such obligations against respondent No. 1. Thereafter by deed of part surrender of assignment of lease dated 1st June,

2009, the respondent No. 2 surrendered and reverted back 25% of the property back to the respondent No. 1.

4. The respondents continued in possession of the property till 12th December, 2011. By virtue of adjustment of the security deposit as per terms of the Lease Deed, it was agreed that rent upto 31st October 2011 would be deemed to be paid by adjustment of the security deposit.

5. The petitioner submits that the rent for the period 1st November, 2011 to 12th December, 2011 remained unpaid by the respondent and they in breach of Article 4.2 and 4.8 of the Lease Deed, the respondents also did not give back the property in the same condition as let out to them.

6. The petitioner issued a demand letter to the respondents for balance lease rentals and cost of rectification etc. on 9th March, 2012. However, the respondents refused to pay the same by their letter dated 7th April, 2012.

7. It is case of the petitioners that in view of the above, an arbitral dispute between the parties arose as the claim of rent for the period of 1st November, 2011 to 12th December, 2011 and the claim for bringing the property back in the original condition and claim of interest thereon were "claims, disputes, questions or controversies involving the parties and arising out of or in connection with or relating to this Lease, or the execution, interpretation, validity, performance, breach" and accordingly now the dispute between them fall within the ambit of Article 12.2 of the Lease Deed for resolution by arbitration. The arbitration clause contained in the Lease Deed gives the rights to the parties to raise dispute, if any.

8. The petitioner issued a letter dated 21st April, 2012 for appointment of sole Arbitrator. The same was replied by the respondents vide letter dated 14th May, 2012 in which they are not agreeable to pay the said dues despite of referring the Arbitration Clause contained in the Lease Deed and requested the petitioner to negotiate and conciliate the dispute as per the provision of Clause 12 of the Lease Deed.

9. The contention of petitioner's counsel is that the respondents after relying on the said Arbitration Clause is now stopped from challenging the same as the petitioner before issuance of notice dated 21st April, 2012 requested the respondents to negotiate the disputes but despite of passing of several months of negotiation, no final settlement could be arrived at between the parties. Counsel for petitioner has placed reliance on letters in this regard i.e. letters dated 25th August, 2012, 15th September, 2012 and 3rd October, 2012.

10. The petitioner by letter dated 23rd October, 2012 issued a notice invoking arbitration to the respondents suggesting the names of Justice R.C. Chopra or Justice Manju Goel to be appointed as the sole Arbitrator. However, on 26th November, 2012, the respondent refused to agree to the proposed names of the arbitrators. The petitioner, thereafter, filed the present petition for appointment of an Arbitrator u/s 11 of the Arbitration and Conciliation Act, 1996.

11. Respondents' main inter alia, contentions are that this Court does not have jurisdiction as the jurisdiction has been vested with Gurgaon, Haryana. Clause 12.4 clearly provides a concurrent jurisdiction to the Courts at New Delhi. Clause 12.4 provides "....Judgment upon any arbitral award rendered hereunder may be entered in any court having jurisdiction in New Delhi...". A part of cause of action arises within the jurisdiction of this Court as the Arbitral Tribunal has its seat and venue at New Delhi. The Assignment Deed, the Rectification Deed and Part Surrender Deed were executed in Delhi. The petitioner as well as both the respondents are operating and doing their business within the territorial jurisdiction of this Court. Thus, this Court has jurisdiction to entertain the present petition. In view of the judgment of Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, which held that in paucity of express intention of the parties which can be manifested by use of terms like "express", "exclusive", "alone", jurisdiction of courts cannot be excluded. Therefore, the courts at New Delhi have jurisdiction to entertain the present petition.

