

Bimla Rani Gupta Vs. S.R. Sachdeva

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Court : Delhi

Decided On : Jan-25-2000

Reported in : 2000IIIAD(Delhi)637; 84(2000)DLT171; 2000(53)DRJ388

Judge : K. Ramamoorthy, J.

Acts : [Arbitration Act, 1940](#) - Sections 34; [Arbitration and Conciliation Act, 1996](#) - Sections 8

Appeal No. : Cr. No. 997 of 1997

Appellant : Bimla Rani Gupta

Respondent : S.R. Sachdeva

Advocate for Def. : Mr. G.D. Gandhi, Adv.

Advocate for Pet/Ap. : Mr. Anurag K. Aggarwal, Adv

Judgement :
ORDER

K. Ramamoorthy, J.

1. The plaintiff in the suit is the petitioner in the revision petition. The petitioner filed the suit for recovery of arrears of rent for the period from 1.1.93 to 29.2.1996. The plaint was presented in March, 1996. The respondent filed an application,

purporting to be under Section 34 of the [Arbitration Act, 1940](#), stating that there was a Rent Agreement between the petitioner and the respondent on the 3rd of November, 1992 for a period of two years and clause 14 of the document provided for adjudication of disputes by arbitration, and, therefore, the suit was liable to be stayed and disputed would have to be referred to for arbitration.

2. By order dated 3.2.1997, the trial court dismissed the application holding that the agreement was only for a period of two years and that period expired on the 2nd of November, 1994, and after the expiration of that period, the respondent cannot press into service the clause 14 of the Rent Agreement. The learned Civil Judge also took the view that the clause did not cover the dispute with reference to arrears of rent.

3. The respondent preferred an appeal to the lower appellate court. The lower appellate court reversed the order of the learned trial Judge and allowed the application of the respondent by order dated 23.8.1997. That is challenged by the plaintiff in this revision petition.

4. The learned counsel for the petitioner, Mr. Anurag Kumar Aggarwal, submitted that the Rent Agreement, which was for a period of two years, was not duly stamped and was not registered, and, therefore, the document was not admissible in evidence, and, hence the respondent cannot seek to enforce clause 14 of the document, which cannot be looked into, in law, for any purpose. The learned counsel submitted that the application under Section 34 of the [Arbitration Act, 1940](#) was not competent as on the, date of the application, the [Arbitration Act, 1940](#) stood repealed by Arbitration & Conciliation Act, 1996. The learned counsel submitted that the right of the land lord to recover the rent cannot be said to be collateral to the transaction and on that ground, the respondent cannot rely upon the arbitration clause. The learned counsel also submitted that once the agreement is not admissible in evidence not being registered, the tenancy becomes a monthly tenancy, and, therefore, the petitioner was well within his rights in instituting the suit for recovery of rent.

5. The learned counsel for the petitioner, Mr. Anurag Kumar Aggarwal, relied upon the judgment of the Bombay High Court in 'Dr. Vasant Balwant Vaidya v. Union of

India', 1970 Mh. LJ. 20, wherein the Bombay High Court had taken the view that a lease for residential purpose for month to month can be made oral and if the agreement was reduced to writing, it required registration, and the document like the present one cannot be relied on as being collateral to the agreement. For the same purpose, the learned counsel relied upon the judgment of the Punjab & Haryana High Court in 'Om Parkash Chawla v. The Union of India', 1972 (74) Pun. L.R. 53.

6. With reference to the point that the respondent cannot, rely upon the Rent Agreement when recovery in the suit would relate to the period posterior to the date of expiration of the agreement, which was on 2.11.1994, the learned counsel for the petitioner, Mr. Anurag Kumar Aggarwal, relied upon the judgment of the High Court of Jammu & Kashmir in 'Ghulam Hassan Dar Vs . Controller of Aerodrome & Another', . The learned counsel referred to Section 35 of the Stamp Act, 1899 to show that the document was not admissible in evidence as it was not duly stamped.

7. The learned counsel for the respondent Mr. G.D. Gandhi, submitted that substantial part of the period for which the suit is filed would come within the period mentioned in the agreement dated 3.11.92, that the Rent Agreement is not compulsorily registerable. The learned counsel submitted that if it is a lease deed, it is compulsorily registerable but the document is not a lease deed, it is only a rent agreement, and, therefore, it would not come within the mischief under Section 17 of the Registration Act, 1908. The learned counsel further submitted that assuming that the document required registration, the question of recovery of rent is a term 'collateral' to the Rent Agreement, and, therefore, the respondent could rely upon clause 14 of the Rent Agreement for the purpose of adjudication of the disputes by arbitration. The learned counsel submitted that no argument were advance on behalf of the petitioner that the [Arbitration Act, 1940](#) was repealed, and the learned counsel submitted that considering the point to be correct, the application filed by the respondent could be treated under Section 8 of the [Arbitration and Conciliation Act, 1996](#). The learned counsel submitted that the rulings relied upon by the learned counsel for the petitioner would not apply to the facts and circumstances of this case.

8. The Rent Agreement is dated 3.11.1992. It is for a period of two years. Undoubtedly, a lease deed requires registration under Section 17 of the Registration Act, 1908. the document is also not duly stamped under the Stamp Act, 1899 and it is executed on Rs. 500/- non-judicial stamp paper. Under Section 35 of the Stamp Act, 1899, the document cannot be permitted to be exhibited. The document cannot be looked into for any purpose. The learned Additional District Judge took the view that the plaintiff/petitioner has filed the suit for recovery of arrears of rent and has not disclosed the agreement and has not denied the execution of the agreement. The learned Additional District Judge said that as per the agreement the disputes or differences arising from the concerning subject matter of agreement out of the agreement, the same shall be referred to sole arbitrator. It is further mentioned in the order of the Additional District Judge that the provisions of the [Arbitration Act, 1940](#) or for any statutory modification, the time being in force shall apply to such arbitration. He Held: 'Keeping in view the arbitration clause, I am not inclined to accept the argument addressed by the counsel for the respondent that the [Arbitration Act, 1940](#) stands repealed.

9. The learned Additional District Judge further said :

'Secondly, he has recovered the arrears of rent for the period covered by the agreement as such the judgment of Hon'ble High Court of J&K; do not support the case of plaintiff/respondent. Keeping in view the judgment of Hon'ble High Court of Delhi in case of 1982 RLR 516, Smt. Darshan Kapur v. Tilak Raj, the appeal of the defendantappellant is allowed and the proceedings of the trial court are stayed as per the agreement. The trial court be sent back.'

The learned Additional District Judge has relied upon the judgment of this Court in 'Smt. Darshan Kapur v. Tilak Raj', 1982 RLR 516.

10. The fact that the Rent Agreement requires registration cannot be disputed and the agreement that it is only a Rent Agreement and does not require registration cannot at all be accepted in law. The ratio laid down in 'Smt. Darshan Kapur v. Tilak Raj', 1982 RLR 516, has not been appreciated by the learned Additional District Judge. The application filed by the respondent under Section 34 of the [Arbitration Act, 1940](#) or even treating the same as a petition under Section 8 of the

[Arbitration and Conciliation Act, 1996](#) is not at all maintainable. Accordingly, the application filed by the respondent is dismissed. The revision petition is allowed.

11. There shall be no order as to costs.

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