

(2011) 04 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8296 of 2009

National Textile Corporation (DP and R) Ltd. (The) and
Another

APPELLANT

Vs

The Rent Control Appellate Tribunal and Others

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 18, 2(3), 8, 8(1)
Transfer of Property Act, 1882 — Section 106, 111(g), 111(h), 3(x)

Citation : (2011) 4 RLW 2803

Hon'ble Judges : Munishwar Nath Bhandari, J

Bench : Single Bench

Advocate : K.K. Sharma, with Mrs. Alankrita Sharma, for the Appellant; R.K. Agrawal with Alok Chaturvedi for Respondents No. 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Munishwar Nath Bhandari, J.—By this writ petition, a challenge has been made the order dated 10.4.2006 passed by the Rent Tribunal, Jaipur and the order dated 19.2.2009 passed by the Appellate Rent Tribunal, Jaipur. It is a case where after termination of lease pursuant to the provisions of Section 106 and 111(g) of the Transfer of Property Act, 1882 (for short "the Act of 1882"), when premises was not vacated on expiry of period of 15 days, respondents No. 3 to 5 preferred application u/s 18 of the Rajasthan Rent Control Act, 2001 (for short "the Act of 2001"). It was in the background this petitioner No. 1 is a Govt. of India enterprise, hence, as per Sec. 3(x), provisions of Chapter II and III of the Act of 2001 are not applicable. Petition preferred by the respondents No. 3 to 5 was allowed by the Rent Tribunal, Jaipur vide order dated 10.4.2006. Petitioners had thereafter preferred an appeal, which was partly allowed by the Appellate Rent Tribunal, Jaipur.

2. Learned counsel for petitioners submits that as per lease agreement, dispute was referable to the Arbitrator thus provision of Sec. 18 of the Act of 2001 was

wrongly invoked by the respondents-landlord. This is more so when Arbitration and Conciliation Act, 1996 is a Central Act thus State Act cannot have overriding effect over it in absence of assent of the President of India.

3. In the alternative, Section 18 of the Act of 2001 does not exclude the jurisdiction of arbitration if proviso to Section 18 is given proper interpretation, as per proviso, where Chapter II and III do not apply then provisions of the Act of 1882, Indian Contract Act and any other substantive law remains applicable, as if such provision would have been applied if the dispute been brought before the civil Court by way of a suit.

4. In the light of the aforesaid, provisions of the Act of 1996 being a substantive law, remains applicable. If the second proviso to Section 18 of the Act of 2001 is seen then exclusion of certain legislation have been given in specific terms. Thus, if, at all, there would have been intention of the Legislature to exclude application of Arbitration and Conciliation Act, 1996 it could have excluded it like Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, as referred in second proviso.

5. In the light of the aforesaid, both the tribunals below failed to give true interpretation of the provision of Section 18 of the Act of 2001, which, in fact, oust the jurisdiction of civil Court only.

6. It is lastly urged that order of eviction has been passed in ignorance of the provisions of Section 106 and 111(g) of Transfer of Property Act, 1882. Section 111(g) has been evoked by the respondents while issuing notice without its application. Learned Tribunal, ignoring the aforesaid, passed the order of eviction, which deserves to be set aside. To support his arguments, reference of the judgment in the case of Gyaneshwar Bhati Vs. Balu Ram and Others, has been given, wherein, application u/s 18 of the Act of 2001 was held to be not maintainable.

7. No other argument has been raised by learned counsel for petitioners.

8. Learned counsel for respondents landlord, on the other hand, submits that petition u/s 18 of the Act of 2001 is maintainable in the present matter, since Chapter II and III of the Act of 2001 is not applicable. Provisions of Section 18 of the Act gives exclusive jurisdiction to the Rent Tribunal for adjudication of dispute between landlord and tenant and matters connected therewith the ancillary thereto. It also excludes jurisdiction of civil Court. In the background aforesaid, a clause of arbitration in the lease agreement cannot nullify the statutory provisions. Section 29 of the Act of 2001 gives overriding effect to any other law. In the aforesaid background, the clause for arbitration in the lease agreement cannot nullify the jurisdiction of Rent Tribunal under the Act of 2001. This is essentially when the dispute in the present matter is between landlord and tenant. Even if it is assumed that the arbitration clause is applicable notwithstanding the provisions of Section 18 and Section 29 of the Act of 2001, there is no bar for the Rent Tribunal to proceed in the matter. If Section 8 of the