12. The next submission of the respondents is that the claim of the petitioner pertains to a period after the efflux of time of the Lease Deed is expired and incase any recovery of amount, the petitioner has to take civil remedy in accordance with law. Part of petitioner's claim is for unpaid rent pursuant to the Lease Deed only apart from which the petitioner has also claimed for rectification of damages to the property which were done by the respondents during the term of the Lease only. Even otherwise, the respondents themselves have relied upon the terms of the Lease Deed and the Arbitration Clause contained within the Lease Deed even after the efflux of the Lease period. The respondent in response to petitioner's first notice invoking arbitration dated 21st April, 2012 stated vide its letter dated 14th May, 2012 stating that as per the terms of the arbitration clause in the Lease Deed, the parties are to negotiate in good faith. The said negotiation process thereafter lasted for a period of almost a period of 3-4 months. Thus, having placed reliance upon the terms of the Lease, the respondents are now not allowed to take different stands at this stage. The objection raised by the respondents no doubt has to be considered by the sole Arbitrator as per its own merit but prima facie, it cannot be disputed the fact that part of the claim of the petitioner is for unpaid rent as per Lease Deed. With regard to other claims of petitioner are concerned, the same are to be determined by the sole Arbitrator after raising the objections by the respondents.

13. In the case of Abaskar Construction Pvt. Ltd. Vs. Pakistan International Airlines, it was held at para 16 that even after the expiry of the lease period if the tenant continues in possession of the property he continues on same terms and conditions as contained in the lease deed. The court held:

Therefore, since the plaintiff allowed the defendant to continue in possession of the tenancy premises and also accepted rent from it, even after the term of the lease had expired by afflux of time, the lease came to be renewed from month to

month being a lease for commercial purpose. The use of the expression "renewed" in Section 116 of Transfer of Property Act clearly implies that the parties in the event of a tenant holding over the property on determination of the lease, would be governed by the terms and conditions of the lease which stands determined, unless they enter into a fresh agreement contrary to the terms and conditions of the lease which stand determined.

This was the view taken by the Division Bench of Calcutta High Court in Krishna Charan Sukladas and Others Vs. Nitya Sundari Devi, as well as by a Division Bench of Allahabad High Court in Zahoor Ahmad Abdul Sattar Vs. State of Uttar Pradesh and Another, and by Madras High Court in K. Gnanadesikam Pillai and Others Vs. Antony Benathu Boopalarayar, . The decision of the Allahabad High Court in the case of Zahoor Ahmad (supra) was affirmed by Supreme Court in The State of U.P. Vs. Zahoor Ahmad and Another, This was also the view of the Federal Court in AIR 1949 124 (Federal Court) where the Court agreed with the following statement contained in Woodfall's "Law of Landlord and Tenant".

Where a tenant for a term of years holds over after the expiration of his lease he becomes a tenant on sufferance, but when he pays or expressly agrees to pay any subsequent rent at the previous rate a new tenancy from year to year is thereby created upon the same terms and conditions as those contained in the expired lease so far as the same are applicable to and not inconsistent with an yearly tenancy.

I, therefore, hold that even on expiry of the terms of the lease, the terms and conditions contained in the lease deed continued to bind the parties, so long as the defendant was holding over the tenancy premises.

Given the fact that in the present case, there was no agreement to the contrary, the occupation of the respondents without prejudice would be on the same terms and conditions as stipulated in the Lease Deed which contains the arbitration. Therefore, this Court ought to refer the present dispute to arbitration pursuant to the arbitration agreement contained in the Lease Deed.

14. The Supreme Court in Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, has held that it is clear from the language of Section 16 of the Act that the Civil Court should not embark upon an inquiry in regard to the applicability of the arbitration clause to the facts of the case, in that the said Section of the Arbitration and Conciliation Act empowers the Arbitral Tribunal to rule "on any objections with respect to the existence or validity of the arbitration agreement."

15. Counsel for the respondents has referred the following decisions

- i) Bougainvillea Multiplex and Entertainment Center Private Limited Vs. Shankar Rai,
- ii) The West Coast Paper Mills Ltd. vs. Asha Kapoor.

17. As far as the first case *Bougainvillea Multiples* (supra) is concerned, the facts are materially different as there is no dispute that the Arbitrator is bound by terms of agreement between the parties and he cannot travel beyond agreement entered into in the case referred, it was held by the Court that the application u/s 8 of the Act was not maintainable since the subject matter of the suit was not covered under the agreement between the parties but situation in the present dispute is different. Therefore it is clearly distinguishable on the basis of different facts.

