

*Before Paramjeet Singh, J.*

**EIGEN TECHNICAL SERVICES PVT. LTD.—Petitioner**

*versus*

**VATIKA LIMITED AND ANOTHER—Respondents**

**CR No. 3918 of 2013**

July 5, 2013

*Arbitration and Conciliation Act, 1996 - S. 8 - Transfer of Property Act, 1882 - S. 111 - Arbitration clause in lease deed - Determination of lease - Affect - Suit for possession by way of ejectment and recovery of rent and mesne profits - Lease was for three years - Lessee had option to renew lease for another term of three years - Notice of renewal was required to be given to lessor, three months prior to expiry of lease period - Notice not given by lessee - Lease stands extinguished by efflux of time - Arbitration clause in lease deed perished with the lease coming to an end and the same cannot be enforced - Possession of tenant unauthorised after lease period - Arbitration clause would not have any effect on the suit - Terms of the lease deed do not provide for reference of future disputes to arbitration - Court cannot refer to arbitration clause for disputes other than those specifically referred to in the arbitration agreement/ clause, unless the parties agreed to refer such disputes.*

*Held*, in view of the terms of the lease deed the arbitration clause contained therein stands perished with efflux of time. Since the lease has not been renewed at the instant (*sic*-instance) of the petitioner, the contract already stands extinguished by efflux of time. The logical outcome of the above discussion would be that arbitration clause perished with the lease deed dated 11.11.2008 coming to an end and the same cannot be enforced. The possession of the petitioner is unauthorised, so the arbitration clause will have no effect so far as the suit for possession by way of ejectment, for recovery of arrears of rent and mesne profits is concerned. In these circumstances, the case cannot be referred at all to the arbitration. The terms of the lease deed does not provide for reference of future disputes to arbitration. In view of this, the Court cannot refer to arbitration clause for the disputes other than those

specifically referred to in the arbitration agreement/clause unless the parties agreed to refer such disputes.

[Paras 11 and 12]

Vinod S. Bhardwaj, Advocate, *for the petitioner.*

Adarsh Jain, Advocate, for the caveator.

**PARAMJEET SINGH, J.**

(1) Instant revision petition has been filed for setting aside the order dated 04.05.2013 (Annexure P/2) passed by the Court of learned Additional Civil Judge (Senior Division), Gurgaon whereby application under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to the 'Arbitration Act') has been dismissed.

(2) Brief facts of the case are that respondents filed a suit for possession by way of ejection and recovery of arrears of rent and mesne profits. After notice, the petitioner appeared in Trial Court and moved an application under Section 8 of the Arbitration Act praying that in the lease deeds dated 01.07.2005 and 11.11.2008 executed between the parties, there is an arbitration clause, so the learned Trial Court has not jurisdiction to entertain and try the suit and the matter is required to be referred to the arbitration. Learned Additional Civil Judge (Senior Division) dismissed the application vide impugned order dated 04.05.2013 (Annexure P/2). Hence, the present revision petition.

Heard.

(3) Learned counsel for the petitioner vehemently contended that suit of the respondents-plaintiffs is based on the lease deeds dated 01.07.2005 and 11.11.2008 which contains arbitration clause, so the matter is required to be referred to the arbitration. Learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in *The Branch Manager, M/s Magma Leasing and Finance Limited and another vs. Potluri Madhavalata and another(1)*. Learned counsel for the petitioner further contended that the learned Trial Court has erroneously rejected the application by stating that term of lease deed has already expired by efflux of time and lease is no more valid and the

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conditions mentioned in the lease deeds cannot be taken into consideration since the lease agreement has not been extended between the parties as per the terms of the lease deed dated 11.11.2008. It is the contention of the learned counsel for the petitioner that the suit by way of possession and recovery of arrears of rent and mense profits is dependent upon the lease deeds, as such the matter is required to be referred to the arbitration in view of the terms of the lease deed.

