

(2012) 08 AHC CK 0048

In the Allahabad High Court

Case No : Civil Revision No"s. 388 and 389 of 2012

Smt. Krishna Premmai Devidasi

APPELLANT

Vs

International Society For Krishna Consciousness and Others

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 7, 8
Criminal Procedure Code, 1973 (CrPC) — Section 5
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2012) 9 ADJ 185

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Udayan Nandan and Shashi Nandan, for the Appellant; Vivek Saran, for the Respondent

Judgement

Hon"ble Pankaj Mithal, J.—The two revisions u/s 25 of the Provincial Small Causes Court Act, 1887 are based upon the identical facts involving the same controversy. The controversy is with regard to tenancy between the plaintiff respondent and the defendant revisionist.

2. The shops in question which are under tenancy of the defendant revisionists are owned by the plaintiff respondent ISKCON a registered society. The relationship of landlord and tenant between them is not disputed.

3. The plaintiff respondent instituted two separate suits before the Small Causes Court for arrears of rent and eviction against the defendant/revisionist in connection with both the shops separately. In the said suits on account of default of the tenant defendant revisionist in depositing the entire admitted amount alongwith 9% interest and the monthly rent thereof her defence was struck off under Order 15 Rule 5 CPC as applicable to the State of U.P. Thereafter, defendant revisionist in the suits moved applications u/s 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act") contending that the Rules and Regulations of the plaintiff respondent society contains an arbitration clause

and in view of it, the dispute in both the cases is referable to Arbitration.

The above applications of the defendant revisionist have been rejected by the Court below by separate but identical orders passed on 5.5.2012.

4. It is against the above two orders of identical nature based upon the similar sets of facts and circumstances that the defendant revisionist has preferred these revisions.

5. I have heard Sri Shashi Nandan, Senior Advocate assisted by Sri Udayan Nandan, learned counsel for the defendant revisionists and Sri Vivek Saran, learned counsel for the defendant respondents.

6. Both the parties who alone are the contesting parties agree for final disposal of the revision at this very stage as the facts are not disputed and the question involved is purely legal in nature.

7. The other respondents are only pro-forma respondents and it was not felt necessary to either serve or hear them.

8. The sole question which crops up for consideration is whether in view of arbitration clause in the Rules and Regulations of the society, the instant dispute between the landlord and tenant is referable to arbitration u/s 8 of the Act.

9. Principally, all civil disputes whether contractual or non-contractual or otherwise are capable of being adjudicated by the Civil Court unless the jurisdiction of the Civil Court is expressly or impliedly barred. Arbitration is an alternative dispute redressal system which is of a voluntary nature. Therefore, parties at litigation can be relegated to the aforesaid alternative dispute redressal system only if they volunteer to do so or had agreed to get the disputes between them resolved through arbitration excluding the jurisdiction of the Civil Court.

10. Section 8 of the Act is a step for reference of disputes between the parties to arbitration provided such disputes are "subject-matter of arbitration agreement" and instead of availing the remedy of arbitration, they are brought before the Court.

The relevant provision of Section 8 of the Act reads as under :

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...

3....

11. The aforesaid provision in unequivocal terms envisages that where an action is brought before the judicial authority in a matter which is "subject-matter of arbitration agreement" and if any of the parties applies for referring the matter

to arbitration instead of getting it adjudicated by the Court, such judicial authority is obliged to refer the parties to arbitration.

12. In the above provision the words "subject-matter of arbitration agreement" are of prime importance. It is only those matters which are "subject-matter of arbitration agreement" which can be referred to arbitration u/s 8 of the Act.

13. "Arbitration agreement" has been defined u/s 7 of the Act to mean an agreement by the parties to submit to arbitration all or certain disputes arising between them. It also provides that the arbitration agreement shall be in writing.

14. For the sake of convenience the relevant part of Section 7 of the Act is quoted below:

(1) In this part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2)...

(3) An arbitration agreement shall be in writing.

(4)...

(a)...

(b)...

(c)...

(5)....

In view of the above provision ignoring the manner in which the arbitration agreement in writing may be expressed, the most important element in constituting an arbitration agreement is an "agreement by the parties"" in writing.

15. The agreement by the parties conceives of consent of both the parties in contrast to an unilateral agreement. Therefore, for making a reference u/s 8 of the Act, two things are of prime importance, namely, arbitration agreement which has to be an agreement between the parties to the dispute; and that it should be touching the "subject-matter of the dispute". Thus, before making a reference u/s 8 of the Act, it is obligatory upon the Court or the judicial authority to decide whether there exists an agreement between/amongst the parties regarding arbitration, apart from other things.

16. In the present context, it is admitted to the parties that there is no agreement or contract of tenancy between them in writing which may contain an arbitration agreement. The entire emphasis of the defendant revisionist is upon the Rules and Regulations of the Society which contains the following clause

concerning arbitration :

C. Arbitration:

All disputes, differences and questions of any nature which at any time arise between ISKCON and any of its members, officers, representatives, volunteer workers, persons working for the Society and persons having any agreement or transaction with ISKCON subject to the provisions contained within these Rules and Regulations, or any of them, out of construction or concerning anything contained in or arising out of Rules and/ or Bye-Laws of ISKCON, or as to the rights, duties or liabilities under the said Rules and/or Bye-Laws or out of the affairs of the Society, shall be referred to any arbitrator

17. The aforesaid arbitration clause is contained in the Rules and Regulations of the Society. It is not a part of any agreement which may have been entered into between the parties. It is therefore not an agreement by the parties so as to make it an arbitration agreement u/s 7 read with Section 8 of the Act.

18. The defendant revisionist while making an application for reference u/s 8 of the Act dated 12.3.2012, which has been filed as one of the annexures to the stay application, simply states that according to Rules and Regulations of the Society, a copy of which has been brought on record, the dispute between the parties falls within the purview of arbitration and is referable to an arbitrator. The above application nowhere in clear terms states that there exists an arbitration agreement between the parties or that there is an agreement between them to submit disputes to arbitration.

19. In this view of the matter, the arbitration clause that exists in the Rules and Regulations of the Society is of a general nature but is not an agreement between the parties so as to constitute it to be an arbitration agreement for making a reference to arbitration u/s 8 of the Act.

20. In *Yogi Agarwal Vs. Inspiration Clothes and U and Others*, , the Apex Court was seized with a similar controversy relating to Sections 7 and 8 of the Act. Their Lordships of the Supreme Court held that when a party invokes Section 8 of the Act by alleging existence of an arbitration agreement, it is incumbent upon him to establish such an arbitration agreement and that it is applicable to the transaction concerned. It is fundamental that to constitute an arbitration agreement for the purpose of Sections 7 and 8 of the Act, two conditions must be satisfied namely it should be between the parties to the dispute and secondly it should relate to or be applicable to the dispute.

21. In view of the above decision also satisfaction of the twin conditions laid down therein including the one that the arbitration agreement should be between the parties to the dispute is mandatory.

22. In the instant case, as pointed out above, the arbitration clause contained in the Rules and Regulation of the Society is an unilateral document to which defendant revisionist is not a party and, as such, it is not an agreement between

the parties to the dispute so as to constitute an arbitration agreement for the purposes of Section 8 of the Act.

23. In view of the aforesaid facts and circumstances, I am of the opinion that the dispute in the two suits which is essentially one between the landlord and the tenant is not referable to arbitration u/s 8 of the Act and therefore the Court below has not committed any illegality in rejecting the applications of both the defendant respondents. Revisions are therefore merit-less and are dismissed.