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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: August 06, 2009

Date of Order: September 15, 2009

+OMP 303/2009

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Ajit Mittal

Through: Mr. Shiv Khorana, Advocate

15.09.2009

...Petitioner

Versus

Heat Exchange (P) Ltd.

Through: Mr. Jasmeet Singh with Mr. Saurabh Tiwari & Ms. Divya Chaturvedi, Advocates

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. This objection petition under Section 34 of the Arbitration & Conciliation Act, 1996 has been preferred by the petitioner assailing an award dated 23rd January, 2009 passed by the learned Sole Arbitrator allowing the claim of possession of the tenanted premises owned by the claimant and also allowing monetary claim of Rs.50,86,485/- after giving adjustment of counterclaim of the petitioner and further holding that the petitioner would be liable to pay Rs.6000/- per day with effect from 12th January, 2009 as damages till he vacates the premises. The arbitrator awarded interest @ 12% per annum on the awarded amount.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was a tenant in the premises bearing number 349, Functional

Industrial Estate, Patparganj, Delhi-110 092 having an area of 450 sq. meters comprising of basement, first floor and a second floor. The tenancy was created by a written lease agreement dated 7th July 2003 between the parties. The tenancy started from 4th July 2003 when the possession of the premises was handed over to the tenant (petitioner herein). The rent payable by the petitioner was Rs.90,000/- per month for the first and second year and Rs.99,000/- per month during third year of the tenancy. The Lessee (petitioner herein) was provided with 70 KW of electric load connection and the meters were installed in the premises on 17th July 2003.

3. During continuation of the tenancy period, disputes arose between the parties regarding non-payment of electricity bills by the tenant to BSES and regarding forging of certain documents by the petitioner/ tenant concerning electricity meters. However, the Lessee/petitioner did not vacate the premises even after expiry of three years, despite service of a notice by the respondent. The petitioner also stopped paying rent as reserved under the lease agreement. The lease agreement between the parties had an arbitration clause. A petition was moved before this Court for appointment of an arbitrator and Justice Anil Dev Singh (retd.) was appointed as the sole arbitrator, who during arbitral proceedings resigned and Justice V.S. Aggarwal (retd.) was subsequently appointed as an arbitrator in his place.

4. The learned arbitrator after considering the claims and counterclaims of the parties and material placed before him passed the impugned award giving reliefs as narrated above to the claimant (respondent herein).

5. The petitioner has assailed the award on the ground that the learned

arbitrator had no jurisdiction to entertain the claim of the petitioner since the lease agreement was for a period of three years and no dispute arose between the parties within the period of three years i.e. tenure of the agreement and after expiry of the agreement, the matter pertaining to tenancy and eviction could not be referred to by the arbitrator.

6. Similar objection was raised before the learned arbitrator as well and the learned arbitrator rejected this plea on the ground that the plea could not be considered since the arbitrator was appointed by the order of High Court and this plea should have been taken before the High Court. I consider that the learned arbitrator rightly rejected the plea taken by petitioner. It is settled law that before appointing an arbitrator, the High Court has to consider about the existence of arbitration agreement and a live dispute between the parties. The petitioner was at liberty to challenge the order of this Court of appointing the arbitrator. Since the petitioner did not challenge the order of this Court appointing an arbitrator for adjudicating the disputes between the parties, the order has become final and the issue regarding jurisdiction cannot be raised by the petitioner either before the arbitrator or now before this Court by way of present petition.

7. The other ground for challenging the award is that the lessor (respondent) in this case had taken the premises from Commissioner of Industries on lease and one of the conditions of the lease was that the premises could not be further sublet. This plea was considered by the learned arbitrator and was rightly rejected. The lease between the lessor and the superior lessor was not the subject matter of dispute before the arbitrator nor could the petitioner raise this issue. The superior lessor is free to take

action against the lessor (respondent herein) for violation of the terms of the lease. It is none of the business of the petitioner, that too after enjoying the lease premises, to raise this issue. If the petitioner was aggrieved on this count, he could have vacated the premises as and when the petitioner came to know about it. The petitioner could not have continued to occupy the premises and simultaneously take a ground that he was wrongly inducted as a sub-tenant.

