

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 23.3.2009
Date of Order: 15th May, 2009

OMP No. 654/2007

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15.5.2009

MTNL

... Petitioner

Through: Mr. Ravi Sekri, Advocate

Versus

S.P.S.Rana

... Respondent

Through: Mr. J.P.Gupta, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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| 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

By this petition under Section 34 of the Arbitration & Conciliation Act, 1996, the petitioner has filed objections against an award dated 9.8.2007 passed by the learned Arbitrator in favour of the respondent and against the petitioner for a sum of Rs.14,14,261/-.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner was a lessee in respect of premises no.GN-4, Vishal Enclave New Delhi and respondent was the lessor. The premises was leased out to the

petitioner vide a registered lease deed dated 18.8.1999 at rent for a period of three years with a stipulation for renewal. It was stipulated in this lease deed of 18.8.1999 that after three years if the lease is renewed the rent will be increased by 15%. In terms of clause 3 of the lease deed, it was respondent/lessor, who was to pay the house tax/property tax to MCD. The lessor did not pay house tax as a result, MCD attached the rent. After issuance of attachment orders under Section 162 of DMC Act, petitioner sent the attached rent to MCD. This order of attachment of rent was withdrawn by MCD on 19.9.2003. The lease had also expired in August, 2002. The parties had started negotiating for renewal of the lease. The correspondence shows MTNL/Petitioner was not interested in renewing the lease with increased rent thus, after negotiations it was agreed by the respondent that lease deed will be renewed on the same old rent and same terms and conditions. A new lease deed was signed between the parties and registered on 8.10.2003 w.e.f. 18.8.2002 for a period of three years.

3. The petitioner vide a letter dated 6.11.2004 informed the respondent that part of the premises was no more required by the petitioner and had been vacated. The petitioner wanted respondent to take over the possession of the premises. The respondent wrote back to the petitioner raising certain issues and the possession was not taken over. Thereafter, the petitioner vide letter dated 3.12.2004 served a notice on the respondent about its vacating ground floor and first floor of the premises. Again correspondence started between the parties and possession was not taken over. Vide letter dated

24.1.2005, the petitioner requested respondent to send certificate of taking over vacant possession of 2nd and 3rd floor on 6.11.2004. In response to this letter, the respondent raised issues regarding payment of house tax/property tax and payment of rent by the petitioner and again possession was not taken over. On 18.2.2005 the petitioner enclosed the keys of second and third floors of the premises along with a letter and sent the same to the respondent. The respondent vide letter dated 22.2.2005 refuted that the keys of the premises had been enclosed with the letter or the premises were lying vacant and told petitioner that the petitioner/MTNL would have to give a fresh notice and that dues and rent be paid at enhanced rates. Vide letter dated 25.2.2005, the petitioner again informed the respondent that ground floor and first floor were also lying vacant and ready for possession. The respondent again refuted the fact that ground floor and first floor were lying vacant and raised an issue that no joint inspection had been carried out of the premises to show that the premises had been restored to its original condition. In view of these disputes being raised by the respondent, the matter was referred by this Court to Indian Council of Arbitration in terms of clause 4.1 of the lease agreement for settlement of disputes.

4. Before the learned Arbitrator, respondent raised 11 claims and the Arbitrator framed following issues in respect of claims as made by the respondent:

- 1) *Whether claimant is entitled to Rs.4,50,000/- towards interest for the delayed payment of rent from 10.08.1999 to 30.09.2005?*
- 2) *Whether Claimant is entitled to the rent of Second and Third floors from November, 2004 to March, 2005 amounting to Rs.2,66,140/-?*
- 3) *Whether Claimant is entitled to a sum of Rs.1,40,577/- towards the rent of Ground and first floor from January 2005 to March 2005?*
- 4) *Whether Respondent is liable to pay electricity charges to the tune of Rs.78,990/- and water charges to the tune of Rs.23,329/-?*
- 5) *Whether the Claimant is entitled to Rs.18,55,666.48 being the house-tax liable to be paid by the Respondent?*
- 6) *Whether the Claimant is entitled to the increase in rent from 18.08.2002 to 31.03.2005 at the rate of Rs.25,000/- per month for 32 months?*
- 7) *Whether the Claimant is entitled to interest @ 24% p.a. on the amount of house-tax paid out of rent and also on the increased rent due but not paid?*
- 8) *Whether the Claimant is entitled to damages @ Rs.1,50,000/- per month from 01.04.2005 to 30.09.2005?*
- 9) *Whether the Claimant is entitled to an amount of Rs.9,07,900/- on account of misc. repairs, replacement, fitting and fixtures and for repair of building?*
- 10) *Whether the Claimant is entitled to damages due to non-vacation of the premises in time amounting to Rs.2,00,000/- ?*
- 11) *Whether the Claimant is entitled for legal expenses and local commissioner's fees?*

