



2025:CHC-OS:257-DB

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

APO 54 of 2024

With

CS 19 of 2022

Sharad Goenka

Vs.

Tarit Mitra and Another

For the appellant : Mr. Meghnad Dutta, Adv.
Mr. Samrat Saha, Adv.
Mr. Naresh Balodia, Adv.

For the respondents : Mr. Sakya Sen, Sr. Adv.
Mr. Sukrit Mukherjee, Adv.
Ms. Somali Bhattacharya, Adv.
Ms. Megha Das, Adv.

Hearing concluded on : 14.11.2025

Judgment on : 18.12.2025

Md. Shabbar Rashidi, J.:-

1. The appeal is directed against an order dated January 30, 2024 passed in GA No. 2 of 2022 arising out of CS No. 19 of 2022.



2. By the impugned order the learned Single Judge dismissed the application under Section 8 of the Arbitration & Conciliation Act, 1996, made on behalf of the appellant seeking reference of the disputes to arbitration. The learned trial Judge did not find that there was any agreement between the parties containing an arbitration clause.

3. Learned advocate for the appellant submitted that the learned Single Judge erred in appreciating that the respondents/plaintiffs filed the suit seeking eviction of the appellant from the suit premises and in such suit, tenancy of the appellant was claimed to be created by their predecessor under an agreement dated January 27, 2006. According to learned advocate for the appellant, all such agreements contained specific arbitration clauses. The respondents sought eviction of the appellant from the suit premises as legal representative of the person who inducted the appellant as tenant therein on the strength of the agreements dated January 27, 2006.

4. Learned advocate for the appellant further contended that appellant was inducted in the suit premises by the predecessor of the respondents by dint of agreements dated January 27, 2006. The respondents have filed the suit for eviction as legal representative of their predecessor. Rights of the appellant flows from such agreements which contained arbitration clause. Therefore, the agreements dated January 27, 2006 were binding upon the respondents. Moreover, two out of three agreements entered into between the appellant and



predecessor of respondents in respect of tenancy did not contain any specific time period.

5. Learned advocate for the appellant further submitted that the learned Single Judge failed to appreciate the true purport of the provisions contained in Section 40 of the Act of 1996. According to learned advocate for the appellant, the agreements dated January 27, 2006 survived in view of the provisions of Section 40 and the disputes ought to have been referred to arbitration.

6. Learned advocate for the appellant further submitted that the learned trial Judge came to an erroneous conclusion that the agreements dated January 27, 2006 expired with efflux of time and so the arbitration clause contained therein also came to an end. The tenancy of the appellant was renewed and was continuing on month to month basis on the terms and conditions of the agreements dated January 27, 2006.

7. Learned advocate for the appellant also contended that the learned Single Judge came to an erroneous finding that there was novation of the contract of tenancy. Such finding is inconsistent with the case made out by the respondents/plaintiffs in their plaint. It was admitted by the respondents that the appellant continued in possession of the suit premises since the agreements dated January 27, 2006. Learned trial Judge, according to learned advocate for the appellant, wrongly held that the respondent and appellant were not ad idem on



the point of applicability of arbitration clause in the agreements dated January 27, 2006. For the aforesaid reasons, learned advocate for the appellant submitted that the impugned order is bad in law and liable to be set aside.

8. Learned advocate for the respondent, on the other hand, submitted that the original agreement of tenancy was with the predecessor of the respondent/plaintiffs. It was also contended that the original agreement of tenancy, containing the arbitration clause, expired due to efflux of time. Although, the appellant/defendant continued in possession of the suit premises but since the original agreement of tenancy including the arbitration clause expired, there is no subsisting agreement between the parties. In absence of an express agreement in this regard in terms of Section 7 of the Act of 1996, any dispute between the parties cannot be referred to arbitration.

9. Learned advocate for the respondent also submitted that the appellant continued in possession of the suit premises after the tenancy agreement expired with efflux of time. Such possession of the appellant amounts to novation of contract of tenancy. The new agreement is not in writing and the parties did not infer to incorporate an arbitration clause in such contract nor the parties ever agreed to be governed by the original tenancy agreement. In such conspectus, it is submitted by learned advocate for the respondents/plaintiffs that the learned single



Judge rightly dismissed the application under Section 8 of the Arbitration and Conciliation Act, 1996 filed on behalf of the appellant.

