

OD – 5 & 6

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA NO. GA/1/2022
IA NO. GA/2/2022
In CS/19/2022

TARIT MITRA AND ANR.
Vs
SHARAD GOENKA

BEFORE:
THE HON'BLE JUSTICE SUGATO MAJUMDAR
Date: 30th January, 2024

Appearance:

Mr. Sakya Sen, Adv.
Mr. Sukrit Mukherjee, Adv.
Ms. Somali Bhattacharya, Adv.

..for Plaintiffs/Respondent in GA
No.2

Mr. Mainak Bose, Adv.
Mr. Naresh Balodia, Adv.
Mr. Pallav Choudhury, Adv.

..for the Defendant.

The Court: GA No. 2 of 2022 is filed by the Defendant under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996.

The instant suit is one for eviction and recovery of possession from the Defendant. The plaint case is that a monthly tenancy was granted by the original landlady to the Defendant in terms of the agreement dated 27th January, 2006. Two

other agreements were also executed on the same day incidental to the tenancy, so granted to the Defendant. All the agreements contained arbitration clauses to refer the disputes to arbitration. The tenancy was initially created for a period of five years from 1st February, 2006. The original landlady expired on 28th December, 2012, leaving behind her legal heir Joy Mitra who also expired on 6th August, 2018, leaving the present Plaintiffs as legal heirs and successors. Tenancy was terminated in terms of a notice dated 3rd August, 2021 issued under Section 106 of the Transfer of Property Act, 1882. Since the Defendant did not vacate the suit premises, in spite of termination, in the instant suit has been instituted for recovery of possession.

The Defendant filed the instant application under Section 8 of the Arbitration and Conciliation Act, 1996 praying for referring the present dispute to arbitration. It is contended in the application that all the three agreements creating tenancy and incidental to tenancy bearing dated 27th January, 2006 contains arbitration clause. From a meaningful reading of averments made in the plaint it would be evident that subject matter of the present suit is covered by and within the scope and ambit of the arbitration clause between the parties. Referring to Section 8 of the Arbitration and Conciliation Act, 1996 the Defendant prayed that the instant dispute may be referred to arbitration.

Affidavit-in-Opposition as well as Affidavit-in-Reply are filed by the parties.

In Affidavit-in-Opposition, to be precise, the Plaintiff refuted the contention that there exists any arbitration clause or agreement between the parties containing arbitration clause. The Defendant had earlier given a go-by to the arbitration agreement and submitted to the jurisdiction of civil court by filing Title Suit No. 433

of 2019. Herein also, the Defendant subjected himself to the jurisdiction of the civil court negating applicability of the Arbitration and Conciliation Act, 1996.

In Affidavit-in-Reply the Defendant refuted the contentions contained in Affidavit-in-Opposition.

Both the parties filed notes of arguments and supported their respective contentions.

Mr. Bose, the Learned Counsel for the Defendant, argued that the genesis of the Defendant's tenancy is the agreement dated 27th January, 2006 containing arbitration clause. These arbitration agreements are still applicable. Referring to **Vidya Drolia & Ors. Vs. Durga Trading Corporation [(2021) 2 SCC 1]** it is submitted by Mr. Bose that landlord – tenant disputes governed by the Transfer of Property Act, 1882 are arbitrable. Mr. Bose also referred to **Reva Electric Car Company [(2012) 2 SCC 93]** to argue that termination of agreement does not stand in the way to settle disputes arising out of the contract.

Per contra, Mr. Sakya Sen appearing for the Plaintiff argued that the tenancy agreement expired by efflux of time in the year 2011. Therefore, the original tenancy is not subsisting today. It is further argued that scope of the arbitration agreement was restricted to disputes and differences falling within the ambit of the original tenancy itself which cannot be widened or extended to include all the disputes and differences between the parties. Thirdly, it is argued that an unregistered or unstamped document creating tenancy cannot be looked into and relied upon.

I have heard rival submissions.

The tenancy was created in terms of the agreement dated 27th January, 2006 by the predecessor-in-interest of the present Plaintiffs. Apart from the tenancy agreement, two other agreements, incidental to the tenancy agreement were executed. All the agreements contained the arbitration clause. The said agreements expired by efflux of time after five years. After the expiration of tenancy it continued under the original landlady, then under her legal heir Joy Mitra and thereafter under the present Plaintiffs. Rent was increased and there was no agreement showing that disputes and differences related to tenancies are to be decided by arbitration. The other two incidental agreements were also not renewed. There is nothing in writing to indicate that disputes and differences between the parties should be referred to arbitration as contemplated in the original agreement. Section 7 of the Arbitration and Conciliation Act, 1996 demands that arbitration agreement must be in writing whether incorporated as a clause in an agreement or contained in correspondences between the parties, to refer present and future disputes to arbitration. A tenancy may be by-conduct but arbitration cannot be inferred from the conduct of the parties. There is nothing in writing to suggest that the present disputes which are subject matter of the suit should be referred to arbitration. The original agreement contemplated that any disputes and differences arising under the said tenancy agreement should be referred to arbitration. The tenancy agreement containing arbitration clause expired and the tenancy contemplated in the said agreement was renewed. In fact, the contract of tenancy, there was novation of contract between the parties. It is manifest that the parties were not *ad idem* on applicability of arbitration clause in respect of the tenancy and incidental rights to tenancies comprised in the original agreements dated 27th January 2006, executed along with the tenancy agreement. Therefore, the old tenancy agreement cannot be said to be applicable as on today. **Reva Electric Car**

Company [(2012) 2 SCC 93] was decided in conspectus of different facts specific to itself and has no application in the present case.

In nutshell, it is concluded that there is no arbitration clause as contemplated under Section 7 of the Arbitration and Conciliation Act, 1996 to refer the present disputes to arbitration. Accordingly, the application filed under Section 8 of the Arbitration and Conciliation Act, 1996 being GA No. 2 of 2022 stands dismissed.

Fix on 26th February, 2024 for hearing of GA No. 1 of 2022.

(SUGATO MAJUMDAR, J.)