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# TENANCY DISPUTES AND ARBITRATION: NAVIGATING LEGAL AVENUES

## INTRODUCTION

Speedy justice is the paramount factor that ensures smooth functioning of welfare state. The Rule of Law plays pivotal role in upholding the spirit of a nation. To ensure access to speedy justice, the judicial system underwent stages of evolution, one such stage involved introduction of Arbitration and Conciliation Act, 1996 (for short “*Arbitration Act*”), an Act paving the way of dispute resolution. Arbitration Act is concerned with speedy disposal of disputes concerning right *in personam*. But, the point of consideration remains, its inapplicability in certain class of cases, such as criminal cases, disputes involving interest of public at large, etc. One such type of dispute forming part of excluded class is tenancy dispute, wherein tenancy is regulated under the provision of Rent Control Act of a particular state.

This article aims to delineate the stance of court while distinguishing between arbitrability of tenancy dispute covered under Transfer of Property Act, 1882 (for short “*TPA*”) and those under state Rent control Act, the purpose behind that distinction, its exception, and lastly, the effect of non-arbitrability in certain class of tenancy disputes.

## LEASE AGREEMENT: DETERMINING FACTOR OF ARBITRABILITY

The Apex court, in plethora of cases discussed the scope of arbitrability in tenancy disputes. Recently, in *Suresh Shah v. Hipad Technology (India) (P) Ltd.*, (2021) 1 SCC 529<sup>1</sup>, Supreme Court determined the applicability of arbitration clause in lease agreements which are governed by state Rent Control Act. The court held that tenancy regulated under provisions of Rent Control Act of a particular state is *de hors* the scope of arbitrability.

The right over land, collection of rent and tenancy are mentioned in List II of 7<sup>th</sup> Schedule, bringing them under the ambit of State. The reason behind enacting a special statute by each state for regulating segments of tenancy, such as rents, eviction etc, was the need of protecting tenants from unwarranted evictions by landlords and to regulate the rent charged by landlords.

Chapter V of TPA provides specific provisions governing lease agreement, which also delineate rights of Tenant and Landlord. To ensure better protection of tenants, State Rent Control Act also provide various provisions. The thin line of distinction between TPA and State Rent Control Act is the purpose that these Act serve. TPA, under Section 114<sup>2</sup>, 114A<sup>3</sup> provides rights of Tenants against eviction, though, these protections/rights are only applicable against parties to Contractual Agreement. On the other hand, Rent Control Act are concerned with providing rights *in rem*, it deals with public policy at large.

In conclusion, every tenant, unless expressly excluded under Rent control Act of respective state, gets the shade of Rent Control Act, which, irrespective of the provisions of any law or contract, provide them rights *in rem* that protects them against eviction<sup>4</sup>.

## TENANCY DISPUTE AND SCOPE OF ARBITRATION

Section 8<sup>5</sup> of Arbitration Act authorizes Judicial Authority dealing with cases involving arbitration agreement, to refer such cases to arbitration. The scope of arbitration agreement is however restricted in certain class of cases as discussed herein-above. The Apex court over the span of last 4 decades dealt with the scope of arbitrability in tenancy regulated under TPA and Rent Control Act.

<sup>1</sup> *Suresh Shah v. Hipad Technology (India) (P) Ltd.*, (2021) 1 SCC 529

<sup>2</sup> *Transfer of Property Act, 1882 § 114*

<sup>3</sup> *Transfer of Property Act, 1882 § 114A*



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In *Natraj Studios (P) Ltd. v. Navrang Studios, (1981) 1 SCC 523*<sup>6</sup>, the apex court while dealing with the provisions of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short “**The Act**”), discussed in length the excluded jurisdiction of court under Section 28 of the Act. The bench while referring to its earlier judgments, came to the conclusion that the Act is welfare legislation, serving matter of public policy and it confers exclusive jurisdiction on certain court to better serve its purpose, thereby ousting scope of arbitration.

Division bench of Apex court in *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532*<sup>7</sup> determined the scope of Section 8 of the Arbitration Act and while referring to Section 34(2)(b) and 48(2) of the Arbitration Act, laid down class of non-arbitrable cases, including but not limited to divorce cases, insolvency cases, and even tenancy matter governed under special statutes that related to right *in rem*. The ratio categorically placed the reasoning behind non-arbitrability of cases involving question of right *in rem*.

The Apex court in, *Ranjit Kumar Bose v. Anannya Chowdhury, (2014) 11 SCC 446*<sup>8</sup> re-appreciated its stance and held that by virtue of Section 6 of West Bengal Premises Tenancy Act, 1997, civil judge has sole jurisdictions and the disputes cannot be referred to arbitration.

The Supreme court however, in *Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 7069*, went a step further and declared that tenancy disputes, that are solely governed under TPA also stand excluded from the scope of arbitrability. The court held that, even though, by virtue of Section 3 of Delhi Rent Control Act, 1995, it becomes inapplicable on certain premise that does not mean the tenancy dispute arising in such premise would become arbitrable, as such premise would be covered by TPA, coffering exclusive jurisdiction to civil courts.

A two judge bench in *Vidya Drolia & Ors. V. Durga Trading Corporation, [2019] 3 S.C.R. 465*<sup>10</sup>, critically examined Section 111, 114 and 114A of TPA and came to conclusion that the said provisions are neutral provisions, protecting rights of both tenant and landlord. The court also held that the said sections do not serve tenants as a matter of public policy, thereby, making tenancy dispute under TPA arbitrable.

Lastly, a three judge bench in *Suresh Shah v. Hipad Technology (India) (P) Ltd., (2021) 1 SCC 529*<sup>11</sup> clarified the question of arbitrability in tenancy disputes. The bench held that tenancy governed under TPA is generally amenable to jurisdiction of court. However, if the contract between parties allow scope of arbitration, then such disputes can be referred to Arbitral Tribunal, competent to deal with dispute involving question under Section 114 and 114-A of the Act. On the other hand, when tenancy is covered under Rent Control Act of a state, then courts specified under such act will have sole jurisdiction to adjudicate the dispute.

## CONCLUSION

To summarize the scope of arbitrability, it can be said that tenancy governed solely under TPA (a statute concerning rights *in personam*) can be subjected to arbitration.

On the other hand, when tenants are provided protection against eviction under Rent Control Act of a state which confers them right *in rem*, then such disputes are not amenable to jurisdiction of Arbitral Tribunal.

In conclusion, unless state Rent Control Act is inapplicable on a premise, the disputes between landlord and tenant of such premise cannot be resolved by arbitrators even if the contract includes an arbitration clause.

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<sup>4</sup> *The Delhi Rent Control Act, 1958 § 14*

<sup>5</sup> *Arbitration and Conciliation Act, 1996, § 8*

<sup>6</sup> *Natraj Studios (P) Ltd. v. Navrang Studios, (1981) 1 SCC 523, Para 17*

<sup>7</sup> *Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532*

<sup>8</sup> *Ranjit Kumar Bose v. Anannya Chowdhury, (2014) 11 SCC 446*

<sup>9</sup> *Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706, Para 24*

<sup>10</sup> *Vidya Drolia & Ors. V. Durga Trading Corporation, [2019] 3 S.C.R. 465*

<sup>11</sup> *Suresh Shah v. Hipad Technology (India) (P) Ltd., (2021) 1 SCC 529, Para 17-1*