8. The other ground taken by the petitioner is that the learned arbitrator had no jurisdiction to order eviction as the lease agreement entered into between the parties provided for damages @ Rs.6,000/- per day in case of overstaying by the petitioner after expiry of the lease period. This argument of the petitioner must fail because the arbitration clause envisages adjudication of all disputes arising out of the lease agreement, which includes termination of the lease and consequential handing over of possession of the leased premises by the lessee to the lessor. There is no bar under law or otherwise on an arbitrator on ordering handing over of the possession of the premises by the lessee, whose stay in the premises is held unlawful, unauthorized or illegal. The petitioner has also assailed the decision of the arbitrator of awarding damages @ Rs.6,000/- per day for unauthorized occupation of the premises by the petitioner till date of passing of the award and thereafter. The contention of the petitioner is that the compensation awarded by the arbitrator was unreasonable and contrary to the provisions of Section 74 of the Indian Contract Act. The arbitrator should have awarded a reasonable compensation taking into account the evidence of loss suffered by claimant. It is submitted that there was no evidence to come to this conclusion.

9. Where the parties have entered into a contract specifying the quantum of user charges for use and occupation of the premises after a particular date, the parties are bound by that contract. Even otherwise, in my view, non-vacation of the premises by the petitioner despite the clause that he will have to pay Rs.6,000/- per day as damages, is sufficient proof that the quantum of damages agreed between the parties represented market rent of the premises. If the petitioner considered that damages @ Rs.6,000/- per day was an unreasonable amount to be paid for the premises being used by him, he would have searched for another premises in the same vicinity on lesser rent and shifted to that premises. The very fact that the petitioner despite the fact that his tenancy had been terminated and despite passing of award against him by the arbitrator did not shift to another premises would show that the premises of same area was not available at an amount of less than Rs.6000/- per day to the petitioner and agreed amount of Rs.6000/- per day was just and reasonable amount for use of the premises. No further evidence was required by the arbitrator to award damages at agreed rate. In any event, it is settled law that where parties had entered into a contract for liquidated damages, irrespective of the quantum of loss suffered by one party, the other party is bound to pay damages at the rate agreed between them. The quantum of loss in that eventuality may be more than the damages or may be less than the damages agreed by the parties. It is not that if the quantum of loss suffered by the lessor would have been Rs.9,000/- per day, the arbitrator could award damages @ Rs.9,000/- per day instead of Rs.6,000/- per day. The arbitrator was bound by the contract entered into between the parties and could not have awarded damages at a rate more or less than Rs.6000/- per day.

10. The next objection taken by the petitioner is that the respondent had not filed the site plan of the leased property and, therefore, respondent was not entitled to claim of possession. This plea of the petitioner has to be rejected outrightly. The property in this case is an identifiable property. The lease agreement between the parties is regarding an identifiable property and there was no necessity of filing the site plan.

11. The next objection taken by the petitioner is that the person who filed the claim petition before the learned arbitrator was not duly authorized on behalf of respondent company and the arbitrator failed to appreciate the evidence in this regard. It is settled law that this Court does not sit in appeal against an order of the learned arbitrator. This Court cannot re-appreciate the evidence and come to a different conclusion than one arrived at by the arbitrator. Even otherwise, I consider that the arbitrator has rightly come to a conclusion that the provisions of Civil Procedure Code and Evidence Act were not applicable to the arbitral proceedings and he was not bound by the strict provisions of the Evidence Act neither was bound by the provision of Civil Procedure Code. I find no infirmity in the award on this count also.

12. The Supreme Court in catena of judgments has observed that the claim of the party should not be allowed to be defeated on account of trivial and technical grounds. In *Union Bank of India v Naresh Kumar and others (1996) 6 SCC 660*, the Supreme Court observed that in case where pleadings have been signed by one of the officers of the Corporation, the Corporation can ratify the said action of its officer in signing the pleadings. Such ratification may be expressed or implied and the Court on the basis of record could come

to a conclusion that the Corporation had ratified the signing of the pleadings by the officer. The learned arbitrator in this case has rightly held that the person who signed the claim petition was duly authorized by respondent.

13. I find that the petition of the petitioner under Section 34 of the Act has no substance and merits dismissal. The petition is hereby dismissed. No orders as to costs.

September 15, 2009
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SHIV NARAYAN DHINGRA J.