2024 INSC 805

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO._____/2024
Arising out of SLP (C) No. 4940 of 2022

CENTRAL WAREHOUSING CORPORATION & ANR. ...APPELLANT(S)

VERSUS

M/S SIDHARTHA TILES & SANITARY PVT. LTD ...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave granted.

2. The questions of law formulated in this appeal is, whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996. If the said question is answered in negative, the only question that survives is, whether the High Court committed any error in appointing the arbitrator while exercising the jurisdiction under Section 11 of the Arbitration and Conciliation Act, 1996 ('hereinafter referred as the Act'). Having examined the matter in detail, it is clear that the said question does not arise in the facts and circumstances of the case. We are guided by the existence of the Arbitration Clause and the decision of this Court in *SBI General Insurance Co. Ltd.* vs. *Krish*

Spinning[1] which discussed the scope of referral court's interference when a valid arbitration clause exists.

3. A brief conspectus of the facts is as follows. The appellant is a statutory body under the Warehousing Corporations Act, 1962, and is under the administrative control of the Ministry of Consumer Affairs, Government of India. As it was providing warehousing facilities, the respondent, a company engaged in the business of trading ceramic tiles and sanitary ware, had approached the appellant for storage of its goods. The appellant agreed and provided a storage space of 1295 sq. mtrs. and possession of this space was handed over to the respondent on 12.09.2012, even before an agreement could be entered between the parties.

4. Lease agreement on 26.09.2012 governing the contractual relationship provided under Clause 1 that the space will remain with the respondent for a period of 3 years from 12.09.2012. Thus, the contract was due to expire by efflux of time by 11.09.2015. This lease was made subject to a 'renewal by mutual consent' as per Clause 2. The rate of storage was fixed at Rs. 131 per square meter per month. What is relevant for us is Clause 16 of the agreement, incorporating the arbitration clause.

[1] 2024 SCC OnLine SC 1754

5. Even before the expiry of the lease, the storage charges were said to have been revised on a pan India basis w.e.f. 01.11.2012. The revision of the storage charges was communicated to the respondent and by a letter dated 04.10.2012, a demand for enhanced payment w.e.f. 01.11.2012 was raised. The appellant renewed the said demand on 10.05.2013 and 31.12.2014 and intimated that if the amount is not paid, it will be inferred that the respondent is not interested in retaining the facility. While the matter was pending, the storage charges were further revised w.e.f. 01.04.2015 by a letter dated 05.03.2015 when the respondent was informed that the tariff will be at the rate of Rs.177/- per sq. mtr. per month.

6. In turn, the respondent is said to have intimated the appellant that it is interested in continuing the facility but sought renewal of the agreement dated 26.09.2012 by also committing that any arrears due as per the original agreement would be cleared.

7. On 16.09.2015, the appellant is supposed to have rejected the request for renewal of the agreement and has in turn raised a demand of Rs. 16,10,004/. In view of the fact that the respondent had not vacated the premises despite the lease's expiry on 11.09.2015, the appellant invoked the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter the Public Premises Act).

8. It is an admitted fact that even before the order of the Estate Officer under the Public Premises Act could be passed, the respondent is said to have vacated the premises on 13.11.2015. The Estate Officer any way passed his order on 31.12.2015 holding that the respondent was in unauthorised possession only from 11.09.2015 (i.e. when the lease expired) to 13.11.2015 (when premises were vacated) and also directed payment of certain dues as indicated in the demand notice.

9. It is in the above referred background that the respondent invoked arbitration by filing an application under Section 11(6) of the Act for the appointment of an arbitrator in view of a subsisting arbitration clause in the agreement. The said clause is as under:

> "***16.*** *All disputes and differences arising out of or in any way touching upon or concerning this agreement whatsoever shall be referred to the sole Arbitration of any person appointed by the Managing Director, Central Warehousing Corporation New Delhi. The Award of such Arbitrator shall be final and binding on the Parties to this agreement. It is a term of this agreement that in the event of such arbitrator to whom the matter is originally referred / being transferred or vacating his office or being unable to act for any reason the Central Warehousing Corporation at that time shall appoint any other person to act as Arbitrator in accordance with the terms of this agreement. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessors. The Arbitrator shall give a speaking award.*
> *The venue of Arbitration shall be at such place as may be fixed by the Arbitrator at his sole discretion.*
> *The cost of arbitration shall be borne by the parties as per the decision of the Arbitrator.*
> *The Arbitrator shall give separate award respect of each dispute or difference referred him,*

> *In to Subject as aforesaid, the Arbitration & Conciliation Act, 1996 shall apply to the Arbitration proceedings under this clause.*"

10. The application under Section 11 specifically speaks about the dispute that has arisen under the agreement dated 26.09.2012. Broadly, they relate to the right of renewal of the contract and also the legality and propriety of the revision of rates during the subsistence of the agreement.