10. It is not in dispute that the appellant/defendant was inducted in the suit premises by the erstwhile owner i.e. the predecessor of the respondents/plaintiffs. At the time of such induction, the two parties entered into three several agreements of tenancy and other ancillary matters on January 27, 2006. It is admitted position that all the three agreements contained arbitration clause in unambiguous terms. Admittedly, such agreement was for a period of 5 years commencing from February 1, 2006.

11. It is also admitted that the original landlady, who inducted the appellant, expired on December 28, 2012 leaving behind one Joy Mitra as her legal heir. The said Joy Mitra also expired on August 6, 2018 being survived by the plaintiffs/respondents as legal heirs and successors. The tenancy of the appellant, in respect of the suit premises, was terminated by the respondent in terms of a termination notice dated August 3, 2021 under Section 106 of the Transfer of Property Act, 1882. Since the appellant did not vacate the suit premises in terms of such termination notice, the respondents/plaintiffs filed C.S. No. 19 of 2022 seeking recovery of possession of the suit premises from the appellant/defendant.

12. Upon appearance in the suit, the appellant filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 being IA



No. GA 2 of 2022, for referring the matter to arbitration in terms of the terms and conditions of the agreements dated January 27, 2006. Such application was rejected by the impugned order.

13. In the impugned order, the learned Single Judge noted that the appellant was a tenant in respect of the suit premises in terms of agreements dated January 27, 2006 which contained arbitration clauses. The said agreements expired with efflux of time. Initially, the appellant was a tenant under the original landlady, who inducted him, thereafter under her legal heir Joy Mitra and ultimately under the respondents. It was specifically observed in the impugned order that there was novation of contract as rents were increased from time to time as also there was no written contract or correspondence between the parties, after such novation of agreement, agreeing to refer their disputes with regard to the tenancy to arbitration. Relying upon the provisions of Section 7 of the Act of 1996, the learned single Judge observed that there may be a tenancy by conduct of the parties but arbitration clause cannot be inferred from the conduct unless there is express agreement in writing to that effect. The initial agreements of tenancy expired with efflux of time and could not be said to be subsisting.

14. The original agreements of tenancy and other ancillary issues, was executed on January 27, 2006 by and between the original landlady and the appellant. The said agreement was valid for a period of



5 years commencing from February 1, 2006. It is admitted position that the original landlady, who inducted the appellant in the suit premises, died on December 28, 2012 i.e. after several months of the agreement expiring with efflux of time. Nevertheless, the appellant continued in possession of the suit premises as tenant without any demur on the part of the original landlady. The original landlady died leaving behind one Joy Mitra as her legal heir. The said Joy Mitra also expired on August 6, 2018. There is nothing placed before us that such legal heir of the original landlady did take any steps or raise any question as to the tenancy of the appellant till his death in 2018. Such conduct on the part of the parties establishes that the parties continued to be governed by original agreements dated January 27, 2006 including the arbitration clause therein.

15. It after August 6, 2018, on the death of the legal heir of original landlady, the plaintiffs/respondents succeeded to the suit premises and thereafter, they served notice under Section 106 of the Transfer of Property Act, 1882 upon the appellant requiring him to quit and vacate the suit premises on the ground that the tenancy was terminated with efflux of time.

16. It is not in dispute that the appellant is still in possession of the suit premises and has been paying rents thereof month to month. Even if the original agreements of tenancy was terminated with efflux of time, since the agreement was for a period of 5 years, the conduct of the



parties demonstrate that they were agreeable to continue with the tenancy created by the original agreements. Rents were paid and accepted in terms of such agreements even after the period of agreement was over. It would be apposite to reproduce the terms of the agreement dated January 27, 2006 for the sake of discussion.

