

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ARB-220-2023 (O&M)

Date of Decision: 07.12.2023

Harinder Singh @ Harinder Pal Singh & othersPetitioners

Versus

Godrej Agrovvet Limited & othersRespondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sanjeev Kumar Arora & Mr. Lovish Arora, Advocates,
for the petitioners.

Mr. Naresh Markanda, Senior Advocate, with
Mr. Rohan Markanda, Advocate, for the respondents.

GURVINDER SINGH GILL, J.

1. The petitioners seek appointment of an Arbitrator in terms of Section 11 (6) of the Arbitration and Conciliation Act, 1996.
2. It is not in dispute that a lease agreement dated 27.07.2007 (Annexure A/1) had been entered into between the petitioners and the respondents i.e. Godrej Agrovvet Limited and as per which the petitioners had leased out an open plot measuring 34500 sq. feet in Mandi Killianwali, District Muktsar, Punjab to the respondents, who were into the business of 'manufacturing & marketing of agricultural implements, pesticides, weedicides, tissue culture planting etc.'. The lease was for a period of 30 years on a monthly rent of Rs.69,000/-. An increase in the rent at the rate of 10% at the end of 5 years

was also agreed amongst the parties. The agreement also provided for resolution of disputes by way of arbitration. The relevant clause from the lease deed is reproduced hereinunder:

“12) Arbitration:

Any dispute or difference arising out of this Agreement shall be referred to a sole Arbitrator appointed by the Lessee in accordance with the provisions of Arbitration and Conciliation Act, 1996 and the decision of such Arbitrator shall be final and binding on both the parties. The venue of such proceedings shall be at Chandigarh.”

3. A dispute having arisen, the petitioners invoked arbitration by way of issuance of a notice dated 27.02.2023 to the respondents, but to no avail.
4. It is the case of the petitioners that the respondents had not adhered to terms & conditions of the agreement and had not paid any rent and nor had handed back the vacant possession of the demised premises.
5. Respondents have filed their reply, wherein an issue of limitation has been raised on the ground that since it is the specific case of the petitioners that no rent was ever paid, therefore, the cause of action which had arisen in the year 2007 has become time barred and that the petitioners cannot invoke arbitration after 15 years of the said cause of action, which arose in the year 2007 itself.
6. This Court has considered the rival submissions.
7. In order to constitute a cause of action, first is the coming into existence of a right, and secondly, its infringement or threat to be infringed. Usually, cause of action in substance denotes and determines the starting point of limitation. However, there would be certain circumstances where it could even be said that the cause of action is arising repeatedly again and again and in which

case inaction on part of aggrieved person to take an action at the first instance of default would not operate as an estoppel on the aggrieved person.

8. In the present case, the lease agreement was, admittedly for a period of 30 years. If the contention put forth on behalf of respondent is accepted that would mean that in case the lessor did not initiate action against the lessee in respect of the first instance of default of non-payment of rent, the same would operate as estoppels or waiver and the lessee could continue occupying the premises during the remaining period of lease even without payment of rent. Such an interpretation would be absurd and against the tone and tenor of lease agreement. As per agreement the lessee was required to pay rent on monthly basis. Thus non-payment of rent in any month would amount to violation of terms of the agreement and furnish a fresh cause of action every month even if the lessor had chosen to overlook earlier default on part of lessee. Such inaction on part lessor can not be construed as a waiver so as to debar the lessee for all times to take action against the the defaulting lessee.
9. Hon'ble Supreme Court in the matter of *N.R. Narayan Swamy Vs. B. Francis Jagan, 2001(6) SCC 473* where the question for consideration was whether successive suits can be filed by landlord on ground of bona fide requirement or non-payment of rent, has held therein that bona fide requirement or non-payment of rent is a recurring cause of action and, therefore, a landlord is not precluded from instituting fresh proceeding for seeking a decree of eviction on the ground of bona fide requirement and the genuineness of the said ground has to be decided on the basis of requirement on the date of the suit.

10. As such, this Court is unable to accept the submission raised on behalf of the respondents regarding the claim being time barred. Since the factum of lease agreement is not in dispute, which specifically provides for resolution of disputes by way of arbitration, the instant petition merits acceptance and the same is hereby accepted.
11. Accordingly, Sh. Sanjeev Kumar Garg, District & Sessions Judge, Punjab (Retd.) is appointed as the sole Arbitrator. However, such appointment would be subject to the declaration to be made by Sh. Sanjeev Kumar Garg, District & Sessions Judge (Retd.) under Section 12 of the Act with regard to his independence and impartiality to settle the disputes between the parties.
12. The Arbitrator shall be paid fee in accordance with the Fourth Schedule of the Act, as amended or as may be mutually settled by the parties and the Arbitrator.
13. As per agreement expressed by learned counsel for the petitioner, for the sake of the convenience of his respective client, as also of the Arbitrator, the venue for the Arbitration shall be at Arbitration Centre, Chandigarh or at any other place convenient to all concerned.
14. After seeking convenience of the Arbitrator, the parties are directed to appear before him on 15.12.2023 at 11:00 A.M. or any other date suitable to all concerned.
15. A copy of this order be sent to the appointed Arbitrator at the given addresses:

“H.No.518, IAS/PCS Society,
Mullanpur, New Chandigarh, (Punjab).
Mobile No.7626900060”

16. The petition stands disposed of in the above mentioned terms.

07.12.2023

Vimal

(GURVINDER SINGH GILL)

JUDGE

Whether speaking/reasoned: **Yes**

Whether reportable: **Yes**