(4) Before I deal with the contentions raised by the learned counsel for the petitioner, it would be appropriate to refer to the relevant clauses of the lease deed dated 11.11.2008 between the parties (Annexure P/6). The relevant clauses of the lease deed dated 11.11.2008 read as under:

*(i) Lease-Rental and Option to Renew the Lease: The lessor agrees to lease the demised premises to the lessee and the lessee agrees to take on lease the said Demised Premises together with the right to use the common facilities in the said Complex along with other occupants and the right to park the 33 Nos. car parks in exclusive and dedicated car parking slots distributed evenly in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> levels of basements. Additional reserved car parking shall be available @ ₹1500.00 per car park per month, however, subject to availability. Apart from the reserved car parks, the occupants of the building shall have access to free surface parking on first-come-first-serve basis.*

*The period of the lease is 3 (three) years from the date of commencement of the same at a monthly rent of ₹11,24,383/- (Rupees Eleven Lakhs Twentyfour thousand three hundred eighty three only) at the rate ₹ 33.44/- (Rupees Thirty three and paisa forty four only) per sq. ft of super built-up area. The Lessee will have an option to renew the Lease for another consecutive term of 3 (three) years at mutually agreed terms pertaining to rentals, however, the enhanced monthly rent shall in no event exceed 15% more than the last paid rental, provided that the Lessee shall give the Lessor a duly served notice for*

*renewal in writing, upon the Lessor seeking such confirmation, at least three months before the expiry of the three year period of lease. If the option to renew the lease is exercised by the lessee as above, then a fresh lease deed shall be executed on the same terms and conditions but at the enhanced rent and will be duly registered with Registrar's office at Gurgaon.*

*The monthly rent mentioned herein above will be exclusive of monthly maintenance charges and electricity/power charges and other consumables, which shall be payable separately by the Lessee as provided herein below.*

- (ii) *Commencement: That the lease and the rental for the second term of three years shall commence from 18<sup>th</sup> November 2008.*

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- (xxxiv) *Termination of the Lease and the Lock-in Period: that the lessee may terminate this lease by giving three months notice or rent and other charges in lieu thereof. The Lessee will have an option to renew the Lease after the second term of three years for a further period of three years, by giving three months' duly served notice in advance in writing to the Lessor before the expiry date of the each lease and upon exercise of the option, the Lessor shall execute and cause to be registered at the cost to be borne by the Lessee, fresh lease deed in favour of the Lessee on the same terms and conditions as laid down in this lease-deed except only that the rent shall be enhanced as specifically provided in Clause (i) herein above. The Lessee hereby agrees and undertakes that in case it terminates this lease without the specific notice or through action of non-payment of its dues payable to the Lessor, then the lessee agrees to be liable to pay and hereby authorizes the lessor to claim the rent for the committed period from the lessee and to adjust the same from any*

*deposits of the lessee lying with the Lessor/Maintenance Company at that point of time.*

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*(xlix) Abiding by Laws of the Land: That the Lessee and the Lessor shall abide by the laws of the land and any local enactment in respect of the leased premises.*

*(i) Notices/Communications: That any notice, letter, communication etc. to be made served or communicated upon the Lessor under these presents shall be in writing and shall be deemed to be duly made, served or communicated only if the notice or letter or communication is addressed to the Lessor at the address shown above or such other address as may be intimated by the Lessor in this behalf and sent by registered post / FAX. Similarly any notice, letter or communication to the Lessee shall be deemed to be made, served or communicated only if the same in writing is addressed to the above mentioned address of the lessee or to the address of the said premises after the lessee has shifted to the same by registered post/FAX.*

*(ii) Arbitration Clause: That in the event of any dispute or differences arising out of or relating to or with reference to or in connection with this Lease Deed, including the termination of the Lease Deed, the same shall be referred to a sole Arbitrator to be nominated by both the parties with mutual consent. The Arbitrator shall give a reasoned award. The venue of the Arbitration shall be at Gurgaon arbitration proceedings shall be in accordance with the Indian Arbitration & Conciliation Act, 1996."*

(5) I have considered the contentions raised by the learned counsel for the petitioner and perused the record.