5. The petitioner/Objector has assailed the findings of the learned Arbitrator mainly on issue no.1 whereby learned Arbitrator had directed for payment of interest by petitioner to the respondent on the delayed payment of rent, on issue no.5 whereby the learned Arbitrator directed the petitioner to pay sum of Rs.9,04,771.20 against house tax from 18.8.2002 to 25.3.2005 and issue

no.9 whereby the learned Arbitrator directed the petitioner to pay sum of Rs.4,77,313/-.

6. Under Claim no. 1, the learned Arbitrator had allowed interest to the respondent on delayed payment of rent. It is stated that rent was liable to be paid by 7th day of each calendar month. There were certain delays in payment of rent for some period and therefore learned Arbitrator allowed interest @ 6% p.a. on delayed payment of rent. It is contended by the learned Counsel for the petitioner that the lease agreement did not provide for interest on the delayed payment of monthly rent. Each month's rent was being sent to the respondent in terms of the lease agreement however, some time the rent cheque used to reach the respondent a few days after 7th of each calendar month because of inadvertence or other similar reasons, otherwise the rent was being paid regularly. There was no clause in the lease deed that in case of making the payment late, any late payment interest would be charged.

7. It is often seen that when the contract is in continuation, the relations between the parties are normal, no dispute is raised regarding delayed payment of rent or delayed payment of bills etc. However, once the parties become estranged, the issue regarding delayed payments of old monthly rent or old bills is raised before the Arbitrator. The scope of the claims/dispute cannot be enlarged to an extent that the disputes which were never there during the currency of the contract, suddenly are racked up as disputes. An issue or dispute which is not racked up during the currency of the contract, regarding

performance of the contract, cannot be racked up later on after the contract is over or after the termination of the contract.

8. In this case, the parties had agreed for payment of monthly rent by 7th of each month. However, some time the payment reached the respondent not on 7th of each calendar month and reached on 10th, 12 or 15th or next month. If the respondent was aggrieved by this delayed payment of monthly rent, the respondent was free to raise an issue and ask for interest. He could also have insisted on incorporation of a provision in the lease deed/contract itself that delayed payment of rent by any number of days shall attract interest. This would have cautioned the petitioner and the petitioner would have been careful not to delay the rent even by few days.

9. Clause 3 of the initial lease deed dated 18.8.1999 provides that the rent was to be paid on or before 7th date of the following month by post or on submission of pre receipt. It is obvious that if there is any delay in submission of pre receipt or there is delay in delivery of the postal letter the rent would have reached with delay to the respondent. In absence of any clause in the lease deed for charging interest on the delayed payment of rent, the learned Arbitrator could not have directed the petitioner to pay rent on such delayed payments which were of few days in case of each month. It is settled law that Arbitrator is the prisoner of the contract between the parties. Grant of interest on delayed payment of rent has to be inferred from the contract between the parties, if the contract is silent, it has to be inferred from the conduct of the parties. If the

respondent had not written any letter to the petitioner during the currency of the contract till November, 2004 when petitioner expressed its desire to handover the vacant possession, for payment of interest on delayed rent, it is obvious that it was understood between the parties that the contract did not provide for levy of interest on delayed payment of rent. The award passed by the learned Arbitrator on this issue is contrary to the contract between the parties and is therefore liable to be set aside and is hereby set aside.

