



3. The disputes and differences between the parties have arisen out of two Agreements for Lease, both executed on 24 June 2019 in respect of premises located on ground, first and second floors and in respect of premises situated on third floor of the concerned building. Under the Agreements, the lease was for a period of 10 years commencing from 1 May 2019 and ending on 30 April 2029 with a lock-in period of five years upto 30 April 2024. By notice dated 4 January 2024, Respondent terminated both the Agreements for Lease. After termination of lease, Respondent instituted Regular Civil Suit No.8 of 2025 in the Court of Civil Judge Junior Division, Belapur, Navi Mumbai for injunction simplicitor for restraining the Petitioner/Applicant from entering the suit premises. It appears that in Respondent's Regular Civil Suit No.8 of 2025, a temporary injunction has been granted in Respondent's favour for maintainance of status quo. Petitioner/Applicant is yet to file Written Statement in Regular Civil Suit No.8 of 2025.

4. According to the Petitioner/ Applicant, it was forcibly dispossessed from the concerned premises without consent and without following process of law. Accordingly, the Petitioner/Applicant was advised to file Suit under Section 6 of the Specific Relief Act, 1963, and accordingly Special Civil Suit No.56 of 2025 was instituted in the Court of Civil Judge Senior Division, Belapur, Navi Mumbai for restoration of the lost possession.

5. It appears that in Section 6 Suit of the Specific Relief Act (S.C. Suit No.56 of 2025), Respondent filed Application under Section 8 of the

Arbitration Act seeking dismissal of the Suit on the ground of existence of arbitration agreement in both the Agreements for Lease. The Application of Respondent was opposed by the Petitioner on the ground that the remedy under Section 6 of the Specific Relief Act is statutory and non-arbitrable. The application was accordingly rejected.

6. In addition to pursuing of Section 6 Suit (S.C. Suit No.56 of 2025) and defending Respondent's Suit (Regular Civil Suit No.8 of 2025), Petitioner/Applicant has certain claims against Respondent as the Petitioner/Applicant claims that the termination is unlawful. The Petitioner/Applicant accordingly invoked arbitration clause in both the Agreements for Lease vide notice dated 19 July 2025 and sought appointment of arbitrator. Since Respondent has not consented for constitution of Arbitral Tribunal, Application under Section 11 of the Arbitration Act is filed (Arbitration Application No.40 of 2026). Petitioner has also filed a separate Petition under Section 9 of the Arbitration Act for seeking interim measures (Arbitration Petition No.489 of 2025).

7. At the outset, Mr. Vaishnav, on instructions, submits that the Petitioner/Applicant is willing to press interim measures under Section 17 of the Arbitration Act if the Arbitral Tribunal is constituted.

8. Mr. Jha has strenuously opposed even constitution of Arbitral Tribunal by contending that the Petitioner/Applicant cannot split his remedies by claiming certain remedies before Civil Court and

conveniently seeing invocation of arbitration clause for other claims. He particularly refers to Petitioner's act of filing Section 6 Suit (S.C. Suit No.56 of 2025) and pressing the same. He further submits that Petitioner has also not availed the remedy of filing Application under Section 8 of the Arbitration Act in Regular Civil Suit No.8 of 2025 filed by the Respondent. He further submits that the time for filing first statement of defence in Regular Civil Suit No.8 of 2025 has already expired. Alternatively, he submits that reply to Application for temporary injunction is already filed in Regular Civil Suit No.8 of 2025 and therefore, the stage of filing first statement of defence has already crossed.

9. So far as Suit filed under Section 6 of the Specific Relief Act is concerned, the remedy thereunder is statutory in nature, which is not arbitrable. An arbitrator cannot grant the relief of restoration of possession by conducting summary inquiry contemplated under Section 6 of the Specific Relief Act. However, with a view to ensure that all the litigations instituted by the Petitioner relating to possession of leased premises are brought under same umbrella, Mr. Vaishnav, on instructions, makes a statement that the Petitioner shall withdraw S.C. Suit No.56 of 2025 and instead, he would claim relief of possession and performance before the Arbitrator. This solves the problem of pendency of S.C. Suit No.56 of 2025.