18. In case of *West Coast* (supra) also the facts are materially different as it was observed in the case referred in the Arbitration Clause that those disputes and differences which relates to the constructions, meaning, operation or effect to the said lease agreement or breach thereof settled by arbitration and Court found that not a single dispute mentioned in the application touching the interpretation, meaning, operations or effect of the lease agreement. Court did decide in the said case as to whether such a clause contained in the arbitration agreement should be looked into or not. The Court merely dismissed the application u/s 8 of the Act by holding that the disputes are outside the scope and ambit of Arbitration Clause as contained in the lease agreement.

19. In the present case, facts and circumstances are different in case the Arbitration Clause is examined carefully. The same are read as under:

12.1 This Lease Deed shall be governed by, and construed in accordance with, the laws of India, without regard to the principles of conflicts to law of any other jurisdiction and the court at Gurgaon shall have jurisdiction.

12.2 Any and all claims, disputes, questions or controversies involving the Parties and arising out of or in connection with or relating to this Lease, or the execution, interpretation, validity, performance, breach or termination hereof, including, without limitation, the provisions of this Article (individually, a Dispute) shall be resolved by such Parties within one (1) month of the arising of a Dispute by amicable negotiation and conciliation between the Parties. If the Parties are unable to resolve and settle the Dispute within one (1) month, then any Party shall be entitled to cause the Dispute to be submitted for arbitration pursuant to the terms of Article 12.3.

12.3 Any Dispute that is not settled to the satisfaction of the Parties under Article 12.2 above shall be finally resolved by arbitration in accordance with the Indian Laws of Arbitration. The Parties shall appoint a sole arbitrator by the mutual consent failing which Court of Law may appoint the arbitrator.

12.4 The Arbitration proceedings will be conducted in accordance with the Arbitration and Conciliation Act, 1996. The place of arbitration shall be New Delhi. All arbitration proceedings shall be conducted in the English language. The arbitrators shall decide any such dispute or claim strictly in accordance with the governing law specified in Article 12. Judgment upon any arbitral award rendered hereunder may be entered in any Court having jurisdiction in New Delhi, or

application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.

12.5 The Parties agree to facilitate the arbitration by (i) co-operating if, good faith to expedite (to the maximum extent practicable) the conduct of the arbitration, (ii) making available to one another and to the arbitrator for inspection and extraction all documents, books, records, and personnel under their control or under the control of a person controlling or controlled by such Party if determined by the arbitrator to be relevant to the dispute, (iii) conducting arbitration hearings to the greater extent possible on successive business days and (iv) using their best efforts to observe the time periods established by the rules of the arbitrators for the submission of evidence and briefs.

12.6 The costs and expenses of the arbitration, including, without limitation, the fees of the arbitration, the fees of the arbitrator, shall except if the arbitrator determine otherwise, be borne equally by each Party to the dispute or claim, and each party shall pay its own fees, disbursements and other charges of its counsel.

12.7 Any award made by the arbitrator shall be final and binding on each of the Parties that were parties to the dispute. The Parties expressly agree to waive the applicability of any laws and regulations that would otherwise give the right to appeal the decisions of the arbitrators so that there shall be no appeal to any court of law on the award of the arbitrators, and no Party shall challenge or resist the enforcement action taken by any other Party in whose favour an award of the arbitrators was given.

12.8 Each Party shall bear its costs of such Arbitration. When any dispute is under arbitration, except for the matters under dispute, the Parties shall continue to exercise their remaining respective obligations under this Lease Deed to the extent practicable.

20. As already mentioned, the petitioner's part of the claim is to recover unpaid rent in terms of Lease Deed, thus both the decisions referred by the respondents do not help the case of the respondents.

21. For the abovesaid reasons, the present petition is allowed.

Ms. Justice Manju Goel (Retd.), (Mob. 981800030), R-128, Greater Kailash I, New Delhi-48, is appointed as sole Arbitrator to adjudicate the dispute between the parties to be conducted under the aegis of Delhi High Court Arbitration Centre and its rules and the fee shall also be paid to the sole arbitrator as per rules thereof. The Arbitrator appointed by the Delhi High Court Arbitration Centre shall give prior notice before commencing the proceedings. The petition stands disposed of. A copy of the order be sent to Delhi High Court Arbitration Centre.

No costs.