10. The other challenge made by the petitioner is to claim no.5. The lease deed between the parties for three years starting from 18.8.2002 was executed on 8.10.2003. This execution had taken place after correspondence between the parties and negotiations. There is no dispute that the MTNL was not prepared to continue in the premises at the condition of 15% increase in the rent. It is for this reason that despite expiry of the old lease on 17.8.2002 no new lease deed was executed soon thereafter between the parties and a correspondence ensued between the parties in respect of the renewal of the lease deed. The rent of the property had already been attached by MCD for recovery of property tax vide a letter dated 20.3.2000. MCD vide another letter dated 6.3.2003 had written to Area Manager of MTNL that in case the rent was not tendered by the tenant in view of the attachment order passed by MCD under DMC Act, action under Section 160(2)(3) of DMC Act will be taken. The matter was being pursued by the respondent/lessor with MCD and ultimately MCD vide order dated 31.3.2003 passed an assessment order in respect of the property

w.e.f. 1.4.1999. Even on 31.7.2003 MCD wrote a letter to MTNL for attachment of the rent for recovery of the house tax. Only on 19th September, 2003 MCD wrote letter to Assistant Manager of petitioner informing that MCD has decided to withdraw the attachment order. Till September, 2003 the fresh lease deed had not been executed between the parties and MTNL was continuing in the premises without a written lease deed i.e. on month to month basis. On 23.9.2003 the respondent had written a letter to the petitioner showing his desire to execute the fresh lease deed and the letter reads as under:

Dear Sirs,

It is with reference to our meeting today held in the office of the Dy. G.M. (Finance) along with you I hereby place my consent as under pertaining to the pending issues.

1. I am ready to sign the Memo of Understanding pertaining to the Accommodation from 19.08.2002 to 30.09.2003 on the same old rates and terms and conditions.

2. I am further ready and agreeable to execute the fresh agreement on the old rates and terms and conditions w.e.f. 01.10.2003 to 30.09.2006

3. I wish to place on record that the payment of the rent cheque is to be delivered to me on 7th of each month positively. As it had been my experience that the rent payments had been delayed without any reasoning and causes since 18.08.1999.

4. I am further to state that the electricity and water charges as per sub meters payment is to be cleared positively along with the payment of the rent on presentation of the bills from the relevant departments.

In the light of the above submissions you are requested to please accord your approval for the same and release the pending rent without any further delay of time.

11. A reading of above letter makes it abundantly clear that period from 19.8.2002 to 30.9.2003 i.e. the period when there was no written lease deed between the parties, the petitioner was to continue on old rates and terms and conditions. Even from 1.10.2003 to 30.9.2006, the respondent was ready and agreeable to execute fresh lease on old rates and terms and conditions. The payment of rent was to be done by 7th of each month. He made it very clear that electricity and water charges would be payable as per sub meters and would be cleared positively on presentation of bills from the department. No change in the terms of the lease deed was agreed by MTNL and house tax was payable by the respondent. Lease deed of August, 1999 made following provision in respect of rent and house tax:

3. To hold the said premises having carpet area of 3604.61 sq. ft unto the lessee for a period of three years commencing from 18th day of August, 1999 to 17th day of August, 2002 at a monthly rent of Rs.22,430/- (Rupees Twenty Two thousand Four hundred Thirty only) for the Ground Floor and Rs.24,429/- (Rupees Twenty Four Thousand Four Hundred Twenty Nine only) for the First Floor (totaling to Rs.46,859/-) for each English calendar month with 15% increase in rent after every third year (which amount shall cover and include all Government and Municipal Taxes, including the urban immovable Property Tax) except Water and Electric consumption charges to be paid to the Lessor at New Delhi or such other places as the Lessor may in writing direct any extra expenses to the Lessee thereby entitled being deducted from the amount of such instalment or rent on to be paid on or before the seventh day of the following month by post on submission of pre-receipt. However, the maintenance of building lift will be done by the owner on his own cost.

4. The Lessor hereby covenants with the Lessee that he will at his own expense pay all the taxes (in existence at the

time of execution of lease deed and subsequent taxes, if any that may arise) and keep the said premises wind and water tight and good and tenantable repair and conditions in particular while colour wash every third year such parts thereof as are white or colour washed and will at all times keep the electric light, plan and fittings installed in the said premises in good and serviceable order and conditions and in the event of any leakage occurring or being suspected therein will forthwith make all necessary test and repair any such leakage and that if the Lessor shall fail or neglect to observe and perform his obligation under this covenant, the Lessee may pay the taxes or carry out the necessary repairs to the buildings and to the electric installations and deduct the amount or cost from the rent.

