

*Before Bakhshish Kaur, J*

MUKTA SHARMA— *Petitioner/Plaintiff*

*versus*

U.P. INDUSTRIAL CORPORATION ASSOCIATION LTD  
& ANOTHER—*Respondents/Defendants*

C.R. No. 5742 OF 2000

28th November, 2001

*Arbitration Act, 1940—S. 34—Tenanted premises—Suit for ejection & recovery of rent filed—Defendants taking steps in the proceedings—Defendants' application for referring the dispute to an Arbitrator does not disclose the existence of a dispute between the parties—Such an application liable to be dismissed—Petition allowed.*

Held that, in the application, it is nowhere stated, in fact even a passing reference has not been made therein as to what is the dispute between the parties. Where a party has failed to disclose the nature of the dispute and the application appears to be vague, <sup>the</sup> the nature of the dispute, then under such circumstances, the application will not be maintainable, rather the same is required to be dismissed.

(Para 13)

Further held, that the defendants have tendered arrears of rent not on the first date of hearing but on the second date i.e. on 21st November, 1998. Secondly, they had not only taken time for filing written statement, but they had also consumed sufficient time for filing reply to the application under Order 15 Rule 5 of the Code whereby the plaintiff—petitioner had prayed for striking off defence of the defendants. All these facts, therefore, indicate that the defendants had the intention to have the matter adjudicated upon the Court. Thus, they had disentitled themselves for referring the matter to the Arbitrator.

(Para 25)

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Arun Bansal, Advocate *for the Petitioner.*

S.C. Sibal, Senior Advocate with Deepak Sahni, Advocate  
*for the respondents.*

(1) The challenge in this revision is to the order whereby the matter has been referred to the Arbitrator as per order dated November 18, 2000 passed by the learned Additional Civil Judge (Senior Division) Kharar.

(2) The factual matrix of the case is that Mukta Sharma plaintiff-petitioner (hereinafter referred to as 'the plaintiff') filed the suit for possession after ejection of the defendants—respondents (hereinafter referred to as 'the defendants') from the tenanted premises and for recovery of Rs. 25,000 per month for the ground floor and Rs. 10,000 for the basement, in all Rs. 35,000 for the illegal use and occupation of premises from July, 1998 till delivery of possession thereof. Interest at the rate of 12 per cent per annum has also been claimed on the amount.

(3) The facts not disputed are that the defendants were inducted as tenants in the demised premises and an agreement to this effect was executed on 9th December, 1989. Initially, it was given on rent at the rate of Rs. 7,475 per month with an escalating clause of enhancement of rent at the rate of 15% after every five years. One of the clauses of the agreement deed related to referring the disputes to the sole arbitrator and that the award given by the arbitrator will be final and binding upon the parties.

(4) During the pendency of the suit, an application was filed for referring the matter to the arbitrator, which has been allowed by the trial Court,—*vide* the impugned order. But according to the plaintiff, the defendants has taken part in the proceedings. They had been getting adjournments for filing the written statement, therefore, the matter could not be referred to the arbitrator. Secondly, there does not exist any dispute referable to the arbitrator.

(5) I have heard Shri Arun Bansal, learned counsel for the plaintiff and Shri S.C. Sibal, Senior Advocate, learned counsel for the defendants.

(6) The agreement was executed between the parties on December 09, 1989. Copy of the agreement is Annexure P-6 with this petition. The relevant clauses which are important for the purpose of decision of the revision are clauses 6, 7 and 8, which are reproduced hereunder :—

- “6. That this agreement will continue for a period of five years from the date of this agreement and during this period of five years the Second Party will not interfere and cause any hindrance or obstruction in the peaceful enjoyment of the said shop.
7. That after five years, this agreement can be renewed on the same terms and conditions except the rate of rent which may be enhanced by 15% and the First Party will have option to renew this agreement for further period of five years and Second Party will be entitled enhanced rent.
8. That the Second Party shall be liable to pay all property taxes such as House Tax and Water Tax etc. to the local authority and the electricity charges shall be paid to the First Party directly to the electricity authority.”

(7) Mr. Bansal, learned counsel for the plaintiff at the very outset, contended that as per clause 6, the agreement was for a period of five years and after five years this agreement could be renewed on the same terms and conditions as covered under clause 7. Thus, where the period of five years has expired and the agreement was not renewed, therefore, the question of referring the matter to the Arbitrator in terms of the earlier agreement did not arise.