Act of 1996 is looked into, it provides for application for submission of matter to the arbitration. Such an application has to be submitted not later than first statement on the substance of the dispute. Since petitioner never made an application u/s 8 of the Act of 1996, the Rent Tribunal rightly proceeded with the matter. This is more so when the law on the issue has already been settled by this Court in the case of "Smt. Nalini Mehta vs. State Bank of India & Ors." reported in 2007 (3) CDR 1903 (Raj.).

9. Further reference of the judgment in the case of Big Shoppers Supermarket Pvt. Ltd. Vs. K.M. Trading and Agencies Pvt. Ltd. has been given. Therein, application u/s 11 of the Act of 1996 was dismissed in reference to Sections 18 and 29 of the Act of 2001. The aforesaid was also a case between landlord and tenant. Landlord therein filed a suit for eviction before the Rent Tribunal, Jaipur thus taking note of the aforesaid, it was held that it is only the Rent Tribunal which can decide the dispute between landlord and tenant hence, Section 11 of the Act of 1996 cannot be invoked.

10. Further reference of the judgment in the case of Mahesh Kumar Vs. Rajasthan State Road Transport Corporation, has been given. Therein, it was held that to take benefit of Section 8(1) of the Act of 1996 one has to apply within specific period and plea in that regard cannot be taken in written statement. It was thus held that mere existence of arbitration clause does not bar jurisdiction of the civil Court.

11. Coming to the facts of the case in reference to notice u/s 111(g) of the Act of 1882, it has been submitted that no objection was raised in reference to aforesaid notice while filing written statement or arguing the matter before the Tribunals below. The pleading made in the written statement was in reference to the provisions of Sections 106 of the Act of 1882 which becomes clear from the bare reading of para 13 of the written statement. In any case, even reference of wrong provision does not exclude jurisdiction of the Court to determine the dispute on facts. In that regard, reference of the judgment in the case of "N. Mani vs. Sangeetha Theatre & Ors." reported in (2004) 12 SCC 278 has been given. In the present matter, respondents landlord had given notice for termination of lease by invoking provisions of Sections 106 and 111(g) of Transfer of Property Act, 1882. As per Section 106 of the Transfer of Property Act, tenancy comes to an end if notice of fifteen days has been given and period expired. In the present case, petition for eviction was filed much after the end of the month of the date of notice thus termination of lease became absolute. Petitioners tenant did not raise any objection of termination of tenancy in the midst of the month while filing written statement.

12. In any case, the law on the aforesaid issue is settled as held by the Gauhati High Court in the case of Jadab Chandra (Malakar) Das Vs. Sri Sri Hayagriv Madhab and Another, . A further reference of the judgment in the case of Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others, has been given.

13. I have considered rival submissions of learned counsel for the parties and scanned the matter carefully.

14. It is an admitted case of the parties that Chapter II and III of the Act of 2001 is not applicable to the present matter. The respondents landlord invoked the provisions of Section 18 of the Act of 2001 after serving a notice for termination of lease pursuant to Sections 106 and 111(g) of the Transfer of Property Act, 1882.

15. In the aforesaid background and taking note of arbitration clause in the agreement between the parties, the first issue for consideration is as to whether Rent Tribunal was having jurisdiction to entertain the petition for eviction. For appreciation of aforesaid argument, provision of Section 18 of the Act of 2001 are quoted for ready reference-

18. Jurisdiction of Rent Tribunal.--(1) Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends only the Rent Tribunal and no civil court shall have jurisdiction to hear and decide the petitions relating to disputes between landlord and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act:

Provided that Rent Tribunal shall, in deciding such petitions to which provisions contained in Chapter II and III of this Act do not apply, have due regard to the provisions of Transfer of Properties Act, 1882 (Act No. 4 of 1882) the Indian Contract Act, 1872 (Act No. 9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a civil Court by way of suit:

Provided further that nothing contained in this Act shall be deemed to empower the Rent Tribunal to entertain a petition involving such dispute between landlord and tenant to which provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (Act No. 2 of 1965) and the Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 apply.