12. It is obvious that the house tax was the liability of the respondent and the petitioner was only to pay water and electricity under the lease deed of 1999. While agreeing for renewal of the lease subsequent to 1.10.2003, respondent had made it very clear vide above letter (para 8) that the lease will be renewed on same rent and same terms and conditions. However, it is apparent that while registering the lease deed, the officials of the petitioner were not careful and they seem to have signed and got the lease deed registered without reading the terms and conditions, reposing faith in respondent. The new terms and conditions incorporated in the lease deed regarding rent and house tax read as under:

1.0 In pursuance of the said agreement and in consideration of payment of rents and performance and observance of the obligations on the party of the Lessees hereby reserved the LESSORS do hereby grant into the LESSEES ALL THAT part/protion (i.e. covered accommodation of Ground Floor 1725.42 sq. ft and First Floor measuring 1879.19 sq. ft with total area of 3604.61 sq. ft carpet area) of the said building as described in the schedule hereto with all fixtures and fittings of the lessors as

are now lying therein or affixed thereto and hereinafter called the demised premises where the context so admits TOGETHER WITH the accesses thereto and/or all passages ways, entrances, stairs, lobbies, porches, landings gates or other pathways, for an ingress thereto and ingress therefrom to the main Road(which shall be held unless exclusively held/appurtenant in common with others entitled to similar use and without causing any disturbance to others). And also all rights, benefits, easements, advantages and appurtenances thereto for a period of three years from 18.8.2002 to 17.8.2005 subject to the stipulations hereunder. To hold the same for the said period of three years as above and yielding and paying the monthly rent of Rs.22,430/- for Ground floor and 24,429/- for First Floor (Total Rs.46859/-) on or before 7th of every English calendar month for the month then current exclusive of property/municipal taxes but inclusive of there outgoings or impositions whatsoever.

2.0 All municipal taxes in respect of the demised payable to municipal authorities shall be borne and paid by the lessees-on the actual basis from the date of the taking over of the demised premises as per the lease agreement and till the currency of the said leased agreement.(emphasis added)

13. The claimant before the learned Arbitrator relied on above clause and claimed that the house tax for the period from 2002 to 2005 was payable by the petitioner and the learned Arbitrator allowed house tax to the tune of Rs.9,04,771.20 against the petitioner and in favour of the respondent. The petitioner had raised a plea before the learned Arbitrator that the second lease deed was signed by its officers believing that it contained same terms and conditions without caring to read the terms and conditions and the term of payment of house tax was clandestinely introduced by the respondent contrary to the agreement and negotiations between the parties. Since the parties were not ad idem at the time of signing the agreement and the petitioner was always under the impression that the lease deed dated 8.10.2003 contained the same

clauses as lease deed of 18.8.1999 and the house tax was the responsibility of the lessor, the liability of house tax cannot be foisted on the petitioner and the contract regarding payment of house tax was voidable contract and this liability was of the respondent only.

14. The learned Arbitrator though (while passing award in respect of issue no.7) had come to the conclusion that the officials of petitioner were under the impression that the renewal of lease was on the same terms and conditions and the responsibility of payment of house tax was that of the claimant/lessor but despite making this observation in claim no.7 she considered that in view of the express provision in clause 2.3.1, the liability of payment of house tax was that of the petitioner and she passed an award against the petitioner and in favour of the respondent for payment of the house tax.

15. The Counsel for the petitioner argued that once it is shown by written correspondence between the parties that the lease had to be renewed on same terms and conditions and the rent was also not to be increased, there was no reason for the petitioner to incur upon itself additional liability of house tax or of any other kind even for the period from 19.8.2002 to 3.10.2003 when there was no registered lease deed and no issue of House Tax and the respondent had categorically written that he was agreeing to sign MoU for period 18.8.2002 to 30.9.2003 and to execute the lease deed on same terms and conditions. The conclusion arrived at by the learned Arbitrator was contrary to the contract and contrary to settled law of the land.

16. It is well settled law that mistake as to nature of transaction can lead to a contract being void. A person who has put his name to an instrument of one kind understanding it to be an instrument of only different kind is entitled not only to setting aside the contract against the other party on the ground of mistake in respect of nature of transaction irrespective of there being no fraud played upon and can also pray to Court to treat the contract as nullity.