10. So far as Respondent's Suit (Regular Civil Suit No.8 of 2025) is concerned, it is sought to be contended that the Petitioner/Applicant has

remedy of filing Application under Section 8 of the Arbitration Act, which the Petitioner/Applicant has failed to exercise and is now prevented from exercising the same on account of lapse of permissible period of time. In the light of this position, the issue that arises for consideration is whether a party to arbitration agreement is precluded from invoking referral jurisdiction of the High Court under Section 11 (6) of the Arbitration Act merely because the Suit is already filed before Civil Court concerning the subject matter of arbitration. The issue is no more *res integra* and is covered by judgment of the Supreme Court in ***Vijay Kumar Sharma vs. Raghunandan Sharma and Ors.***<sup>1</sup> In the case before the Supreme Court, a suit was filed for partition of ancestral properties. In that suit, application under Section 8 of the Arbitration Act was filed which was allowed and the suit was dismissed. The order allowing Section 8 application was challenged by filing an appeal before the Appellate Court. During pendency of the Appeal, arbitration commenced, and statement of claim was filed before the Arbitrator. However, jurisdiction of arbitrator was challenged on the ground that there was absence of arbitration agreement. Attention of the arbitrator was also invited to pendency of appeal before the Appellate Court challenging the order allowing application under Section 8 of the Arbitration Act. Raising of such pleas led to the Arbitrator withdrawing from the arbitration. This led to filing of an Application under Section 11 read with Sections 14 and 15 of the Arbitration Act before the High Court. In the light of above factual position, the issue before the Apex Court was whether Application for appointment of Arbitrator under

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1 (2010) 2 SCC 486

Section 11 of the Arbitration Act was maintainable in the light of pendency of Appeal challenging order passed by the Civil Court under Section 8 of the Arbitration Act. The Apex Court has held in paragraphs 10, 11 and 12 of the judgment as under:

“10. It is submitted that the order of the trial court dated 19-9-2007 holding that the parties should resolve their disputes by arbitration had been stayed by the High Court in the pending appeal. In view of the pendency of SB Civil First Appeal No. 664 of 2007 and the interim stay of the order dated 19-9-2007, granted by the High Court on 14-11-2007, the appellant submitted that the learned designate of the Chief Justice ought not to have proceeded to decide the application for appointment of a fresh arbitrator, but ought to have awaited the decision in the first appeal. It was submitted that in the pending first appeal (against the decision dismissing his suit under Order 7 Rule 11 of the Code), if it is held that there is no arbitration agreement between the parties or if the court refuses to refer the parties to arbitration, the suits will have to proceed and that will lead to conflicting decisions.

11. Section 8 of the Act which is relevant is extracted below:

“8. *Power to refer parties to arbitration where there is an arbitration agreement.*—(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.”

It is evident from sub-section (3) of Section 8 that the pendency of an application under Section 8 before any court will not come in the way of an arbitration being commenced or continued and an arbitral award being made. The obvious intention of this provision is that neither the filing of any suit by any party to the arbitration agreement nor any application being made by the other party under Section 8 to the court, should obstruct or preclude a party from initiating any proceedings for appointment of an arbitrator or proceeding with the arbitration before the Arbitral Tribunal.

12. Having regard to the specific provision in Section 8(3) providing that the pendency of an application under Section 8(1) will not come in the way of an

arbitration being commenced or continued, we are of the view that an application under Section 11 or Section 15(2) of the Act, for appointment of an arbitrator, will not be barred by pendency of an application under Section 8 of the Act in any suit, nor will the designate of the Chief Justice be precluded from considering and disposing of an application under Section 11 or 15(2) of the Act.”

11. Thus, in ***Vijay Kumar Sharma*** (supra), the Supreme Court has held that pendency of an Application under Section 8 of the Arbitration Act before civil court does not come in the way of arbitration being commenced or continued and arbitral award being made.

