
(2009) 03 DEL CK 0090
In the Delhi High Court
Case No : FAO No. 356 of 2008

Roshin Lal Gupta and Sons Pvt. Ltd.

APPELLANT

Vs

Delhi Tourism and Transportation Development Corporation
and Another

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Citation : (2009) 157 DLT 781 : (2010) 8 RCR(Civil) 1439

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : R.K. Singh and Deepa Rai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—The plaintiff/appellant - Roshin Lal Gupta & Sons Pvt. Ltd. owns a shop-cum-office at the ground floor, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi. It let out the said premises to the respondents - Delhi Tourism & Transportation Development Corporation (DTDC) on 2nd March, 2005 for two years. The appellant claims that the monthly rent agreed between the parties was fixed @ 12.5% of the gross profit arising from the sales carried out by the respondents from the said premises. The appellant also contends that at the time when the premises were let out, the respondents assured them that the monthly rent would work out to more than Rs. 30,000/- per month. The terms and conditions of the contract between the parties were reduced to writing by a "Deed of Agreement" executed on 1st June, 2005 between the parties. That agreement also contained the following arbitration clause:

That if any dispute or difference arises between the parties here or their representatives or in regard to any other matter under these presents and save as to any matter the decision thereof is hereinbefore expressly provided for, the same shall be referred to Sole-Arbitrator of the MD&CE, Delhi Tourism & Tpt. Dev. Corporation Limited and if he is unable or unwilling to act to the sole

Arbitration of some other persons appointed by him, it will be no objection to any such appointment that the person appointed is/was an employee of the Corporation or that he has to deal with the matters to which the contract relates and that in the course of his duties as such employees of the Corporation, he has expressed views on all or any of the matter in dispute or difference.

The reference to the Arbitration shall be deemed to be a submission within the meaning of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof, and the rules made there under for the time being in force shall apply to such reference and this deed shall be deemed to be submission to such Arbitration. The decision of such arbitrator shall be final and binding upon both the parties.

2. The appellant contends that despite repeated requests, the respondents failed to pay the monthly dues as fixed under the aforesaid agreement between the parties to them. It is also alleged that the respondents failed to render proper accounts of the total monthly sales turnover which would enable the appellants to also determine the amount due to them every month in terms of the Agreement. Consequently, on 2nd July, 2005, the appellants terminated the agreement and called upon the respondents to vacate the premises by 2nd August, 2005. Since the respondents failed to do so, another letter was written by the appellant putting the respondents on notice that the monthly rent of the premises is about Rs. 50,000-60,000/- per month and that in case the premises are not handed over by Ist December, 2006, the appellant would be constrained to seek their eviction as well as damages for the illegal use and occupation of the same. Other communications to the same effect are also stated to have been addressed to the respondents by the appellant but to no avail. Ultimately, a legal notice dated 11th July, 2007 was served by the appellant on the respondents demanding rendition of accounts pertaining to sale from the premises from March, 2005 to May, 2006. Consideration at the agreed rate of 12.5% of the monthly gross profit arising from the sales during that period along with damages for unauthorized occupation of the premises from Ist May, 2006 onwards was also demanded @ Rs. 50,000/- per month. The respondents were given two weeks" time to comply failing which the appellant would be constrained to initiate eviction proceedings in Court. Ultimately, the appellant filed a suit No. 161 of 2007 before the Court of the District Judge, Delhi, seeking recovery of possession of the suit premises, damages/mesne profits and also rendition of accounts pertaining to the sales incurred by the respondents from the suit premises. On receipt of notice of the suit, the respondents moved an application u/s 8 of the Arbitration and Conciliation Act, 1996 praying that in view of the aforesaid arbitration agreement incorporated in the Deed of Agreement executed between the parties on Ist June, 2005, the disputes between the parties be referred to arbitration. The appellant opposed reference to arbitration. After hearing the parties, the learned Additional District Judge granted the prayer of the respondents and referred the matter to arbitration in terms of the aforesaid arbitration agreement between the parties. Dissatisfied

with that order, the appellant/plaintiff has appealed to this Court.