(8) As far as the renewal part of the agreement is concerned, I am of the view that the plaintiff cannot be allowed to blow hot and cold in the same breath because after the expiry of five years term, as per clause 7, the agreement could be renewed on the same terms and conditions except the rate of rent which may be enhanced by 15 per cent. Initially, the rate of rent was 6,500 per month. Now, the plaintiff is claiming rent at the rate of Rs. 7,475 with effect from 1st October, 1984. This fact is clearly borne out from the legal notice

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Annexure P-7. Para no. 1 of the legal notice Annexure P-7 is as follows :—

“1. that the ground floor measuring 1582 Sq.ft. and basement measuring 855 Sq.ft. in the aforesaid premises No. S.C.O. No. 17, Phase I, Mohali has been leased out to you by my client as per agreed terms of tenancy at a monthly rent of Rs. 6,500 per month payable in advance with effect from 1st October, 1989. The present rate of rent is Rs. 7,475 per month with effect from 1st October, 1994 as agreed.”

(9) Thus, it cannot be said that the agreement has expired and it needs to be ignored.

(10) Now, adverting to the impugned order whether the trial Court has formed a correct opinion that dispute has arisen between the parties which is referable to the arbitrator.

(11) A careful reading of the same would indicate that no such opinion or finding has been recorded in this regard. In fact, it is simply mentioned in the concluding paragraph that “it cannot be concluded that the defendants had participated in the proceedings, and since the agreement clause is admitted, therefore, I deem it a fit case where the matter is to be referred to the arbitrator. Accordingly, the instant application dated 10th December, 1998 for referring the matter to the arbitrator is allowed.”

(12) Not only this, even the application filed by the defendants for referring the dispute does not disclose the existence of a dispute between the parties. Copy of the application is Annexure P-1. Paras 2 and 3 of the application relate to the agreement,—*vide* which the property was given on rent for five years and it is averred that it is continuing till today since the enhanced rent is being received by the plaintiff from the defendants. Para 4 pertains to the payment of rent up-to-date through the cheques and the drafts for the months of November and December, 1998. Paragraph 6 pertains to clause 9 of the agreement, which requires that all disputes arising out of this agreement will be referred to the sole arbitrator of Registrar, Handloom Cooperative Societies, U.P., whose decision in the matter will be final.

(13) In the application, it is nowhere stated, in fact even a passing reference has not been made therein as to what is the dispute between the parties. Where a party has failed to disclose the nature of the dispute and the application appears to be vague, qua the nature of the dispute, then under such circumstances, the application will not be maintainable, rather the same is required to be dismissed, and in this regard reference can be easily made to a decision rendered by this Court in "**Daman Anand and others** versus **Hira Lal and others** (1). It was held that application under Section 34 for stay qua the suit must disclose the disputes as the existence of the dispute others between the parties is a condition precedent for referring the matter to the Arbitrator. In the absence of such an allegation, such an application for stay of the proceedings is not maintainable.

(14) In **Ladha Singh Bedi** versus **Jyoti Prosad Singa** (2), it is observed that an arbitration presupposes a dispute or difference between the parties and if there is no dispute or difference there is no occasion for an arbitration and a pending suit between the parties ought not to be stayed in such a case." Also relied upon was **Chranjiv Lal** versus **The Tropical Insurance Co. Ltd.** (3) in which it was observed that where there was no point of difference before the filing of the suit, there was nothing to refer to arbitration.

(15) A somewhat similar situation arose in **Union of India** versus **Birla Cotton Spinning and Weaving Mills Ltd.** (4), which was relied upon by learned counsel for the petitioner. Therein the defendant had applied under Section 34 of the Indian Arbitration Act for stay of the suit alleging that a dispute had arisen between the parties and there being an arbitration agreement, therefore, the matter be referred to arbitrator. It was held as under :—

“ . In order that an arbitration clause can be enforced there must also exist a dispute. In the absence of a dispute between the parties to the arbitration agreement, there can be no reference.”

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- (1) AIR 1974 Pb. & Hy. 232
  - (2) AIR 1940 Cal. 105
  - (3) AIR 1952 Pb. 63
  - (4) AIR 1967 SC 688

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(16) In the given case in hand, the plaintiff had filed a suit for ejection of the defendant from the tenanted premises besides recovery of rent for the period in question. There is no dispute with regard to the tenanted premises, the rate of rent and the execution of agreement between the parties. In the application also, it is nowhere mentioned that the amount claimed by the petitioner is not recoverable or that they are not liable to pay the amount. To be more specific, in the application, neither the dispute nor the difference, if any, having arisen, has been set out, therefore, in the absence of all these important ingredients, whether a matter can be referred to the arbitrator? Certainly not. The whole matter required to be adjudicated upon by the arbitrator is kept in the dark.

