

The authors discuss on arbitrability of landlord and tenant disputes.

In the recent times, there has been tremendous debate regarding the arbitrability of disputes. Interminable, time consuming, complex, and expensive court procedures impelled jurists to search for an alternate forum, less formal, more effective, and speedy for resolution of disputes. This led to the development of Arbitration in India. Arbitration is a process where parties repose their trust and confidence on an independent third party who adjudicates the disputes between the parties and renders his decision in form of an award. However, there are certain disputes which are not capable of adjudication through arbitration and therefore courts have been given the sole authority to adjudicate such disputes. Various judicial precedents indicate the disputes which are arbitrable and disputes which are not arbitrable. Inter alia, one such issue is on the arbitrability of landlord and tenant disputes.

Recently, Supreme Court in *Vidya Drolia & Ors. v/s. Durga Trading Corporation* held that the disputes between the landlord and tenant governed by the Transfer of Property Act, 1882 are arbitrable disputes. However, when the disputes are covered by special forum (namely under Rent Act) then such disputes would have to be adjudicated by designated court/tribunal and such disputes are not arbitrable. In this article we discuss on arbitrability of landlord and tenant disputes. Before we dwell into deeper analysis, it would be appropriate to highlight the dichotomy prevalent earlier prior to the judgment. This can be understood by highlighting one of the specific rent legislation and the Arbitration Act as done by Hon'ble Supreme Court in *Vidya Drolia Case (Supra)*.

I. Maharashtra Rent Control Act, 1999 (Rent Act)

Maharashtra Rent Control Act, 1999 enacted

on 31st March, 2020, repeals the previous local legislations such as Bombay Rents Hotel & Lodging House Rates Control Act, 1947, and is applicable in the State of Maharashtra.

The Rent Act governs the grant of tenancy, eviction of tenants, responsibility/ liability of landlord to repair the building and take appropriate steps in respect of preservation and maintenance of building and collection of rent and payment of cess as well as various municipal and other taxes to be collected from the tenants, to the appropriate authorities. It also covers the provisions regarding control of rentals and increases in the same after following due procedure. Moreover, the Act confers the Courts of Small Causes the 'exclusive jurisdiction' to deal with the disputes arising from the Rent Act.

Maharashtra Rent Control Act, 1999 is a special legislation which governs the rights and liabilities of landlord and protected tenant and moreover the act expressly excludes jurisdiction of all other courts and clothes the Court of Small Causes with the exclusive jurisdiction. With regards to unprotected tenants, the local legislation is silent; hence their rights are governed by Transfer of Property Act, 1882.

II. Arbitration and Conciliation Act, 1996 (Arbitration Act)

The Arbitration Act is based upon the UNCITRAL Model Law which introduced an entirely new regimen with the objective to promote arbitration in commercial and economic matters as an alternative dispute resolution mechanism that is fair, responsive and efficient to contemporary requirements. One of the primary objectives of the Arbitration Act is to reduce and minimize the supervisory role of



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courts. Arbitration is a creature of consensus. It is completely dependent on party autonomy and the intention expressed in the agreement. The concept of arbitrability of disputes has evolved with time and with passing of various judicial pronouncements. We now analyse the concept of arbitrability of dispute vis-a-vis landlord-tenant dispute.

POSITION PRIOR TO PASSING OF THE JUDGMENT IN VIDYA DROLIA CASE?

The Supreme Court way back in 1981 in *Natraj Studios (P) Ltd. v/s. Navrang Studios & Anr.*, dismissed an application under Section 8 of Arbitration Act, 1940 as tenancy was protected under the Bombay Rents Hotel & Lodging House Rates Control Act, 1947. The court ruled that disputes relating to lease are to be adjudicated under the special legislation and therefore not capable of settlement through arbitration.

Once again in 2011 the Supreme Court in *Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. & Ors.*, held that eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction then only the specified courts are conferred jurisdiction to grant eviction or decide the disputes. The court expressly ruled out the possibility of settlement through arbitration.

In 2017, the Supreme Court again in *Himangi Enterprises v/s. Kamaljeet Singh Ahluwalia*, the disputes in case were governed by Transfer of property Act, 1882, involves a right in rem and therefore non-arbitrable. The civil court would therefore have jurisdiction.

THE RATIO IN VIDYA DROLIA JUDGMENT?

The Supreme Court in *Vidya Drolia* (supra) case, overruled the ratio laid down in *Himangi Enterprises* supra and held that the disputes between the landlord and tenant governed by the Transfer of Property Act, 1882 are arbitrable disputes as they are not actions in rem but pertain to subordinate rights in personam that arise from right in rem. However, when the disputes are covered by special forum (namely under Rent Act) then such disputes would have to be adjudicated by designated court/tribunal and such disputes are not arbitrable. Besides, the Apex Court draws distinction between adjudications of actions in rem and adjudication of actions in personam. A judgment in rem determines the status of a person or thing as distinct from the particular interest in it of a party to the litigation; and such a judgment is conclusive evidence for and against all persons whether parties, privies or strangers of the matter actually decided. Such a judgment "settles the destiny of the res itself" and binds all persons claiming an interest in


the property inconsistent with the judgment even though pronounced in their absence. By contrast, a judgment in personam, "although it may concern a res, merely determines the rights of the litigants inter se to the res".

Predominantly, a right in rem means a right vested in a person which is available to him or her against the entire world whereas right in personam gives the person rights against one person or party to the contract. The Apex Court also examined the meaning of non-arbitrability of disputes and propounded a four-pronged test for determining when the subject matter of a dispute in an arbitration agreement is not arbitrable:

- 1 When cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.
- 2 When cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
- 3 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
- 4 When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s)."

While laying down the above test, the Supreme Court overruled its 2010 decision in *N. Radhakrishnan v. Maestro Engineers and Others*, which held that matters of fraud were not arbitrable. By doing so, Hon'ble Supreme Court has also cemented the judicial shift towards arbitrability of allegations of fraud in contractual disputes.

CONCLUSION

The recent development has come to the rescue of landlords and tenants who can now refer disputes to private forum and do away with costly and lengthy court litigation. The courts have adopted pro-arbitration approach to recognize arbitration as a principal mechanism to resolve disputes between the parties. Moreover, now the parties have an option to opt for resolution and/or settlement of disputes through arbitration or approach the courts. Besides, it would be interesting to see the effect of this judgment on the pending civil matters where a party has filed application under Section 8 of Arbitration Act 1996, for request to refer the matter to arbitration. 

¹Civil Appeal No.2402 of 2019; ²Section 33 of Maharashtra Rent Control Act, 1999.; ³Section 3 of Maharashtra Rent Control Act, 1999.; ⁴(1981) 1 SCC 523; ⁵Power of the court to appoint arbitrator or umpire; ⁶Civil Appeal No.5440 of 2002; ⁷(2017) 10 SCC 706; ⁸G.C. Cheshire & P.M. North, *Private International Law* 12th ed. by North & Fawcett (London: Butterworth's, 1992, p. 362



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