3. Counsel for the appellant has raised two principal contentions. According to him, since the lease in question had come to an end and the tenancy stood terminated with effect from 1st May, 2006 after the same was determined by his client therefore, there is no subsisting lease agreement in existence under which any dispute can be referred to arbitration. It is next contended by learned Counsel for the appellant that as a matter of fact, the application moved by the respondent u/s 8 of the Arbitration and Conciliation Act, 1996 before the Trial court has failed to disclose any disputes between the parties in respect of which arbitration can be claimed in terms of the arbitration agreement reproduced above. It is submitted by learned Counsel for the appellant that under the circumstances, the trial court was in error in concluding that there was a subsisting arbitration agreement between the parties or that there existed any disputes between the parties that could have been referred to arbitration.

4. With regard to the first argument, it is also the appellant's case that since the lease in question had come to an end consequently, the arbitration clause contained in the lease also came to an end and that in this way, the arbitration clause ceased to exist altogether, and that therefore, the learned trial court was in error in concluding that there existed a subsisting arbitration agreement between the parties on the basis of which a dispute could be referred to arbitration.

5. Per Saville, J. in *Union of India v. McDonnell Douglas Corporation* (1993) 2 LLRep. 48. "arbitration clause in a commercial contract is an agreement inside an agreement. The parties make their commercial bargain...but in addition agree on a private tribunal to resolve any issues that may arise between them."

In this case also, the arbitration clause in question provides the manner in which all disputes or differences between the parties in regard to "any other matter", arising out of the lease agreement, are to be resolved.

6. Russell on Arbitration [21st Edition] has examined just the very question raised by learned Counsel for the appellant who claims that since the contract in which the clause was contained was brought to an end by his client because, according to him, the other party was in breach, therefore, along with the contract, the arbitration agreement contained therein has also ceased to exist. There, it stated thus, at Page 32.

it would be a bizarre outcome if the arbitration clause did not survive discharge of the contract by breach, as the arbitration clause was agreed by the parties for the very purpose of providing the means by which disputes about the contract, including breach, would be determined. The first part of the answer is that the arbitration clause is treated as a separate and independent agreement which generally survives the termination of the underlying contract. This is known as the doctrine of separability.

The aforesaid doctrine of separability has been given judicial recognition in a number of judgments. Under it, unless a contrary intention appears, "the arbitration agreement has a separate life from the contract for which it provides the means of resolving disputes. This enables the arbitration agreement to survive breach of the contract of which it is a clause." (See Russell on Arbitration, 21st Edition, Page 57).

Similarly, with regard to termination of a contract by breach or frustration it was held in *Heyman v. Darwins Ltd.* (1942) A.C. 356 that termination by breach of performance obligations does not bring the contract's dispute resolution procedure to an end, and is entirely within the scope of the arbitration agreement.

I may add that as held in *Astro Vencedor Compania Naviera SA v. Mabanft GmbH* (1970) 2 LlJ Rep. 267, "the court should if the circumstances allow lean in favour of giving effect to the arbitration clause to which the parties have agreed.

7. In the same context, Russell on Arbitration also states that, "the reasoning behind the doctrine of separability was, therefore, that the arbitration clause constitutes a self contained contract collateral or ancillary to the underlying or "main" contract." Under the doctrine of implied terms, it has long been held that an arbitration agreement can continue to be implied as one of the terms of the relationship between the parties after the formal expiry of an agreement between them containing an arbitration clause: typically, this is found in leases and partnership deeds. [see Russell on Arbitration, 21st Edition, page 34]

8. Similarly, in Mustill & Boyd, *Commercial Arbitration*, Butterworths (1982), at page 8, the doctrine of separability has been expressed thus;

a doctrine has been evolved which leads to a different conclusion-where the question is whether the contract, acknowledged to be binding at the inception, has been discharged by subsequent events. This doctrine treats the arbitration clause as having a life of its own, severable from the substantive contract, and capable of surviving it so as to give the arbitrator continuing jurisdiction not only over disputes arising from events happening whilst the contract was still in existence, but also upon whether the contract has come to an end, and if so with what consequences to the parties. Thus an arbitrator can hold that the contract has been discharged by frustration or repudiation, or has been rescinded on the ground of misrepresentation or non-disclosure, without casting any doubt upon his own status as arbitrator.

