



Melvin V A
Associate

SUPREME COURT ON ARBITRABILITY OF LANDLORD-TENANT DISPUTES

1. Brief Facts:

- a. Supreme Court (“SC”) had previously in the case of *Himangni Enterprises v. Kamaljeet Singh Abluwalia*¹ (“**Himangni Enterprises case**”) held that landlord-tenant disputes governed by provisions of The Transfer of Property Act, 1882 (“**TP Act**”) are not arbitrable as it would be contrary to public policy.
- b. A division bench of SC during March 2019 noted that the ratio held in *Himangni Enterprises* case will require a relook by its larger bench.
- c. Subsequently on December 14, 2020, a three-judge bench of the Supreme Court, in the case of *Vidya Drolia and others v Durga Trading Corporation*² overruled the judgment passed in *Himangni Enterprises* case and held that the landlord-tenant disputes are arbitrable.

2. Decision and Reasoning by SC:

- a. SC while overruling the ratio laid down in *Himangni Enterprises* case held that the landlord-tenant disputes are arbitrable as the TP Act does not forbid or foreclose arbitration.
- b. Landlord-tenant disputes governed by the TP Act are arbitrable as they are not actions/rights in rem³ but pertain to subordinate rights in personam⁴ that arise from rights in rem. Such actions normally would not affect third-party rights or public interest as whole and do not require centralized adjudication.
- c. Actions under TP Act normally would not affect third-party rights and such disputes do not relate to inalienable and sovereign functions of the State and hence arbitrable.
- d. The arbitration award passed in such disputes can therefore be executed and enforced like a decree of the civil court.
- e. However, tenancy disputes which are governed by rent control legislations would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations pertaining to such disputes.

¹ MANU/SC/1307/2017.

² MANU/SC/0939/2020.

³ Right in Rem is a right exercisable against the world at large and is not amenable to arbitration.

⁴ Right in personam is an interest protected against a specific individual and is referable to arbitration.

3. Four-Fold Test by SC:

SC also propounded a four-fold test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

- a. When cause of action and subject matter of the dispute relates to actions/rights in rem, that do not pertain to subordinate rights in personam that arise from rights in rem;
- b. When cause of action and subject matter of the dispute affects third party rights; have impact on public interest and requires centralized adjudication and wherein mutual adjudication would not be appropriate and enforceable;
- c. When cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and
- d. When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

4. SC on Competent Authority:

Another important issue placed before the larger bench was on who would be the competent authority to decide on the question of arbitrability. Whether it is the court at the reference stage or the arbitral tribunal in the arbitration proceedings.

The court held that arbitral tribunal is the preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of “second look” on aspects of non-arbitrability post the award as per the provisions of The Arbitration and Conciliation Act, 1996. However, the court may interfere when it is clear and evident that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable.

CONCLUSION

This judgment of SC settles the law and confirms that tenancy disputes are generally arbitrable except where such disputes are governed by rent control legislations. The clarity provided by this judgment will help both landlords and tenants to submit and resolve the dispute through arbitration as against subjecting the dispute to the court process and suffering delays arising from several appeals before a finality of resolution is achieved in the dispute.

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