

(1984) 08 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1352 of 1977

The Sainik Rest House and Others

APPELLANT

Vs

Ramji Lal and Others

RESPONDENT

Date of Decision : 24-08-1984

Acts Referred:

Arbitration Act, 1940 — Section 14

Citation : (1984) 08 P&H CK 0095

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : P.S. Jain, Sr with Mr. S.K. Jain, for the Appellant; H.L. Sarin with Mr. M.L. Sarin and Mr. R.L. Sarin and Mr. Anupam Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.P. Goyal, J.—This judgment will dispose of 7 petitions, Civil Revision Nos. 1346 to 1352 of 1977, as a common question of law it involved in all of them. For the purpose of this judgment, the facts in Civil Revision No. 1352 of 1977 have been noticed.

2. Respondent No I, like the private Respondents in the other petitions, was in occupation of the site near Fauji Sarai as a tenant under Petitioner No. 1 and 2 on a monthly rent of Rs. 7/-. The said Petitioners framed a scheme to built paces shops on the demised sine and got it vacated from the tenant under as agreement dated February 26th, 1969. According to the terms of this agreement, after the construction of the pacca shops the same were to be allotted to its previous owners on a monthly real to be got fixed from a committee constituted of the Deputy Commissioner, Vice President of the first party, Executive Engineer B & R, Ludhiana and Chairman, Ludhiana Improvement Trust, Ludhiana The rent of the premises in dispute was fixed at Rs. 237/- per month by the said committee and when a notice was served on Respondent No. 1 for payment of the rent at the said rate, he filed an application u/s 14 of the Arbitration Act (for short, "the Act") for a direction to the members of the Sub-Committee to file the

award in the Court. On having come to know on September 4, 1973 that a copy of the award had been filed in Court he moved this petition u/s 33 of the Act for declaring the award to be illegal and void having been made without any notice and without providing an opportunity of hearing to him. The petition was opposed by the present Petitioners as well as Respondents No. 2 to 4 on various pleas which were all turned down and the alleged award declared null and void vide order dated April 30, 1977. Hence these revisions.

3. It is not necessary to discuss the pleas of the parties on merit because in my view there was no arbitration agreement between them and whole of the proceedings taken under the Act were entirely misconceived Clause 6 of the said agreement under which the rent was fixed by the Sub-Committee reads as under:

That the reasonable and fair rent of the newly constructed shop shall be got fixed by a committee consisting of the following and will be in accordance with the procedure laid down for this purpose in the Punjab PWD manual:

1. Deputy Commissioner, Ludhiana;
2. Vice President of the First Party,
3. Executive Engineer, Building and Roads PWD Ludhiana,
4. Chairman, Ludhiana Improvement Trust, Ludhiana.

This clause by no stretch of reasoning can be said to contain an arbitration agreement between the parties because it does not refer to any present or future dispute nor envisages any reference by the parties for settlement of any such dispute to the Committee. The arbitration agreement as defined u/s 2(a) means a written agreement to submit present or future differences to arbitration whether an arbitration is named therein or not Reference according to Clause (e) of the said section means a reference to arbitration. As the said clause does not speak of present or future dispute or making of a reference of any such dispute to the Committee it cannot be interpreted to contain a "y" arbitration agreement between the parties.

4. The Learned Counsel for the Respondents, however, urged that it was not necessary to use the word, arbitrator or arbitration in the agreement and the nature of the clause in dispute has to be interpreted keeping in view the intention of the parties. In support of his contention, he relied on a Full Bench decision of this Court in *Messrs Ram Lal Jagan Nath v. The Punjab State and Ors.* (1966) 68 P.L.R. 522. The clause under consideration in that decision provided that in the matter of dispute the case shall be referred to the Superintending Engineer of the Circle whose order shall be final. As the clause envisaged reference of a dispute between the parties for decision of the Superintending Engineer it was held to contain arbitration agreement between the parties. Obviously, this decision has hardly any bearing on the facts of the present case because the clause under consideration neither made mention of the present or future dispute nor envisaged any reference by the parties to the Committee. The

Full Bench decision, therefore, in no way helps in the contention raised by the Learned Counsel nor on its basis the said clause be interpreted to contain arbitration Agreement between the parties.

5. In the State of U.P. v. Tipper Chand AIR 1980 S.C. 1922, Clause 22 of the agreement reads as under:

Except where otherwise specified in the contract the decision of the Superintending Engineer for the time being shall be final, conclusive and binding on all the parties to the contract upon all questions relating to the meaning of the specifications, design, drawing and instructions hereinbefore mentioned. The decision of such Engineer as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or things whatever, in any way arising out of or relating to the contract, designs drawing specifications, estimates, instructions, orders, or these conditions, or otherwise concerning the works, or the execution or failure to execute the same, whether arising during the progress of the work, or after the completion or abandonment of the contract by the contractor, shall also be final, conclusive and binding on the contractor.

Rejecting the contention of the contractor that the said clause contained arbitration agreement between the parties to refer the dispute to the Superintending Engineer, Fazal Ali, J, who spoke for the Bench held that the aforesaid clause merely conferred power on the Superintending Engineer to take decisions of his own and it did not authorise the parties to refer any matter of arbitration. The terms of the clause interpreted by their Lordships of the Supreme Court were on much better footing as compared with the terms of the present Clause 6 and, therefore, no arbitration agreement can possibly be spelled out from the terms of the present clause.

6. Before closing the judgment I may also notice the technical objection raised by the Learned Counsel for the Respondent that it was not open to the Petitioners to dispute the existence of arbitration agreement as no such point was raised in the pleadings or during the trial in the lower Court. I am unable to subscribe to this view The objection raised is purely a legal one and affects the very jurisdiction of the trial Court to entertain a petition u/s 33 of the Act and as such could not be disallowed on the ground urged. It is well settled that a legal objection which affects jurisdiction of the Court can be raised at any stage of the proceedings and a party would not be debarred from raising it at the appeal or revisional stage simply because it was not raised in the trial Court.

7. For the reasons recorded above, these revisions are allowed, the impugned order set aside and the petitions filed u/s 33 dismissed. In the circumstances of the case, the parties are left to bear their own costs.

Revision petition allowed.