



Supreme Court refers the question of whether landlord-tenant disputes are arbitrable to a larger bench¹

Brief Facts

The landlord (Respondent) and tenant (Appellants) entered into a tenancy agreement (“**Tenancy Agreement**”) which contained an arbitration clause. On 24 August 2015, the Respondent issued a letter to the Appellants to deliver vacant and peaceful possession on expiry of the Tenancy Agreement. As the tenant did not vacate the premises, arbitration was invoked by the Respondent on 29 February 2016. The Respondent filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (“**Act**”) on 28 April 2016 before the Calcutta High Court. The High Court passed the impugned order (“**Impugned Order**”) on 7 September 2016 appointing an arbitrator after rejecting the Appellants’ objections regarding arbitrability of the disputes.

On 12 October 2017, a judgment was delivered by the Supreme Court in a separate matter in **Himangni Enterprises v. Kamaljeet Singh Ahluwalia**² (**Himangni**) holding that where the Transfer of Property Act, 1882 (“**TP Act**”) applies between a landlord and tenant, disputes between the said parties would not be arbitrable.

Pursuant to **Himangni**, the Respondent filed a review petition before the Calcutta High Court on 4 June 2018, which was also dismissed on 8 June 2018.

The present Special Leave Petition was filed against the Impugned Order.

Issue

Whether disputes between landlord and tenants pertaining to a lease governed by the TP Act are arbitrable?

Judgment

The Court observed that **Himangni** held that landlord-tenant disputes under the TP Act were not arbitrable on the basis of the Supreme Court’s decisions in **Booz Allen and Hamilton Inc. v. SBI Home Finance Limited and Others**³ (**Booz Allen**) and **Natraj Studios (P) Ltd. v. Navrang Studios (Natraj)**.⁴ The Court also observed that **Booz Allen** makes it clear that only those tenancy matters are non-arbitrable (i) which are governed by special statutes; (ii) where the tenant enjoys protection against eviction; and (iii) where only specified courts are conferred jurisdiction to grant eviction or decide disputes. The Court held that **Natraj** was not applicable to the facts in **Himangni** because **Natraj** pertained to a dispute under the Bombay Rent Act, 1947 while **Himangni** pertained to disputes under the TP Act.

The Court also observed that there is nothing in the TP Act to show that disputes under Section 111 of the TP Act (determination of lease) cannot be decided by arbitration. It analysed Sections 114 and 114A of the TP Act (forfeiture of lease) and observed that these provisions balance the interests of the landlord (lessor) and tenant (lessee) since *inter alia* the lessee may be relieved against forfeiture under Section 114 but the landlord’s

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interest is secured by deposit of the rent in arrears, interest and costs of suit. The Court held that Section 114 cannot be said to be a provision conceived for the relief of tenants as a matter of public policy which can be decided only by courts. The Court concluded that the grounds stated in Section 111, whether read with Section 114 and/or Section 114A, are grounds which can be raised before an arbitrator to decide whether or not a lease has determined. It also reiterated that issues pertaining to specific performance can be referred to arbitration and referred the case to a larger bench of three judges.

Analysis

The Court has succinctly analysed the applicability of **Booz Allen** and **Natraj** to landlord-tenant disputes under the TP Act while **Himangni** does not discuss or offer any reasoning for the non-arbitrability of disputes under the TP Act.

The Court gave the example of disputes under

the Indian Trusts Act, 1882 as non-arbitrable disputes relying *inter alia* on Section 34 of the Indian Trusts Act, 1882, whereby a trustee may apply for an opinion of a civil court for the administration of trust property. Section 69(10) of the TP Act also permits an application to be made to the court for an opinion on the administration of mortgaged property. If the larger bench of the Supreme Court is of the opinion that the disputes under the TP Act are arbitrable, then disputes pertaining to the management of mortgaged property may be said to be exempted from such a judgment.

It may be interesting to note that the Supreme Court permitted the arbitration to continue but allowed the execution of the arbitral award only with permission of the Supreme Court. Given the Court allowed the arbitration to proceed in this case, it will also be interesting to see how different courts treat pending and future arbitrations between landlords and tenants under the TP Act, while a decision from the larger bench is awaited.

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1 Authored by Surjendu Sankar Das, Partner and Ravjyot Ghuman, Associate; Vidya Drolia & Ors. v. Durga Trading Corporation, C.A. No. 2402 of 2019, Supreme Court, 2019 SCC OnLine SC 358, judgment dated 28 February 2019.

Quorum: R.F. Nariman and Vineet Saran, JJ.

2 (2017) 10 SCC 706.

3 (2011) 5 SCC 532.

4 (1981) 1 SCC 523.

PRACTICE AREA EXPERTS

Pallavi Shroff

Managing Partner and
National Practice Head Dispute Resolution
+91 98100 99911
E: pallavi.shroff@AMSShardul.com

Siddhartha Datta

Partner
+91 90070 68488
E: siddhartha.datta@AMSShardul.com

Binsy Susan

Partner
+91 96500 80397
E: binsy.susan@AMSShardul.com

Tejas Karia

Partner and Head, Arbitration Practice sub-group
+91 98107 98570
E: tejas.karia@AMSShardul.com

Ila Kapoor

Partner
+91 98717 92737
E: ila.kapoor@AMSShardul.com

Aashish Gupta

Partner
+91 98189 19857
E: aashish.gupta@AMSShardul.com

Anirudh Das

Partner
+91 98100 98329
E: anirudh.das@AMSShardul.com

Rishab Gupta

Partner
+91 98217 80313
E: rishab.gupta@AMSShardul.com

Smarika Singh

Partner
+91 97170 98075
E: smarika.singh@AMSShardul.com

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