(17) Looking this case from another angle, whether the defendant has taken steps in the proceedings? If so, then certainly the matter will not be referable to the arbitrator.

(18) Some of the zimni orders reproduced in the ground of revision would show that the suit was filed on 7th August, 1998. The defendant had put in appearance for the first time on 22nd October, 1998. The case was adjourned to 21st November, 1998 for filing of written statement. On 21st November, 1998, the following order was made :—

*Present :*

Counsel for the plaintiff.

Shri Gurdev Singh, Advocate, for the defendants.

A cheque of Rs. 7,475 tendered. For written statement, to come up for 10th December, 1998.”

(19) In this way, amount towards arrears of rent was tendered by way of cheque and the case was adjourned for written statement. On the adjourned date application for referring the matter to the arbitrator was filed and the case adjourned to 21st December, 1998 for reply. The matter remained pending for consideration of this application alone till August 13, 1999.

(20) On August 13, 1999, the plaintiff filed an application (Annexure P-3) for striking off the defence of the defendants. (The provision of law mentioned in the application is not correctly described.

In fact, it should be under Order 15 Rule 5 CPC). Reply to this application was filed on 3rd November, 1999/3rd December, 1999 (two dates have been given) and the case was adjourned to 5th January, 2000 for consideration of the application. The matter was adjourned from time to time for different reasons from 5th January, 2000 onwards for consideration of this application.

(21) As is made out from the interlocutory orders, though this application (Annexure P-3) under Order 15 Rule 5 of the Code came up for final hearing, but it was never decided nor any order has been passed thereon till today. Instead, the application dated 10th December, 1998 for referring the dispute to the arbitrator was disposed of on 18th December, 2000 nearly after two years. The reasoning given by the trial Court for adjourning the case and the observation that the defendant has not sought a number of opportunities for filing written statement, does not appear to be correct. Rather I would not hesitate in observing that the trial Court has not made efforts to deal with the case judiciously. In fact very casual attitude was adopted in the disposal of two applications, one for referring the matter to the Arbitrator and the other was striking of the defence. The later application filed on 18th August, 1999 appears to be still pending before the trial Court.

(22) Now the point under consideration is whether the defendants have taken steps in the proceedings. The defendants have admittedly tendered rent by way of cheque in the sum of Rs. 7,475. In the presence of the defendants, the case was adjourned for filing of the written statement. Again, the case was adjourned from 13th August, 1999 for the purpose of filing written statement/reply to the application under Order 15 Rule 5. Would it not amount to taking steps in the proceedings ? These adjournments were given at the request of counsel for the defendants except on 11th October, 1999 when the Judge was on leave.

(23) In *Behari Lal* versus *Prakash Chand (5)*, cited by Mr. Bansal, it has been observed that it is essential that the defendant should not have taken any steps in the proceedings. Where the defendant makes an application whatsoever in the court or prays for time to file the written statement, that will constitute a step in the proceedings.

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(24) My attention has also been drawn to "*Rachappa Guruadappa Bijapur versus Gurusiddappa Nuraniappa and others (6)*", that the applicant must have taken no steps in the proceedings after appearance. Therein also, adjournment was sought for filing written statement. Thus, it was observed under para 12 that it was not only the time taken to consider whether written statement should be filed as a defence to the plaint to enter into an arena of controversy, but it was time taken to have the matter decided by the suit. It was further observed that once the party evinced an intention to have the matter adjudicated by the Court, then in view of the principle enunciated hereinbefore, the party has disentitled itself to ask for stay of the said suit.

(25) In the given case in hand, the defendants have tendered arrears of rent not on the first date of hearing but on the second date i.e. on 21st November, 1998. Secondly, they had not only taken time for filing written statement, but they had also consumed sufficient time for filing reply to the application under Order 15 Rule 5 of the Code whereby the plaintiff-petitioner had prayed for striking off defence of the defendants. All these facts, therefore, indicate that the defendants had the intention to have the matter adjudicated upon by the Court. Thus, they had disentitled themselves for referring the matter to the Arbitrator.

(26) For the aforesaid reasons, I am of the view that the trial Court was in error in referring the matter to the arbitrator. Consequently, this revision is allowed and the application filed by the respondents for referring the matter to the arbitrator is hereby dismissed.

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*R.N.R.*