9. On the same lines, in *Shri N. Sreenivasa v. Kuttukaran Machine Tools Ltd.* 2007 (4) ARB.L.R. 445, it was held as follows:

12. ... But in a case where a contract is validly executed, which contains an arbitration clause, if such a contract comes to an end either by way of repudiation, frustration, breach or performance of the contract, though the contract comes to an end, the contract is still in existence, for certain purposes in

respect of disputes arising under it or in connection with it. Therefore, the arbitration clause in such a contract does not perish. It continues to exist. Any dispute arising under the said contract is to be decided as stipulated in the arbitration clause. Whether the contract has come to an end in the manner stipulated in the contract itself is a dispute. Therefore, notwithstanding the contract coming to an end, the arbitration clause persists and even that dispute is to be resolved in terms of the arbitration clause contained in the agreement.

To my mind, the above is a cogent example of the application of the doctrine of separability.

10. In *Andritz Oy v. Enmas Engineering Pvt. Ltd.* 2007 (3) ARB. L.R. 545, the Madras High Court examined the question of the separability and survival of the arbitration clause and held in paragraph 33 thereof that,

therefore, the contention that the arbitration clause is severable and that it can be treated as an agreement in itself is well founded. This inevitable conclusion flows out of the provisions of Section 2(1)(b) and 7(2) of the Act, in respect of cases covered by Part I and it flows out of the provisions of Article 11(2) of the First Schedule to the Act, in respect of cases covered by Chapter I of Part II. In a sense, an arbitration clause contained only as part of a whole agreement, is to be treated as a life boat in a ship, of which it is a part. Whether the life boat would survive the ship when it is sinking, is the crucial issue to be considered....

To this, that Court added the qualification that the conclusion that the arbitration agreement is severable from the main contract does not imply that it will survive the main contract in every case even if the main contract is at an end. It felt that although in case of agreements which are void ab initio the ability of the arbitration clause to survive is doubtful, however, in voidable contracts, the arbitration clause would survive, while in the case of contracts which are stated to have become void later on, that Court quoted the Supreme Court in *Naihati Jute Mills Ltd. v. Khayaliram Jagannath* (1968) 2 SCJ 907 for the proposition that in such a situation, the arbitration clause would survive. Similarly in another case of *Neyveli Lignite Corporation Ltd. v. Metro Machinery Traders and Ors.* in Writ Appeal Nos. 1488, 1502 and 1562 of 2007 decided by the Madras High Court on 1st April, 2008, it was held in paragraph 38 thereof that;

an arbitration clause in an agreement shall be treated as an agreement independent of other terms of the contract and even if the Arbitral Tribunal were to hold that the contract is null and void, it shall not entail ipso jure the invalidity of the arbitration clause. In other words, even if the contract is held to be void, the clause regarding arbitration found in a void contract would not become void. It exists independently of the said contract and it could be enforced.

11. Similarly, in *The Union of India Vs. Kishorilal Gupta and Bros.,* , a Full Bench of the Supreme Court noticed the aforesaid decision of the House of Lords in *Heyman v. Darwins Ltd.* (supra) and quoted with approval the following observations from that decision;

if, however, the parties are at one in asserting that they entered into a binding contract, but a difference has arisen between them as to whether there has been a breach by one side or the other, or as to whether circumstances have arisen which have discharged one or both parties from further performance, such differences should be regarded as differences which have arisen "in respect of ", or "with regard to", or "under" the contract, and an arbitration clause which uses these, or similar, expressions, should be construed accordingly.

12. The appellant's argument that the arbitration clause has ceased to exist altogether and that there was no subsisting agreement between the parties on the basis of which a dispute could be referred to arbitration does not hold water for the simple reason that an arbitration clause contained in a contract constitutes a separate agreement by itself. It has an independent existence and whether or not it survives the termination of the contract in which it is contained is a matter of fact depending upon the language of the contract as well as of the arbitration agreement itself. In this case, the fact that the arbitration agreement would continue to be in existence is also supported by the expression, "or in regard to any matter under these presents". To my mind, this clause is very wide and can easily be said to have within its contemplation any dispute between the parties with regard to the terms and conditions of the tenancy agreement and the interpretation thereof, as well as any claims that one party may have against the other in this regard. It would also include any claim that the lessor may have for recovery of possession of the premises on account of breach of the contract as well as for damages and mesne profits etc. on the same account. In such a case, whilst one party may claim recovery of possession along with damages and mesne profits on account of breach by the other, the other party might well claim that there is in fact no breach at all, and that it has been acting in terms of the contract all along and that it is in possession of the premises in terms of a valid and subsisting contract. Such a dispute would clearly be one that has arisen with regard to the terms of the contract and the duties of the contracting parties to each other. The issue whether one party has validly terminated the contract or whether a party is in breach or whether the contract still subsists, is certainly something that is directly related to the contract and would, without a doubt, fall within the ambit of the expression, "any other matter" envisaged in the arbitration agreement. Clearly therefore, the appellant's suit against the respondent alleging violation of the aforesaid agreement of 1st June, 2005 between them, amounts to, "an action in a matter which is the subject of an arbitration agreement" as envisaged u/s 8 of the Arbitration and Conciliation Act, 1996.

