

CS SCJ: 263/25

JAINA PROPERTIES PVT LTD Vs SATINDER PAL SINGH

17.01.2026

Present : Sh Akshay Dhawan, Ld counsel for plaintiff.  
Defendant in person.

Original licence agreement dated 16.02.2000 have been placed on record by plaintiff. Application has been moved u/o 8 of Arbitration & Conciliation Act seeking to refer the matter to arbitration.

It is submitted by Ld counsel for defendant that by virtue of paragraph 41 of the Licence Agreement dated 16.02.2000 the matter has to be referred to Arbitration as plaintiff herein has sought the vacation of the property as well as recovery of damages.

Per contra, ld counsel for plaintiff has submitted that this court can adjudicate upon such dispute and since the vacation of the property is involved, therefore the case should not be referred to arbitration.

Heard. Perused and considered.

It has been held in **Arti Jethani v. Daehsan Trading (India) (P) Ltd.**, 2011 SCC OnLine Del 2270 : (2011) 125 DRJ 494 : (2011) 180 DLT 511 : ILR (2011) 6 Del 319 : (2011) 2 Arb LR 382 at page 495

*“3. A careful analysis of Section 8 of Arbitration and Conciliation Act, 1996 would show that the following conditions are required to be fulfilled before the Court can refer the matter to arbitration;*

*(a) the dispute between the parties should be subject matter of an arbitration agreement;*

*(b) one of the parties to the suit should apply for referring the parties to arbitration,*

*(c) the application should be filed on or before submitting first statement on the substance of the dispute and;*

*(d) the application should be accompanied by the original arbitration agreement or its certified copy.”*

In the present case the above condition has been complied with and the original licence agreement dated 16.02.2000 has been placed on record wherein paragraph 41 clearly reveals for reference of dispute to the arbitration. With respect to the objection of the plaintiff that since the present suit involves the vacation of the suit property, the same cannot be referred to arbitration and is not sustainable as the present case is not governed by any special rent act.

It has been held in the case of **Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549 : 2020 SCC OnLine SC 1018 at page 72:**

*“76. In view of the above discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:*

*76.1. (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.*

*76.2. (2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.*

*76.3. (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.*

76.4. (4) *When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).*

76.5. *These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.*

76.6. *However, the aforesaid principles have to be applied with care and caution as observed in Olympus Superstructures (P) Ltd. [Olympus Superstructures (P) Ltd. v. Meena Vijay Khetan, (1999) 5 SCC 651] : (SCC p. 669, para 35)*

*“35. ... Reference is made there to certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements and disputes relating to status, such as divorce, which cannot be referred to arbitration. It has, however, been held that if in respect of facts relating to a criminal matter, say, physical injury, if there is a right to damages for personal injury, then such a dispute can be referred to arbitration (Keir v. Leeman [Keir v. Leeman, (1846) 9 QB 371 : 115 ER 1315] ). Similarly, it has been held that a husband and a wife may refer to arbitration the terms on which they shall separate, because they can make a valid agreement between themselves on that matter (Soilleux v. Herbst [Soilleux v. Herbst, (1801) 2 Bos & P 444 : 126 ER 1376] , Wilson v. Wilson [Wilson v. Wilson, (1848) 1 HL Cas 538] and Cahill v. Cahill [Cahill v. Cahill, (1883) LR 8 AC 420 (HL)] ).”*

Therefore, this court is of the opinion that the present case is depended upon the jural relationship of licensor and licensee and it is well provided in the arbitration act that arbitral award can be executed as a decree of the court.

In view of aforesaid judgment, the matter is arbitral and therefore, **application u/o 7 Rule 10 CPC is allowed.** Plaintiff is directed to initiate the arbitration for the dissolution of dispute.

The original documents be returned to the plaintiff on fur-

nishing of certified copy of same and against proper receiving.

**File be consigned to record room after due compliance.**

(Vaibhav Chaurasia)  
ASCJ cum JSCC cum Guardian Judge  
Dwarka Courts: New Delhi  
17.01.2026