(2) Where the petition only for recovery of unpaid rent or arrears of rent is filed, the time schedule and procedure enumerated in Section 14 shall mutatis mutandis apply to such petition.

(3) Where the petition for recovery of possession is filed in respect of the premises or tenancies to which the provisions of Chapter II and III of this Act do not apply, the time schedule and procedure enumerated in Section 15 shall mutatis mutandis apply to such petition.

(4) A petition shall be instituted before the Rent Tribunal, within the local limits of whose jurisdiction - the premises is situated.

16. Bare perusal of the above provision shows that exclusive jurisdiction has been given to the Rent Tribunal regarding the dispute between landlord and tenant and matter connected therewith and ancillary thereto. It is

notwithstanding anything contained in any other law for time being in force.

17. Section 29 also gives overriding effect to the provisions of the Act of 2001, which is quoted thus-

29. Act to have overriding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other Law for the time being in force or in any instrument having effect by virtue of any Law other than this Act.

18. In the light of aforesaid provision, any other law inconsistent with the provisions of the Act of 2001 will have no effect as the Act of 2001 has been given overriding effect. The Act of 2001 is a State Legislature and is being enacted by the State Government within its competence. The issue involved in the present matter was otherwise considered by this Court in the case of Big Shoppers Supermarket Pvt. Ltd. (supra). Therein, application u/s 11 of the Arbitration and Conciliation Act, 1996 was not entertained as the landlord had invoked jurisdiction of the Rent Tribunal under the Act of 2001. It was held that as per Section 18 of the Act of 2001, a dispute between landlord and tenant remains under exclusive jurisdiction of the Rent Tribunal. Reference of Section 2(3) of the Act of 1996 was given to show that provisions of the Act of 1996 does not have overriding effect to the said legislation. Paras 5 to 9 of the aforesaid judgment aforesaid are quoted for ready reference-

5. Admittedly the applicant is tenant and the respondent is the landlord and the dispute between the parties relates to termination of tenancy and eviction of the tenant. As per Section 18 of the Rent Act, only the Rent Tribunal has the jurisdiction to resolve the disputes between landlord and tenant. Section 18(1) reads as follows:-

18. (1) Jurisdiction of Rent Tribunal. Notwithstanding anything contained in any other law for the time being in force, in the areas to which this Act extends, only the Rent Tribunal and no Civil Court shall have jurisdiction to hear and decide the petitions relating to disputes between land lord and tenant and matters connected therewith and ancillary thereto, filed under the provisions of this Act. Provided that Rent Tribunal shall, in deciding such petitions to which provisions contained in Chapter II and III of this Act do not apply have due regard to the provisions of Transfer of Properties Act, 1882 (Act No. 4 of 1882), the Indian Contract Act, 1872 (Act No. 9 of 1872), or any other substantive law applicable to such matter in the same manner in which such law would have been applied had the dispute been brought before a Civil Court by way of suit;

Provided further that nothing contained in this Act shall be deemed to empower the Rent Tribunal to entertain a petition involving such dispute between landlord and tenant to which provisions of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (Act No. 2 of 1965) and the Rajasthan Premises (Requisition and Eviction) Ordinance, 1949 apply.

6. A further look at the scheme of Rent Act demonstrates that as per Section 9 the satisfaction of Rent Tribunal is necessary before ordering eviction of the tenant. The satisfaction of Rent Tribunal can not be substantiated with that of the satisfaction of Arbitrator. According to Section 29 the provisions of Rent Act have overriding effect over other laws. Section 29 reads thus:-

29. Act to have overriding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

7. Even as per Section 2(3) of 1996 Act, the said Act shall not effect any other law for the time being in force. Section 2(3) reads as follows:-

(3) 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.

8. Indisputably the respondent landlord has already filed a suit for eviction bearing No. 365/2008 against the tenant applicant in the Rent Tribunal Jaipur which is pending for adjudication. Now after noticing that the suit for eviction is pending against him, the tenant has filed instant application. According to the tenant the dispute has arisen in relation to or connected with the lease deed or concerning the lease and the following disputes are required to be referred to the Sole Arbitrator for adjudication:-

(a) Whether the applicant is entitled to the specific performance of the contract viz. for asking the respondent to submit the lease deed for registration and get it registered?

