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Arbitrability of Lease Deed Disputes in India – The Apex Court Answers

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The (Indian) Arbitration and Conciliation Act, 1996 does not specify which disputes are arbitrable and which are not. The arbitrability of disputes is a contested issue and has been left for the courts to decide on a case-by-case basis. In *Himangni Enterprises v. Kamaljeet Singh Ahluwalia* (“**Himangni Enterprises**”), the arbitrability of disputes under a lease deed was questioned. In India, lease deeds are ordinarily governed by the Transfer of Property Act, 1882 (“**TP Act**”).

Previously, in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.* (“**Booz Allen**”), the Supreme Court held a gamut of disputes to be non-arbitrable (see [here](#) and [here](#)). One such category of disputes was “*eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction*”.

The Court also recognised a distinction between disputes involving rights *in rem* and those involving rights *in personam*. It ruled that disputes concerning rights *in personam* may be decided by a private forum (such as an arbitral tribunal) but those concerning rights *in rem* should necessarily be decided by a public court. The case of *A. Ayyasamy v. A. Paramasivam* (“**Ayyasamy**”) further clarified this rule by carving out the following two categories of disputes which may not be subject to arbitral proceedings:

1. Disputes falling within the exclusive jurisdiction of a special court under a special statute; and,
2. Disputes which are generally considered by the courts as appropriate for decision by public fora, for instance, disputes pertaining to rights *in rem* (the 6 categories of disputes specified in *Booz Allen*).

The Issue of Arbitrability

While the law is clear on disputes arising under a lease deed governed by special statutes such as the Rent Control Act, conflicting judgments of various High Courts exist on the issue of whether disputes arising under a lease deed governed by the TP Act (a general statute on the transfer of property) can be a subject-matter of arbitration.

In *Penumalli Sulochana v. Harish Rawtani*, the Andhra Pradesh High Court extended the rule evolved in *Booz Allen* and held that disputes under a lease deed, governed by the TP Act are non-arbitrable. The court reasoned that since the eviction of a tenant, governed by special statutes,

cannot be the subject-matter of arbitration, a similar case which falls under the TP Act cannot be a subject-matter of arbitration either.

In *Ambuja Neotia Holdings Pvt. Ltd v. M/s Planet M Retail Ltd.*, however, the Calcutta High Court held that lease deed disputes, governed by the TP Act are arbitrable, as the TP Act codifies the general law of transfer of property and is not a special statute. The Court was of the view that Booz Allen does not render all eviction or tenancy matters non-arbitrable, but covers only such disputes which are governed by a special statute.

The Deciding Case – Himangni Enterprises

On 12 October 2017, the Supreme Court in *Himangni Enterprises*, ruled on this specific issue. The Court was dealing with a civil suit that had been filed before the trial court for eviction of a tenant, recovery of unpaid arrears of rent and grant of injunction against his possession of the property. The defendant filed an application before the trial court seeking referral of the disputes to an arbitrator on the basis of an arbitration clause in the lease deed. The trial court dismissed the application. The dismissal was later challenged before the Delhi High Court and then the Supreme Court. It was argued before the Supreme Court that since a special rent legislation was not applicable to the premises, the dispute had to be referred to arbitration.

Relying on *Booz Allen* and *Natraj Studios Pvt. Ltd. v. Navrang Studios* (“**Natraj Studios**”), the Apex Court held that the disputes under the TP Act would also necessarily have to be tried by a public court and not by an arbitrator.

Comment

Since the question of arbitrability of lease deed disputes under the TP Act was not considered in either *Booz Allen* or *Natraj Studios*, the Court’s reliance on the aforementioned judgments appear to be misplaced. While *Booz Allen* considered the arbitrability of a mortgage deed, *Nataraj Studios* considered a leave and licence dispute governed by a special rent legislation. Ideally, the Court should have focused on the facet of non-arbitrability of disputes concerning rights *in rem* and clarified the jurisprudential basis for its decision. However, this case is logically consistent with the ratio in previous cases such as the *Ayyasamy* judgment. The decision is also in line with an earlier judgment (*Vimal Kishore Shah v. Jayesh Dinesh Shah*), wherein the Court held that a reference to arbitration for deciding disputes under a trust deed is barred by implication, as the Indian Trust Act, 1882 provides a sufficient and adequate remedy (see [here](#)).

It is clear that a lease deed, whether governed by the TP Act or by a special statute, involves disputes concerning rights *in rem*. Since a lease involves a transfer of interest in the property, such a transfer invariably involves creation of rights *qua* third parties, as far as the rights of possession and enjoyment of the property are concerned.

This becomes relevant in situations where a third person may claim possession over a property on the basis of another lease deed. A dispute of this nature would involve a determination of the parties’ respective interest in the property, which would necessarily be a determination of rights *in rem*. Therefore, a hearing should be afforded to all persons whose rights may be affected that can be adjudicated only by a public court. An arbitral tribunal, being a creature of a contract between parties, cannot possibly decide on any impact on third party rights or allow for such a procedure. Additionally, an arbitral tribunal’s decision would not be binding on a third person and would thus frustrate the process of dispute resolution between all parties.

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