17. In *Foster v. Mackinnon* (1869) LR 4 CP 704 the defendant was induced to endorse a bill of exchange which he was told was a guarantee. The plaintiff was a subsequent holder of value, and therefore the fact the defendant's signature was obtained by fraud would not have protected him in this action. But the Court held that his signature, not being intended as an endorsement of a bill of exchange, or as a signature to any negotiable instrument at all, was wholly inoperative, as much so as if the signature had been written on a blank piece of paper first, and a bill or note written on the other side afterwards. In *Oriental Bank Corpn. V. John Flemming*, (1879) 3 Bom 242, there was a misrepresentation by inadvertence, but no question of fraud. The defendant's firm had suspended its payments, and at a creditors' meeting, it was resolved that the business of the defendant's firm should be wound up by voluntary liquidation under the supervision of a committee. This resolution was confirmed at a subsequent meeting, and it was further resolved that a composition deed should be prepared in pursuance of the above resolutions. No mention was made at either of the meetings of any releases of the claims of the creditors. The

plaintiff was one of the creditors. After a few days, a deed was tendered by one of the defendants' firm to the plaintiffs' agent for execution. He was at the time engaged with an urgent business, and he decided to sign it without being able to read it. The debtor had earnestly pressed him to execute the document at once, stating that it was of utmost importance that no time should be lost, and adding that the deed was nothing more than an assignment to trustees for the benefit of creditors as agreed to at the creditors' meeting. Upon the faith of that assurance, the plaintiffs' agent executed the deed. As a matter of fact, the deed contained a release by the creditors to the debtors. As soon as the plaintiffs' agent came to know of this, he repudiated his signature and refused to be bound by the deed. The plaintiffs sued to have the signature of their agent to a composition deed cancelled, and to have it declared that the deed was not binding on the plaintiffs. On behalf of the plaintiffs, it was contended that the deed, so far as it operated as a release, was a different deed from that which that plaintiffs' agent intended to execute, for he believed he was signing a deed for the benefit of the creditors, whereas in fact it was for the benefit of the debtors, and that his signature could not therefore be held to be a consent of its contents. This argument was upheld, and it was declared that the deed was not the deed of the plaintiffs, but void ab initio and a nullity, so far as it purported to operate as a release to the debtors.

18. The doctrine of *non est factum* applies when there is a misrepresentation inducing a mistaken belief as to the class or character of the supposed document, even if there has been no fraud or misrepresentation to the

contents of document. The transaction is invalid not merely due to fraud, but because the 'mind of signor did not accompany the signature' and therefore in contemplation of law, he never did sign the contract that he did not intend to sign (Bismillah v. Janeshwar Prasad (1990) 1 SCC 207). The correspondence between the parties prior to signing of the lease deed makes it clear that the petitioner had agreed to the same terms of the lease deed which were present in the lease document of 1999 and had not agreed for executing a document containing new terms and conditions. The rent was to be same. The provision regarding house tax etc. was to be same. It is also apparent from the conduct of the respondent that after 19.8.2002 the respondent continued pursuing its house tax case with the MCD on its own and ultimately respondent received an order from MCD removing attachment of the rent amount. After the attachment of the rent was removed then only respondent entered into agreement with the petitioner for renewal of the lease deed on same terms and conditions specifically mentioning that only electricity and water charges would be payable by the petitioner. It is also not disputed that no house tax bill was sent by respondent to the petitioner for the year ending March 2004 asking the petitioner to pay house tax. If it had been agreed between the parties that the house tax was to be paid by the petitioner, the respondent would have sent house tax bill for the period upto 31.3.2004 to the petitioner asking the petitioner to make the payment of the house tax. The respondent racked up this issue only after petitioner served a notice in November, 2004 requesting the respondent to take

back the vacant possession of the premises and the respondent, for one reason or the other refused to take the premises back and continued to foist monthly rent on the petitioner for the period when the petitioner was not even willing to continue the tenancy. I consider that the learned Arbitrator passed the award in respect of this claim contrary to the settled legal position and against public policy. Where the parties are not *ad idem* to the contents of the contract and one party has signed the contract believing it to be copy of the old contract and got it registered, all those clauses in the contract which were contrary to the old lease deed would have no application. A contract between the parties comes into force only when parties agree to the terms and conditions fully knowing the terms and conditions. If one party is under impression that the terms and conditions were the same as under the old lease deed and the other party has redrafted the terms and conditions to include different terms and conditions such variant terms are not binding on the party. The term of House Tax liability on petitioner seems to have been clandestinely introduced and was not in the old lease deed. I, therefore set aside the award in respect of this claim and allow the objection.