(b) In case decree for specific performance is granted, what is the effect of the decree for specific performance on the notice dated June 19, 2007 served by the lesser upon the Lessee?

(c) Whether notice of terminating tenancy is valid?

(d) Whether the lessor is entitled to a decree for eviction as per the provisions of the Rajasthan Rent Control Act, 2001?

9. I am afraid, the Arbitrator cannot resolve as to whether the respondent landlord is entitled to a decree for eviction or not under Rent Act. It is only the Rent Tribunal, which has jurisdiction to pass the decree for eviction.

19. Even in the case of Smt. Nalini Mehta (supra) provisions of Section 18 was made applicable even in those cases where Chapter II and III of the Act of 2001 was excluded. In view of aforesaid, it cannot be said that any agreement having arbitration clause, the Rent Tribunal will have no jurisdiction, rather, in the light of the judgments referred to above and taking note of the provisions of Section 18 and 29 of the Act of 2001 a dispute between landlord and tenant is given to the exclusive jurisdiction of the Rent Tribunal and proviso to it can be read in contradiction.

20. The controversy now remains in regard to the issue of alleged repugnance between the Central enactment viz a viz the State enactment, for this purpose, firstly, reference of Section 2(3) of the Act of 1996 would be relevant and is quoted thus-

2. Definitions.--(1) in this Part, unless the context otherwise requires,-

(a) to (h).....

(2)...

(3) 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.

21. Bare reading of the aforesaid provision clarifies that the provisions of the Act of 1996 has not been given overriding effect to any other law where jurisdiction of the arbitration has been excluded. If the provisions of Section 18 of the Act of 2001 are looked into, a dispute between landlord and tenant is given under exclusive jurisdiction of the Rent Tribunal. Thus, question of repugnance does not exist in the light of Section 2(3) of the Act of 1996.

22. I have considered the matter further. Assuming that jurisdiction with the arbitrator remains irrespective of provisions of Section 18 and 29 of the Act of 2001. This is in the light of the first proviso to Section 18. In that case also, petitioners were under an obligation to apply for reference of the dispute to the arbitrator before filing of written statement. In fact, either before or after filing of the written statement, petitioners did not apply for reference to the arbitrator in the light of the lease agreement. In the aforesaid background, jurisdiction of the Rent Tribunal remains. To appreciate aforesaid, Section 8 of the Act of 1996 is quoted hereinbelow-

8. Power to refer parties to arbitration where there is an arbitration agreement.--

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

23. Perusal of the aforesaid provision shows that one has to apply for reference to the arbitrator when action has been brought before the judicial authority in a matter having arbitration clause. In this case, no prayer was made to refer the dispute to the Arbitrator. Only the issue of jurisdiction has been raised.

24. In the case of Mahesh Kumar (supra) this Court held that mere existence of arbitration clause does not bar jurisdiction of civil Court automatically. Paras 5, 6 and 7 are quoted for ready reference-

5. So far as requirement of sub-section (1) of Section 8 is concerned, it clearly provides that to take benefit of arbitration clause, party to contract is required to apply for that relief and mere existence of arbitration agreement cannot oust the jurisdiction of the civil court. And for the reference of dispute to arbitrator, party may apply within specific period and outer limit has been given in sub-section (1) of Section 8 of the Act of 1996 itself, i.e., before objection submits his defence. Thereafter, prayer to refer the matter to arbitrator can be made before filing written statement by the defendant. Sub-section (2) of Section 8 of the Act makes it clear that party to suit is not only required to submit application under sub-section (1) of Section 8, but prescribes procedure for filing application u/s 8 of the Act of 1996.

6. Further the sub-section (3) of Section 8 of the Act of 1996 though deals with other aspects of the matter, but says that when application has been made under sub-section (1) and the issue is pending before the judicial authority, the arbitration may be commenced or continued and award can be passed. In sub-section (3) of Section 8 of the Act of 1996 there is reference of application. The Hon''ble Supreme Court also in the judgment of Hindustan Petroleum Corporation Ltd. (supra) also held that "the jurisdiction of civil court is barred after an application u/s 8 of the Act is made for arbitration." In view of the above, a separate application is required to be filed u/s 8(1) of the Act of 1996 and the plea cannot be taken in written statement.