11. The High Court considered the matter in detail and came to the conclusion that the claims made in the notice followed by the application under Section 11 are clearly covered by the arbitration clause. The relevant portions of the High Court Judgment is as under:

> "***12.*** *On going through the same, it is seen that as per the said clause all disputes and differences arising out of or in any way touching upon or concerning the agreement have to be referred to the sole arbitration of any person appointed by the Managing Director of the Corporation. Award of such arbitrator shall be final and binding on the parties to the agreement. The arbitrator shall also decide the venue of arbitration and the cost of arbitration shall be borne by the parties as per the decision of the arbitrator. The arbitrator is required to give separate award in respect of each dispute or difference referred to him. Thus, the crucial words in Clause 16 are "all disputes and differences arising out of or in any way touching upon or concerning the agreement. According to the petitioner, the agreement for dedicated warehousing entered into between the parties on 26.09.2012 clearly mentioned the rate of storage charge i.e. Rs. 131-00 per square meter per month. But the Corporation unilaterally enhanced the storage charge rate with effect from 01.11.2012 at the gross area rate of Rs.157-00 per Square meter per month and net area rate of Rs.216-00 per square meter per month.*

> ***13.*** *The second area of dispute is with regard to extension of the agreement for dedicated warehousing. As per Clause No 1 the period of dedicated warehousing was for three years with effect from 12.09.2012, but both the parties had the option of renewing the agreement for a further period as mutually agreed upon on expiry of the term of the agreement. It is on these two issues that notice of arbitration was given to the Managing Director of the Corporation by the petitioner on 23.09.2015. As per the postal tracking (page32 of the paper book), the same was delivered on 26.09.2015. In any case respondent has not disputed receipt of the notice. According to the respondent, it is not an arbitral dispute being beyond the agreement."*

12. Questioning the judgment and order passed by the High Court, referring the dispute to arbitration, the appellant filed the present appeal. Though the question relating to whether the Public Premises Act will override the Arbitration Act has been raised and argued before the High Court. This court issued notice in the special leave petition on the basis of the question so formulated. We could have dismissed the special leave petition on this very ground but as notice was issued on this point and the appeal has been pending for some time, we considered it appropriate to hear the appellant on this question and decide the case. We will first answer the issue relating to the applicability of the Public Premises Act.

13. *Re: Whether the Public Premises Act, 1971 overrides the Arbitration and Conciliation Act, 1996:* This submission has to fail. The reasons are simple and straight forward. The dispute that is raised in the

Section 11 application relate to promises and reciprocal promises arising out of the agreement dated 26.09.2012. The right of renewal as well as the legality and propriety of the enhanced demand arose during the subsistence of the agreement. It will be on the interpretation, construction and the obligations arising out of the agreement that the respondent's claim rests. On the other hand, The Public Premises Act authorises the ejectment of a tenant in unauthorised occupation of public premises and for consequential directions. The original lease as it were, validly subsisted till 11.09.2015 and the dispute between the parties related to the period commencing from 12.09.2012 to 11.09.2015, when the lease expired. The Public Premises Act would not even cast a shadow on this period. In so far as the dispute relating to this right of renewal is concerned, it depends on the terms of the agreement. The Public Premises Act neither bars nor overlaps with the scope and ambit of proceedings that were initiated under the Arbitration and Conciliation Act.

14. *Whether the High Court committed any error in appointing the arbitrator while exercising the jurisdiction under Section 11*: We have already extracted the relevant portion of the order passed by the High Court. The revision of storage charges occurred during the subsistence of the contract. Its legality and propriety will depend on the terms of the agreement dated 26.09.2012. Similarly, the right of renewal will

also be based on and a construct of the said agreement. These two disputes will undoubtedly arise out of the agreement between the parties and the resolution of such disputes is clearly covered by the arbitration clause (Cl. 16 of the agreement). After the recent decision of this court in *SBI General Insurance Co.* (**supra**) the remit of the referral court to consider an application under Section 11(6) is clear and unambiguous. We need to just examine the existence of an arbitration agreement. The context is clearly delineated in paras 110-111 and 114 of the judgment which are extracted below for ready reference.

> "***110.*** *The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*
> ***111.*** *The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to 'rule' under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.*
> […]
> ***114.*** *In view of the observations made by this Court in In Re : Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else.*[…]"
>
> (emphasis supplied)

15. For the reasons stated above, we have no hesitation in rejecting the petition and we further hold that the appellant must bear the costs for this unnecessary litigation which we quantify at Rs. 50,000/-.

16. As the arbitration proceedings were stayed due to the pendency of this appeal by the order dated 01.04.2022, while dismissing this appeal we direct that the arbitral tribunal shall resume the proceedings and endeavour to deliver the award as expeditiously as possible.

17. The appeal is dismissed in terms of the above order.

.....J.
[**PAMIDIGHANTAM SRI NARASIMHA**]

.....J.
[**SANDEEP MEHTA**]

NEW DELHI;
October 21, 2024.