(6) Learned counsel for the petitioner was specifically put a query as to whether in terms of clause (i) and clause (xxxiv), lease deed dated 11.11.2008 has been extended and whether a three months' advance notice in writing was given to the lessor before the expiry period of lease deed. Learned counsel for the petitioner failed to answer the query, rather could not show the Court that any three months' advance notice in writing prior to expiry of lease deed i.e. three months prior to 10.11.2011 as per the terms of the lease deed was given. Since the counsel has failed to show, nor it is pleaded in the pleadings that three months' notice for further renewal was given, it would be presumed that notice was not given.

(7) From the above, it is clear that three months' prior notice was not given, thus, the lease is to be deemed to have elapsed with efflux of time. It means that after the termination of the lease deed, the arbitration clause does not survive. Even a legal notice to vacate the premises was served upon the petitioner-defendant, but they did not heed to the said notice. Thereafter, the suit for ejectment and recovery of arrears and mesne profits has been filed. After the expiry of lease deed, the petitioner-defendant is in illegal occupation of the demised premises. He has not paid the arrears of rent and mesne profits which amounts to ₹ 1,08,04,564/-. Since the lease deed between the parties has come to an end, there is no question of invoking the alleged arbitration clause nor the question of surviving such arbitration clause remains. Arbitration clause has become equally defunct, invalid, not subsisting and not applicable as the petitioner's possession is not in pursuance to lease after the expiry of lease period. In the case of *M/s V.S. Enterprizes vs. B.R. Sharma*(2), this Court has occasioned to consider the application of Section 8(1) of the Arbitration Act. The relevant paragraphs of the aforesaid judgment read as under:-

*“2. It is a case where the plaintiff-respondent filed a suit for possession by way of ejectment as also seeking relief of permanent injunction as a consequence thereof. Facing this suit, the defendant-petitioner filed an application under the aforesaid provisions for referring the matter to arbitration for proper*

*adjudication of the matter as per the terms of the lease agreement dated 6.9.2004 (Annexure P2).*

*4. The application was opposed claiming that the lease agreement dated 6.9.2004 was for a period of three years and the said period had expired on 5.9.2007. It is further averred that the lease has not been renewed thereafter and the plaintiff has sought vacant possession of the premises. He has also claimed that he has served a legal notice to the defendant-petitioner dated 10.4.2008 terminating the tenancy. Alleging that the lease agreement was, not in force on the date of filing of the suit, therefore, clause 12 of the agreement regarding arbitration would not come into operation.*

*11. The lease under the aforesaid clause was initially to be for a period of 3 years. It could be terminated earlier but not within six months of the commencement. There is no provision for its extension in this agreement. The lease agreement dated 6.9.2004 has expired on 5.9.2007. There is moreover, no agreement between the parties extending the term of the lease, although not provided for in the agreement. The occupation of the tenant over the demised premises after the expiry of this lease agreement is not under this agreement. He is a tenant over the premises under the law, which protects his possession.*

*12. In the reported cases, the agreements containing the arbitration clause were of different kind. In **Bharat Petroleum Corporation Limited's case (supra)**, the agreement was regarding the retail outlet of the petroleum products. Similarly in **M/s Regent Automobilies's case (supra)**, it was a case of gas outlet under company owned company operated agreement. In **Shriram Transport Finance Co. Ltd.'s case (supra)** it was a loan agreement. The rights and liabilities persisted under such agreements even after termination of the agreement.*

*13. Here, the lease agreement has expired by efflux of time and the dispute between the parties is not covered by the lease agreement. The landlord is seeking ejectment of the tenant and the said dispute is not covered by the agreement. Therefore, the*



*arbitration clause in the lease agreement does not cover this dispute and learned trial court has been fully justified in declining to refer the dispute between the parties to the arbitration. The decision in **Ram Dayal's case (supra)** cannot come to the help of the petitioner in any way on the facts of this case. The landlord not seeking ejectment of the petitioner treating him as trespasser. If the landlord has received any rent after institution of the suit, the consequence would be considered and adjudicated upon by the trial court."*