7. The judgment of Hon''ble Supreme Court delivered in Hindustan Petroleum Corporation Ltd. (supra) also nowhere says that the civil Court shall not have jurisdiction to entertain the suit only because that there is contract for referring the dispute to arbitrator. It is not a case of total ouster of jurisdiction of the Court in the cases where the arbitration clause is there in the contract between the parties to the suit, but it depends upon compliance of the conditions by the persons seeking for referring the matter to the arbitration. In view of the above reason, the judgment of the Hon''ble Supreme court sought to be interpreted to mean that once it is found that contract between the parties contains clause for arbitration, the jurisdiction of the civil Court stands ousted automatically, cannot be accepted nor the above judgment of the Hon''ble Supreme Court lays down so, as suggested by the learned counsel for the petitioner.

25. In the light of the aforesaid, even if first argument raised by the petitioners would have been accepted, in absence of an application for reference of the dispute to the arbitrator, jurisdiction of the Rent Tribunal is not excluded. From the facts on record, it is not coming out that petitioners never applied for a reference of the matter to the arbitrator. In the light of aforesaid background, jurisdiction of the Rent Tribunal is not excluded.

26. The question now comes as to whether notice of termination was given as per the provisions of the Transfer of Property Act, 1882 or not? Notice in dispute makes a reference of Sections 106 and 111(g) but if the substance is looked into, it is essentially for termination of the lease by invoking provisions of Section 106 of the Transfer of Property Act, 1882 and as an outcome of which termination of lease in view of provisions of Section 111(h) of the Act of 1882 mentioned as 111(g). Wrong mention of the provision does not exclude jurisdiction of the Rent Tribunal in the light of the judgment in the case of N. Mani (supra). This is apart from the fact that even if provision of Section 111(g) of the Act of 1882 has wrongly been mentioned and has to be taken as it is, notice of termination otherwise makes a reference of Section 106 of the Act of 1882 with a direction to quit. In the background aforesaid, there exist termination of lease as per Section 106 of the Transfer of Property Act. Thus, even last argument raised by learned counsel for the petitioners tenant cannot be accepted. This is more so when no such objection as raised now, was raised in the written statement or before both the Tribunals. Reference of the judgment in the case of Bhagabandas Agarwalla (supra) is relevant, wherein, it has been held that a notice to quit must be construed not with desire to find faults. Para 3 of the said judgment is quoted thus-

3. Now, it is settled law that a notice to quit must be construed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat*. "The validity of a notice to quit", as pointed out by Lord Justice Lindley, L.J. in *Sidebotham vs. Holland* (1), "ought not to turn on the splitting of a straw". It must not be read in a hyper-critical manner, nor must its interpretation be affected by pedagogic pendantism or overrefined subtlety, but it must be construed in a common-sense way. See *Harihar Banerji vs. Ramsashi Roy* (2). The notice to quit in the present case must be judged for its validity in the light of this well recognized principle of interpretation.

27. A part from para 4 of the said judgment is also quoted hereunder-

4.....This makes the intention of the authors of the notice clear that they are terminating the tenancy only with effect from the end of the month of October 1962 and not with effect from any earlier point of time during the currency of that month. If the respondents do not vacate the premises within the month of October 1962, they would be treated as trespassers from 1st November, 1962 and not from any earlier date, clearly implying that they would lawfully continue as tenants upto the expiration of the month of October 1962. The tenancy was, therefore, sought to be determined on the expiration of the month of October 1962 and not earlier and the notice to quit expired with the end of the month of tenancy as required by section 106 of the Transfer Property Act. It was in the circumstances a valid notice which effectively determined the tenancy of the respondents with effect from the mid-night of 31st October, 1962.

28. In view of the aforesaid, Court is required to see substance of the notice without intention to find fault therein.

29. This is more so when after issuance of the notice petition of eviction was filed expiry of a month. In view of discussion made aforesaid, I do not find any merit in this writ petition. This is more so when there exist concurrent finding of fact thus, for the reasons recorded in the judgment, I am not inclined to interfere in the orders of the learned Rent Tribunal and Appellate Rent Tribunal. Hence, writ petition is accordingly, dismissed. Cost is made easy.