12. The judgment of the Supreme Court in ***Vijay Kumar Sharma*** (supra) has been followed by Single Judge of this Court in ***Pelle and Carta Technologi LLP vs. R.K. Engineering and Contractors***<sup>2</sup>. This Court held in paragraphs 8 and 9 as under:

“8. In the context of the said provision, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Vijay Kumar Sharma Vs. Raghunandan Sharma*, (2010) 2 SCC 486, wherein the Supreme Court held as follows:-

“12. Having regard to the specific provision in Section 8(3) providing that the pendency of an application under Section 8(1) will not come in the way of an arbitration being commenced or continued, we are of the view that an application under Section 11 or Section 15(2) of the Act, for appointment of an arbitrator, will not be barred by pendency of an application under Section 8 of the Act in any suit, nor will the designate of the Chief Justice be precluded from considering and disposing of an application under Section 11 or 15(2) of the Act.”

9. In view of the above statutory provision and the law clarified by the Supreme Court in that context, this Court is not inclined to adjourn the petition merely because the proceedings before the competent court, concerning application filed under Section 8 of the said Act are still pending.”

13. Thus, the law appears to be fairly well settled that mere pendency of application under Section 8 of the Arbitration Act would not come in

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<sup>2</sup> Arbitration Petition No.83 of 2022, decided on 15 December 2022

the way of High Court exercising referral jurisdiction under Section 11 of the Arbitration Act. This would also mean that it is not necessary for defendant in the suit to first exercise remedy under Section 8 of the Arbitration Act and not to directly approach the High Court under Section 11 of the Arbitration Act. In fact, what is sought to be contended by the Respondent would lead to an absurd situation in certain cases. If a party to arbitration invokes arbitration clause by issuing notice under Section 21 and upon receipt of notice, the opposite party files Suit before Civil Court, whether in such circumstances, the party who invoked arbitration is precluded from filing Application under Section 11(6) of the Arbitration Act? The answer to the question would obviously be in the negative. What Mr. Jha expects in such a case is that the Defendant must first exercise a remedy under Section 8 of the Arbitration Act, get the suit dismissed and then apply to High Court for appointment of arbitration under Section 11. If this argument is accepted, in the illustration discussed above, the party invoking arbitration will have to first file Section 8 Application, get the same allowed and since Civil Court cannot appoint an arbitrator, file Application under Section 11 of the Arbitration Act for appointment of Arbitrator. This course of action is not postulated under the statutory scheme of Sections 8 and 11 of the Arbitration Act. In my view therefore, even if party seeking reference to arbitration is visited with a Civil Suit, it is not necessary for that party to first file Application under Section 8 of the Arbitration Act and it is open for such party to directly invoke referral jurisdiction of the High Court under Section 11 of the Arbitration Act.

14. Mr. Jha has relied on judgment of this Court in ***State Bank of India vs. Surya Pharmaceuticals***<sup>3</sup> in support of his contention that once the time limit for filing of written statement elapses, Application under Section 8 of the Arbitration Act cannot be filed. The judgment is relied on in the context of the position that the Petitioner is yet to file written statement in Regular Civil Suit No.8 of 2025. However, the observations made by this Court in ***Surya Pharmaceuticals*** (supra) is in the context of commercial suit for which period of limitation of 120 days is prescribed, which cannot be extended under any circumstances. Regular Civil Suit No.8 of 2025 is not a commercial suit and the Defendant therein is not precluded from applying for extension of time for filing of Written Statement. Therefore, reliance of Mr. Jha on judgment in ***Surya Pharmaceuticals*** (supra) is of not much relevance.

15. Mr. Jha also relies on judgment of the Supreme Court in ***Sundaram Finance Limited and Anr. vs. T. Thankam***<sup>4</sup> in support of his contention that bifurcation of claims between Civil Court and Arbitral Tribunal is impermissible. In the present case, the Petitioner is not seeking to bifurcate its claim by enforcing the same before Civil Court and Arbitral Tribunal. Though the relief claimed in Section 6 Suit is not arbitrable, the Petitioner/Applicant has fairly agreed to withdraw the same. Thus, from Petitioner's side, no Suit is pending *qua* the issue of termination of Lease Agreements or for recovery of possession. Regular Civil Suit No.8 of 2025 is filed by the Respondent, which cannot come in the way of Petitioner seeking reference to arbitration. Therefore, the case does not

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3 2025 SCC OnLine Bom 1133

4 (2015) 14 SCC 444

involve splitting of causes of action by the Petitioner and accordingly, reliance by Mr. Jha on judgment of the Apex Court in ***Sundram Finance*** (supra) would be inapposite.