High Court of Allahabad in a judgment dated 10.11.2006 passed in Writ Petition No. 21275 of 2006 titled as ***Union of India Thru' Secy., Ministry of Postal and another vs. Smt. Jagdish Kaur*** has also observed that arbitration clause contained in an expired agreement is also deemed as expired and is no more valid. The Hon'ble Supreme Court in ***Union of India vs. Kishorilal Gupta and Bros.,(3)***, held as under:

*"10. The following principles relevant to the present case emerge from the aforesaid discussion: (1) An arbitration clause is a collateral term of a contract as distinguished from its substantive terms; but nonetheless it is an integral part of it; (2) 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; (3) the contract may be non est in the sense that it never came legally into existence or it was void ab initio; (4) though the contract was validly executed, the parties may put an end to it as if it had never existed and substitute a new contract for it solely governing their rights and liabilities thereunder; (5) in the former case, if the original contract has no legal existence, the arbitration clause also cannot operate, for along with the original contract, it is also void; in the latter case, as the original contract is extinguished by the substituted one, the arbitration clause of the original contract perishes with it; and (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.*

*11. We have held that the three contracts were settled and the third settlement contract was in substitution of the three contracts; and, after its execution, all the earlier contracts were extinguished and the arbitration clause contained therein also perished along with them. We have also held that the new contract was not a conditional one and after its execution the parties should work out their rights only under its terms. In this view, the judgment of the High Court is correct. This appeal fails and is dismissed with costs.”*

(8) Thus the petitioner-defendant cannot invoke a redundant and perished arbitration clause.

(9) Admittedly, in the present case, the petitioner neither paid the arrears of rent nor he got renewed the lease after giving three months' prior notice as per the terms of the lease agreement nor he vacated the demised premises. The lessor had to approach the Civil Court for vacation of the demised premises in question.

(10) Now, the question arises whether in view of non-compliance of the terms of the lease agreement, still the condition mentioned in the lease deed with regard to arbitration survives and the judgment cited by the learned counsel for the petitioner is applicable in the facts of the present case. There is no dispute with regard to the proposition of law laid down in *The Branch Manager, M/s Magma Leasing and Finance Limited's case (supra)*, but the same is not applicable in the facts of the present case.

(11) Thus, in view of the settled proposition of law by the Supreme Court in *Kishorilal Gupta's case (supra)* and this Court in *M/s V.S. Enterprizes's case (supra)* and in view of the express, clear and unambiguous intention of the parties expressed in the lease deed, no scope for drawing upon hypothetical considerations or supposed intentions

of the parties arise. In view of the terms of the lease deed the arbitration clause contained therein stands perished with efflux of time. Since the lease has not been renewed at the instant of the petitioner, the contract already stands extinguished by efflux of time.

(12) The logical outcome of the above discussion would be that arbitration clause perished with the lease deed dated 11.11.2008 coming to an end and the same cannot be enforced. The possession of the petitioner is unauthorised, so the arbitration clause will have no effect so far as the suit for possession by way of ejection, for recovery of arrears of rent and mesne profits is concerned. In these circumstances, the case cannot be referred at all to the arbitration. The terms of the lease deed does not provide for reference of future disputes to arbitration. In view of this, the Court cannot refer to arbitration clause for the disputes other than those specifically referred to in the arbitration agreement/clause unless the parties agreed to refer such disputes.

(13) In view of this, I do not find any infirmity, illegality or perversity in the impugned order dated 04.05.2013 (Annexure P/2) passed by learned Additional Civil Judge (Senior Division), Gurgaon.

(14) In the light of above, the instant petition is dismissed with costs quantified at ₹ 25,000/- in view of the conduct of the petitioner, to be paid by the petitioner to the Haryana State Legal Services Authority. In case, the amount is not paid within one months from today, the authority shall recover as a land revenue and intimation will be sent to the Registry of this Court.

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*M. Jain*