13. In this case also, it is the appellant's own case that parties have entered into a binding agreement whereby the appellant's premises were let to the respondent on a monthly rent which was to be computed on the terms mentioned therein. The appellant has thereafter contended that the respondents failed to perform the terms of the contract and had in effect breached the agreement whereupon the appellant terminated the same and called upon the

respondents to return the premises while reserving the right to seek eviction and damages from the respondents. Under the circumstances, I have no doubt that the arbitration clause contained in the contract between the parties constituted a collateral agreement and it exists independently of the said contract and is enforceable in respect of the disputes raised in the suit. The disputes are directly relatable to and arise out of the aforesaid agreement between the parties of which the arbitration clause is a part.

14. Learned Counsel for the appellant also relied upon the decision of a single Judge of the Allahabad High Court in Krishna Veer son Shri Veer Narain (In Jail) Vs. The State of U.P., in support of his contention that once the lease expired, the contract was at an end since, "the agreement was non-existent" and therefore the arbitration clause contained in that agreement was not applicable. In the light of the law discussed above and for the reasons that follow, I do not consider this authority a good precedent for the proposition canvassed by the appellant. The relevant facts, as they appear in paragraph 3 of that judgment, are that the parties admittedly entered into a lease for five years with effect from 1st July, 1999 and that the agreement envisaged that the tenancy created thereby, "was to continue even after expiry of initial period of five years for future period on yearly basis". Later on, in paragraph 19, the judgment refers to clause 14 of the agreement which it says, "clearly stipulated that the extension of lease could be granted by mutual agreement between the parties". It was also provided that, "in the event of any dispute concerning the subject matter and agreement, the matter was to be referred to an arbitrator..". Before the first period of five years was over, a notice was given by the landlady demanding vacant possession of the tenanted premises and arrears of rent up to 30th June, 2004. In that notice, the tenant was also informed that in case of non-compliance, she intends to file a suit for ejection and arrears of rent along with mesne profits/damages. Ultimately, the landlady filed that suit. The suit was duly contested by the tenants. They filed their written statement taking a number of defences. Issues were framed, and evidence was led by both parties. It might be noticed that the judgment does not state whether any application was moved by the defendants u/s 34 of the Arbitration Act, 1940 seeking stay of legal proceedings in view of the arbitration agreement between the parties. It also does not state whether any application was moved by the defendants u/s 20 of that Act as applicable to the state of Uttar Pradesh seeking a reference to arbitration as envisaged under the agreement. There appears to have been only a preliminary objection taken by the defendants in their written statement that the court had no jurisdiction to entertain the suit in view of the existence of the arbitration clause in the lease deed. It was on these facts that the High Court decided not to interfere in the exercise of writ jurisdiction with the decision of the civil court. Paragraph 21 of that judgment, which is also relied upon by learned Counsel for the appellant, only states that since the suit was filed on 1st July, 2004, the agreement was non-existent and therefore the arbitration clause was not applicable. The reasoning for these conclusions has not been given. As