1. *"The Tenancy shall initially be for a period of 5 years commencing from 1 February, 2006*
2. *The tenant shall pay monthly rent of ₹ 20,000 according to English calendar month by the seventh day of the month for which the same is due by account payee bankers cheque drawn in favour of the landlady for which the landlady shall grant formal stamped receipt which shall be valid only on encashment of the cheque.*
3. *The tenant shall pay the landlady an increased rent of 10% after every alternative third year of tenancy.*
4. *The tenant shall use the tenanted premises only for residential purpose of himself and the members of his family and not for any other purposes.*
5. *The tenant shall have access to the tenanted portion of the premises through the gate on the eastern side facing Leonard Road and shall be entitled to the gate facing Commissariat Road for the entrance of his car to the garage.*
6. *The tenant shall be provided with a garage for the keeping of a car and the servants quarter and shall be entitled to build up a second servants quarter a servant privy and a servant bathroom at his cost for the exclusive use of his servants adjoining the garage on the south-western corner pertaining commissariat Road, which shall vest in the landlady.*
7. *The tenant shall be entitled to repair the premises as also to paint the whole of the outer face of the dwelling house at his cost but shall not make any structural additions or alterations without a specific written permission of the landlady.*



8. The tenant shall not at any time bring in any person or persons of undesirable character or ill repute nor disturbed peace or tranquility of the house of neighbourhood nor hold parties in the tenanted premises without a specific written permission of the landlady.

9. The tenant shall not keep nor store any combustible or inflammable material nor other goods which emit any obnoxious smell in the tenanted premises.

10. The tenant shall be entitled to keep security guards at the premises at his own expense.

11. The tenant shall bear and pay for the electric charges recorded in the electric metre installed for the ground floor and shall be entitled to apply and obtain connection for installation of other electricity metre and to set up an electrical generator.

12. The tenant shall pay one half of the municipal taxes and half of the government revenue payable in respect of the holding No. 1 Leonard Road, Kolkata. The other half being payable by the landlady.

13. The tenant shall be entitled at his cost to repair and make the existing tube well operational.

14. The tenant shall not be entitled to sublet, underlet or assign the tenancy nor any portion the demise premises.

15. The tenant shall keep as security an interest-free deposit of ₹ 5 lakh which shall be refunded to him just before handing over of the vacant position of the tenanted premises subject to the deduction of costs for any damages caused to the demise premises by the tenant or his servants or agents.

16. In the event of any disputes or differences arising between the parties the same shall be referred to arbitration in accordance with the Arbitration and Conciliation Act of 1996 and the venue of such arbitration shall always be in the city of Kolkata.”



17. Therefore, as it transpires from the terms and conditions of the agreement, the tenancy was initially created for a period of 5 years. However, no outer limit was set for its determination. The agreements dated January 27, 2006 does not specifically set forth that on the expiry of initial 5 years, the tenancy of the appellant shall be automatically terminated. Moreover, nothing has been brought forth that the security deposit of ₹5,00,000/- has been returned or intended to be returned to the appellant. The terms and conditions of the agreements indicate that a long term tenancy was contemplated in the agreement. We have noted that the original landlady and her legal heir continued with the tenancy even after expiry of the initial period of 5 years on the terms and conditions of the original agreements.

18. Besides that, the condition no. 16 did not prescribe a time limit for reference of disputes to arbitration. In that view of the facts it is now a settled principle that irrespective of whether the original tenancy agreement is in existence or not, the arbitration clause continues to survive. The tenancy of the appellant has apparently been terminated by a notice under Section 106 of the Act of 1882 at the behest of the respondents/plaintiffs, though; the appellant is still in possession of the suit premises.

19. In view of the discussions made hereinabove with reference to the facts and circumstances of the case, we are of the view that the arbitration clause contained in the original agreements dated January



27, 2006 continues to operate. Therefore, the findings of learned single Judge that there was no arbitration clause as contemplated under the provisions of Arbitration and Conciliation Act, 1996 seems to be not justified and liable to be set aside.

20. As a consequence, let the disputes between the parties be referred to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996. All the proceedings regarding the suit shall remain stayed till the conclusion of the arbitration.

21. Accordingly, the instant appeal being APO 54 of 2024 is allowed. Connected application(s), if any, stands disposed of. The impugned order is hereby set aside.

22. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

23. I agree.

[DEBANGSU BASAK, J.]