

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

AA no. 37/2013

Date of order: 14.03.2014

Rajinder Singh v. Indu Rattan and anr.

Coram:

Hon’ble Mr. Justice M. M. Kumar, Chief Justice

Appearing counsel:

For the Petitioner(s) : Mr. Surinder Singh, Advocate.

For the respondent(s) : Mr. Vishal Sharma, Advocate.

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| i) | Whether to be reported in
Press, Journal/Media | : | Yes |
| ii/ | Whether to be reported in
Digest/ Journal | : | Yes |

1. The short issue raised in the present petition filed under Section 11(6) of the Jammu and Kashmir Arbitration and Conciliation Act, 1997 (for brevity ‘the Act’) is whether there is any dispute between the parties as per the arbitration clause incorporated in the lease deed dated 07.04.2008.

2. Facts in brief are that the petitioner is in possession of land measuring 880 sft. comprising Khasra No.70 min and the Nazool Department accorded sanction for regularisation of the nazool land on lease basis on 06.04.1994 for a period of 40 years on payment of premium of Rs.8,50,000/- per kanal. Thereafter ownership rights have been conferred upon him on deposit of the premium (Annexure-A). The petitioner entered into a partnership deed with the respondents and started

business of sale and purchase of medicines under the name and style of M/S Gopal Medicine Store. The partnership was dissolved by a dissolution deed dated 03.04.2008. Subsequently a deed of settlement was executed between the petitioner and the respondents stipulating that the petitioner would be owner of the half portion of the shop towards Maheshpura Chowk and half of the portion towards medical college was to fall to the share of the respondents. The respondents took the shop of the petitioner on lease for a period of five years and executed a lease deed dated 07.04.2008.

2. The case of the petitioner is that the lease deed was for a period of five years which has expired on 30.11.2012. On the expiry of the lease deed the possession has not been handed over by the respondents. As a consequence the petitioner asked the respondents to refer the dispute to the arbitrator by issuing notice dated 12.06.2013 (Annexure-C). However, no reference has been made resulting in filing of the instant petition.

3. In the objections filed by the respondents a preliminary objection has been raised that a suit for permanent prohibitory injunction has already been filed by the respondents against the petitioner, which is pending in the Court of Sub-Judge, Jammu.

The tenancy is governed by J&K Houses and Shops Rent Control Act which excluded eviction of tenants by the arbitrator. The shop has been rented to the petitioner on the monthly rent of Rs.15,000/- and the same was renewable after every five year on the same terms and conditions.

4. I have heard learned counsel for the parties at a considerable length and have perused the record.

5. In the lease deed dated 07.04.2008 it has been specifically provided that the shop in question has been given on lease for a period of five years commencing from 01.12.2007 on monthly rent of Rs.15,000/-. However, covenant Nos. 6, 7 and 8 of the lease deed extend the period of five years to ten years, which are set out below *in extenso*:-

“6. That after expiry of the lease, the lease shall be renewed at the same terms and conditions for a further period of five years and the present lease deed shall be deemed in perpetuity. The lessee may purchase the said leased shop from the lessor within a period of 10 years from the date of execution of the present lease deed at the market value of the lease shop. In that event if the lessee offers to the lessor for purchase of the said shop at market value on or before the expiry of 10 years from the date of execution of the deed, the lessor shall sell the leased shop to the lessee. (emphasis added)

7. That it is agreed between the parties that in case the lessee is unable to purchase the leased shop from the lessor within the stipulated period of 10 years from the date of execution of this lease deed, the lessor may sell the leased shop to any other person at market value and the lessee shall vacate the leased shop. While selling the leased shop after lapse of 10 years the lessor will give first offer to the lessee for purchase of the shop at market value.

8. That in the event of any dispute arising between the parties with respect to the interpretation or implementation of this lease deed, the matter shall be referred to the Arbitrator of Sh. Ajay Vaid, Advocate and S. Gurcharan Singh S/O

Late S. Ishar Singh R/O 60/3, Nanak Nagar, Jammu under the J&K Arbitration and Conciliation Act and whose decision shall be binding upon the parties and none of the party shall be competent to challenge the said decision.”

6. A perusal of covenant No.6 makes it evident that after the expiry of initial period of five years of lease it is to be renewed on the same terms and conditions for a further period of five years. The present lease deed was required to be considered in perpetuity. There are further conditions with regard to purchase of the leased shop from the lessor/owner within a period of ten years from the date of execution of the lease deed i.e.07.04.2008. It is, thus evident that no arbitrable dispute worthy of reference to an arbitrator in pursuance of covenant No.8 would arise between the lessee and the lessor because according to the covenant No.6, after the expiry of five years initial period, the lease was required to be renewed at the same terms and conditions for a further period of five years. The further period of five years is to expire in December, 2017 as the lease deed was to commence from 01.01.2007. Therefore, the necessary requirement of a live dispute between the parties has not been fulfilled. The aforesaid principles are discernible from the perusal of the judgment of Hon'ble Supreme Court rendered in the cases of **SBP & Co. v. Patel Engineering Ltd. (2005) 8 SCC 618** and **Omnia Technologies (P) Ltd. v. WMA Van Loosbroek, (2011) 3 SCC 682.**

7. As a sequel to the above discussion, this petition fails and same is dismissed. However, the objections based on covenant Nos.6, 7 and 8 may be raised before the Civil Court in the suit pending before it and the same may be adjudicated in accordance with law.

(M. M. Kumar)
Chief Justice

Jammu,
14.03.2014
Vinod.