already noticed above, the court has noted in paragraph 3 that the tenancy was for an initial period of five years and that, "the tenancy was to continue even after the expiry of the initial period of five years for future period on yearly basis...". If this was correct then obviously on 30th June, 2004, the initial period of five years came to an end, and from 1st July, 2004, i.e., the next day onwards, the tenancy was to continue from year to year. It follows therefore that the suit which came to be instituted by the landlady on 1st July, 2004 claiming valid termination of the lease on the refusal of the defendants to vacate the premises or to pay arrears of rent and mesne profits, was obviously in connection with the subject matter of the agreement of lease between the parties, and no reasoning is given for upholding the conclusions of the civil court that the lease was for a fixed term of five years which had expired on 30th June, 2004 or that the arbitration clause is not applicable to this dispute. On the other hand, a perusal of paragraph 19 of the judgment seems to indicate that extension of the lease could be granted only by mutual agreement between the parties. In other words, after the expiry of the initial period of five years, the tenancy would not automatically continue from year to year as mentioned in paragraph 3 of the judgment. There is obviously some confusion on the facts in this regard. Be that as it may, even if we were to assume the facts narrated in paragraph 19 to be correct, even then, to my mind, since both parties had admittedly entered into the contract in question, the doctrine of separability mentioned above would become applicable and, notwithstanding the fact that the contract had come to an end, the arbitration clause would have persisted and remained in existence. Under the circumstances, even under the doctrine of implied terms, (See Russell on Arbitration, 21st Edition, page 34), it could have been implied that the arbitration agreement would continue after the formal expiry of the main agreement. Unfortunately, there is no discussion whatsoever on these aspects of the matter in that judgment. As already noticed, in the precedents cited above, whether the arbitration clause is separable and whether there is an implied agreement that the arbitration clause will survive the expiry of the agreement to resolve disputes arising out of the agreement, including disputes pertaining to the expiry or termination thereof, will all depend on the facts and circumstances of a given case. Another aspect that emerges is that in that case, the defendant did not seek stay of suit u/s 34 or reference to Arbitration u/s 20 of the Arbitration Act, 1940, and seems to have taken the stand that if the plaintiff i.e. the landlady, had a dispute with them, it was for her to seek arbitration by invoking the arbitration clause, but the suit was barred. Here, the defendant has invoked Section 8 of the Arbitration & Conciliation Act, 1996, which prescribes that if the subject matter of suit is covered by the arbitration clause, it must be referred to arbitration. For all these reasons therefore, and with the greatest respect, I find myself unable to follow this judgment. The same has obviously been given on the facts of the case and does not lay down any binding precedent.

15. Learned Counsel for the appellant has also relied on a portion of the second paragraph at page 513 of the Supreme Court's decision in *The Union of India Vs.*

Kishorilal Gupta and Bros., . In that paragraph, the Supreme Court has culled out a number of principles that were relevant to that case as they had emerged from a discussion of all the relevant factors that were taken into account in deciding that case. Six principles were enunciated. The second principle is stated thus,

however comprehensive the terms of an arbitration clause may be, the existence of the contract is a necessary condition for its operation; it perishes with the contract;

Learned counsel for the appellant has relied upon this observation to support his contention that since the principal contract between the parties is at an end, therefore, the arbitration clause in question has also perished with the original contract and the same cannot be invoked for that reason. I do not agree. To my mind, this portion of the judgment cannot be read in isolation. In fact, the paragraph of which this forms a part, begins with the words, "The following principles relevant to the present case emerge from the aforesaid discussion...." In other words, all the six principles enunciated thereafter, including the aforesaid second principle relied upon by the appellant, which is reproduced above, have come about keeping in mind the facts and circumstances of that case. The most important factor in that case was that the principle contract in question was superseded by another contract and the aggrieved party was seeking to invoke the arbitration clause in the previous contract for resolution of some disputes. It is for that purpose that the Supreme Court had concluded that even though the phraseology employed in the arbitration clause contained in the superseded contract was fairly wide, "it is inconceivable that the parties intended its survival even after the contract was mutually rescinded and substituted by a new agreement." For arriving at its conclusion, the Supreme Court also kept in mind the fact that although parties had the power to do so, yet, in the new contract superseding the old one, they did not provide for the survival of the arbitration clause contained in the previous contract. The relevant facts on which these principles were culled by the Supreme Court were that there were three contracts between the parties that were settled and in substitution of the three contracts, a third settlement was executed between the parties. The Court also came to the conclusion on facts that after the execution of the aforesaid third settlement contract, all the other contracts were extinguished. Furthermore, they had held that after the execution of the new contract, the parties could work out their rights only under the terms of the new contract. It was, in these circumstances, that the Supreme Court held that the arbitration clause in the superseded, extinguished contract, did not survive. I might also notice that insofar as the instant case is concerned, principle No. 6 also culled out in the same paragraph, is more relevant and encapsulates the law applicable to the facts of this case. It is as follows:

(6) between the two falls many categories of disputes in connection with a contract, such as the question of repudiation, frustration, breach etc. In those cases, it is the performance of the contract that has come to an end, but the

contract is still in existence for certain purposes in respect of disputes arising under it or in connection with it. As the contract subsists for certain purposes, the arbitration clause operates in respect of these purposes.

