
(1996) 11 DEL CK 0021
In the Delhi High Court
Case No : Suit No. 1800 of 1992

Vijay Kumar Jain

APPELLANT

Vs

Baby Care Mktg. Co.

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Citation : (1997) 41 DRJ 131

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : R.K. Gupta and Rajender Dhawan, for the Appellant;

Judgement

K. Ramamoorthy, J.

(1) This is a petition u/s 20 of the Arbitration Act, 1940. The Petitioner who is the owner of factory No. A-52, Group Industrial Area, Wazirpur, Delhi -52, submits that there was a commission agreement between the parties on 01.07.1977. That was subsequently renewed in July 1, 1983. The first respondent is a partnership firm. Respondents 2 and 3 are the partners. On the strength of the commission agreement the petitioner has been receiving commission and the first respondent has been carrying on business in the premises is the case of the petitioner. When the petitioner demanded a possession according to him the first respondent set up a case of tenancy and, Therefore, he is obliged to file this petition seeking an appointment of the arbitrator, to adjudicate upon the disputes. The submission on behalf of the petitioner is that the first respondent cannot claim to be a tenant in the premises.

(2) Per central the first respondent submits that on a true construction of an agreement the jural relationship between the petitioner and the first respondent is that of landlord and tenant and Therefore, what is being paid Rs. 2400.00 per month is only as rent and the first respondent is protected by the Delhi Rent Control Act, 1958 and Therefore, the clause relating to the arbitration in the agreement becomes unenforceable.

(3) I do not want to go into the question about jural relationship between the parties because that is not the function of the court u/s 20 of the Arbitration Act, 1940. Mr. Gupta learned counsel for the petitioner submits that the only question the petitioner wants the arbitrator to decide is the correct relationship between the petitioner and the first respondent on a correct interpretation of the terms of the agreement. He submits that the petitioner does not want the arbitrator to go into the question of possession.

(4) The learned counsel for the first respondent submits that by virtue of Section 20(4) of the Arbitration Act, 1940, I should go into the question of sufficient cause and the sufficient cause being the protection to the first respondent under the Delhi Rent Control Act, 1958. Learned counsel for the first respondent proceeded to submit that I must, prima facie, consider the question. I am unable to accept this argument. I am of the view that the limited question whether the first respondent is a tenant or not could be adjudicated upon by the arbitrator.

(5) Accordingly, the petition is allowed. I appoint Hon''ble Mr. Justice P.K. Bahri, as an arbitrator to decide this only question, namely, what is the jural relationship between the parties on a true and proper construction of the agreement dated 01.07.1983. The Hon''ble Arbitrator shall be at liberty to fix his remuneration and other expenses for conducting the arbitration proceedings.

(6) The parties are directed to appear before the Hon''ble Arbitrator on 14.12.1996 at 11.00 a.m. A copy of this order shall be given dusty to learned counsel for the parties forthwith on payment of necessary charges.

(7) Accordingly, the suit stands disposed of.