19. The other objection raised by the petitioner is against claim no.9. This claim has been allowed by the arbitrator against repairs, replacing fittings and fixtures, for repair of building. The contention of the respondent had been that when petitioner left the building, it was not left in original shape, certain doors which were removed by the petitioner for making cabins were not re-fixed, certain grills and windows were not reinstalled and the premises was not restored

to the original position. The relevant clause of the contract regarding restoration of the premises to original shape as contained in the contract is as under:

2.8.1 To make good any damages, if caused to any part of the demised premises as a result of the said setting up erection and removal of the said fixtures and fittings and removal of the said fixtures and fittings and other articles and items of the lessees as aforesaid including the main doors, gates and entrances etc. and on the Lessee's failure to do so, the Lessor can have the same done at the cost of the lessee.

2.8.2. To maintain the interior of the demised premises and the said fixtures and fittings Lessors in tenable repairs and conditions subject to hereinafter provided but the lessor shall maintain the exterior of the demised premises and the main fabric/structure of the said building including the demised premises in good and proper condition and also the main water and pipe lines, sewers, drains alongwith and other connections for amenities of the Lessees in similar conditions. To fix up fittings, fixtures or coolers/desert coolers, Air conditioners and/or Air conditioning system including the ducts and false ceiling and water tanks and all other tenements fixtures and fittings as the Lessees shall consider necessary for better use and enjoyment of the demised premises without any objection on the part of the Lessors and to remove the same on the expiry of the lease or whenever the Lessees shall quit the demised premises provided always the Lessors may purchase the same at such prices and at such time as the Lessors and the Lessees shall mutually decide. (emphasis added)

20. It is obvious from the reading of this clause that while interior was the responsibility of the petitioner, exterior was the responsibility of the respondent and the petitioner was to make good any damage if caused to the premises due to its use before vacating the same and in case the petitioner failed to do the necessary repairs the respondent/lessor was free to get the same done

at the cost of the petitioner. In this case after the petitioner vacated the

premises, the respondent in order to build a commercial complex over the premises, demolished the premises. However, before getting the premises demolished, the respondent procured a report from a Civil Engineer firm about the estimates of repairs and based his claim against the petitioner on the basis of estimates of repairs. The purpose of above two clauses was that the petitioner when leaves the premises should do all those repairs which were beyond normal wear and tear but had occurred during use of the premises. If the petitioner failed to carry out repairs, the respondent had liberty to get these repairs done and the respondent could recover cost from the petitioner but only after getting the repairs done. The provision of the contract expressly provided that the respondent had to get the repairs done at the cost of the petitioner. The respondent could not have claimed any repair charges without getting the repair done. If the respondent had to demolish the premises any amount of expenditure done by the petitioner or respondent on repair work would have been an expenditure incurred frivolously. The respondent was not entitled to get the frivolous expenditure from the petitioner. The respondent was entitled to get the premises in the proper shape so that the respondent could re-let it or use it and he had not to spend the amount on the repairs from his own pocket. However, since the respondent had demolished the premises, respondent had no right to claim repair charges on the basis of estimates furnished by a firm. Moreover, the contract between the parties did not provide that the expenses can be claimed on the basis of estimate of repairs. The contract only provided that

the respondent could get the premises repaired at the cost of the petitioner. In order to claim any amount under this clause, the respondent was to prove that it had got the premises repaired and spent the claimed amount on the repair of premises. The learned Arbitrator, merely on the basis of report of the expert/firm about the estimates of repair amounts could not have allowed the claim. An Arbitrator is bound by the contract between the parties. He cannot create a new contract between the parties. I consider that the learned Arbitrator travelled beyond the contract and the award is liable to be set aside on this ground. I, therefore set aside the award of this claim on this ground.

21. I consider that the petitioner cannot also be foisted with the cost of the arbitration because the entire claim made by the respondent against the petitioner was false and frivolous. The parties are therefore directed to bear their own costs before the Arbitrator and before this Court.

22. The petition is allowed in above terms. The award of the arbitration in respect of claims no. 1, 5 and 9 is hereby set aside.

May 15, 2009
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SHIV NARAYAN DHINGRA, J.