For all these reasons, the reliance of learned Counsel for the appellant on this portion of the aforesaid judgment is misplaced. In fact, as already discussed above, this authority also supports the conclusion that I have reached to the effect that in this case, the arbitration clause subsists and the application of the respondent moved u/s 8 of the Arbitration and Conciliation Act 1996, deserves to be allowed.

16. The next contention of counsel for the appellant to the effect that the application filed by the respondent u/s 8 of the Arbitration and Conciliation Act has failed to set out any disputes between the parties, and that therefore, there is nothing to be referred, also does not commend itself for the reason that the application moved by the respondent clearly refers to the appellant's claim in suit against the respondent. Whilst it is true that every single claim raised against the respondent by the appellant in the suit has not been specifically set out in the application moved by the respondent, however, since the application itself has been moved in that suit which is before the same court, any reference by the respondent to the appellant's claim in that suit must necessarily mean all those claims which had been asserted by the appellant and denied by the respondent. In the application, the respondent has stated as follows;

the present suit is not maintainable and the alleged dispute/claim the plaintiff is required to be referred to arbitration.

No written statement has been filed in the suit so far. The suit has been brought by the appellant before the court because of the respondent's refusal to comply with the appellant's demands. This is what has given rise to a cause of action entitling the appellant to have the same adjudicated at trial. To my mind, the very filing of such a suit is an acknowledgment that a dispute has arisen between the plaintiff and the defendant with regard to the claims of the plaintiff in that suit and that the said dispute is subsisting. Further, Section 8(1) of the Arbitration and Conciliation Act, 1996 states as follows:

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.

A perusal of Section 8 of the Arbitration and Conciliation Act, 1996, shows clearly that the court before whom the suit was brought was required to determine whether it pertained to a matter which was, "subject to an arbitration agreement". For this purpose, all that was required of that court was to examine the nature of the suit, the facts stated and the relief claimed therein to satisfy itself that, "the matter" is the subject of an arbitration agreement. An

examination of the impugned judgment shows that this aspect has been properly examined.

17. In support of this contention, learned Counsel for the appellant also places reliance on a decision of the Division Bench of this Court in *Cogent Ventures (India) Ltd. v. Raj Karan* in FAO(OS) No. 288 of 2008 decided on 27th August, 2008. That decision does not help the case of the appellant because, in that matter, while on the one hand, the defendant moved an application u/s 8 of the Arbitration and Conciliation Act, 1996 praying that the suit be rejected and the parties be referred to arbitration in view of an arbitration clause contained in the lease dated 14th August, 2003; on the other hand, he moved another application u/s 11 of the said Act invoking another arbitration clause contained in a Memorandum of Understanding stated to have been executed by the parties later on 17th November, 2003. On facts, the court concluded that the disputes claimed by the defendant relate to the Memorandum of Understanding executed later on between the parties and that therefore no disputes can be said to have arisen out of the previous lease agreement. Both, the previous lease agreement as well as the fresh Memorandum of Understanding executed by the parties later on, had arbitration clauses. According to the court, even the so-called disputes set out in the application u/s 11 of the Act, do not amount to disputes. It further held that the, "entire case of the defendant, as depicted in the application filed u/s 8 of the 1996 Act is that there is an agreement to sell/Memorandum of Understanding as per which right to claim the title in the suit property would be with the defendant". The court therefore concluded that the disputes pointed out by the defendant relate to the title of the suit property which in any case cannot be gone into in the suit for possession that was before the court where the plaintiff had alleged that the suit premises were given on lease to the defendant and that the lease had been determined. In other words, while the action was brought by the plaintiff in relation to a lease, the defendant was seeking reference to arbitration in connection with disputes arising out of a Memorandum of Understanding which was allegedly an Agreement to Sell, i.e., something entirely different from the matter in respect of which the action was brought before the court. It was under these circumstances that the application u/s 8 came to be dismissed. In the case at hand, there is only one agreement and one arbitration clause. The defendant is not claiming that disputes have arisen with regard to a later agreement touching upon a different subject altogether. Therefore, to my mind, this authority has no application in the facts of the instant case.

18. In view of the above discussion, I do not find any infirmity with the impugned order.

19. The appeal is, therefore, dismissed.