16. Mr. Jha has also relied upon judgment of the Delhi High Court in ***Surender Bajaj vs. Dinesh Chand Gupta and Ors***<sup>5</sup>. In that case, Application under Section 8 of the Arbitration Act was already rejected by the Civil Court and thereafter referral jurisdiction of the High Court was invoked under Section 11 of the Arbitration Act. It is in the light of these peculiar facts that the Delhi High Court refused to refer the dispute to arbitration. The judgment in ***Surender Bajaj*** (supra) thus has no application to the facts of the present case.

17. Mr. Jha further submits that since the Petitioner/Applicant opposed Section 8 Application in S.C. Suit No.56 of 2025, it is debarred from seeking a reference to arbitration. He relies on judgment of the Apex Court in ***Anil vs. Rajendra***<sup>6</sup>. However, opposition to Section 8 Application filed in SC Suit No.56 of 2025 was not on the ground that there is no arbitration agreement between the parties. The said application was opposed on the ground that the reliefs sought in Section 6(2) of the Specific Relief Act are not arbitrable. Therefore, mere opposition of Section 8 Application filed in S.C. Suit No.56 of 2025 would not come in the way of Petitioner/Applicant seeking reference to Arbitral Tribunal for raising various claims relating to termination of Lease Agreements.

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5 Arbitration Petition No.1076 of 2025, decided on 19 August 2025

6 (2015) 2 SCC 583

18. Mr. Vaishnav submits that reference is sought for the purpose of adjudication of claims of the Petitioner/Applicant, whereas Respondent has merely filed a Suit merely for injunction before the Civil Court and that therefore, pendency of such suit cannot come in the way of the Petitioner/Applicant pressing all its claims against the Respondent in arbitration.

19. There is no dispute to the position that there exists arbitration agreement between the parties. Clauses 32 and 35 of the Lease Agreements read thus:

“32. Both the parties to this agreement agree that two Arbitrators, one each from the party of the First and Second part will be appointed if any dispute arises regarding the conditions and provisions in this Deed arises, the matter will be out become the above Arbitrators. If the Arbitrators are not successful in providing the unanimous decision then they themselves will appoint third umpire to solve the same and the decision of this umpire will be final and binding on both the parties.

35. Notwithstanding anything contained hereto above so long as a party shall be entitled to demand and/or force the other party to run this Agreement for the entire period of 10 (Ten) years.

35. This Agreement is subject to jurisdiction of Navi Mumbai.”

20. In the light of express agreement to arbitrate between the parties, all disputes relating to performance of Agreements for Lease can be adjudicated through the mechanism of private arbitration. In that view of the matter, it would be just and proper to constitute Arbitral Tribunal of a sole arbitrator.

21. Accordingly, I proceed to pass the following order:

A) Shri Justice Nitin Jamdar, former Chief Justice of Kerala High Court is hereby appointed as sole Arbitrator to adjudicate upon

the disputes and differences between the parties arising out of both the Agreements for Lease referred to above. The contact details of the learned sole Arbitrator are as under:

Mobile No: 98198 29319.

Email ID: nitinjamdar@gmail.com

B) A copy of this order be communicated to the learned sole Arbitrator by the Advocate for the Applicant within a period of one week from the date of uploading of this order. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.

D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by him, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

E) The fees of the learned sole Arbitrator shall be as prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

22. Arbitration Petition No.489 of 2025 is converted into Application under Section 17 of the Arbitration Act, to be decided by the Arbitral Tribunal on its own merits. It would also be open to the Respondent to seek interim measures before the Arbitral Tribunal.
23. Statement made on behalf of the Petitioner/Applicant that it shall withdraw S.C. Suit No.56 of 2025 within a period of six weeks is recorded and accepted.
24. All rights and contentions of parties on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.
25. With the above directions, both Arbitration Application and Arbitration Petition are **disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

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RAJALINGAM  
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