

REPORTABLE

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

FAO No.72/2007

Date of Decision: MAY 20, 2010

B.S.N.L. Appellant
through Mr. Asad Alvi, Advocate with
Mr. Faiz Hyder Rizvi, Advocate

versus

SAROJ KRISHANA ATRAY & ORS Respondents
through Mr. Naresh Kaushik, Advocate with
Ms. Amita Kalkal Chaudhary & Mr. Aditya
Verma, Advocates

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

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

REKHA SHARMA, J. (ORAL)

This appeal has been preferred by the appellant against the order of Additional District Judge, Shri M.K.Gupta dated October 16, 2006 whereby the learned Judge has dismissed the objections filed by the appellant against the arbitration award dated September 05, 2005 made by Sole Arbitrator, Shri S.M.Aggarwal. Unfortunately, the Additional District Judge has given no reasons for dismissing the objections except stating the provisions of law. Hence,

it has fallen upon this Court to deal with the objections raised before the Additional District Judge.

It is not in dispute between the parties that a lease deed was entered between them in respect of Flat No.1502 on 15th Floor, Devika Tower, 6, Nehru Place, New Delhi, measuring 400 sq. ft. The first such lease deed was dated March 28, 1986 and it was to commence with effect from April 01, 1986. It is also not in dispute that the said lease deed dated April 01, 1986 was renewed from time to time after every three years and the last renewal was made on April 01, 2001, the other terms and conditions of the lease deed remaining the same.

It so happened that on December 31, 2002 the appellant who was the lessee of the said premises gave a notice in writing to the respondents-lessors, intimating thereby that it proposed to surrender the premises after the expiry of the period of three months, i.e. on March 31, 2003. The respondents in response to the notice wrote to the appellant on January 10, 2003 calling upon it to restore the flat in question in the same shape and condition in which it was taken at the time of execution of the initial lease deed and till then declined to take possession of the same. The appellant, in the meanwhile, in terms of its notice dated December 31, 2002 though vacated the flat, but put its own lock on the same. The respondents, on the other hand, invoked the arbitration clause and consequently, Shri S.M.Aggarwal, a retired Additional District Judge was appointed as the arbitrator to go into the questions – whether the appellant had offered to the

respondents possession of the flat in the same shape in which it was taken when the lease deed was executed and if not, whether the respondents were entitled to the rent of the flat as agreed upon up till the expiry of the period of notice, i.e. March 31, 2003 and thereafter on enhanced rent which as per the terms of the lease deed was to be 15% more than the last agreed rent till the flat was handed over to the respondents in the original shape and further, whether the respondents were liable to claim the expenses incurred in bringing the flat to its original shape as well as the maintenance charges which the respondents became liable to pay after March 31, 2003.

It is the case of the respondents that when the flat in question was leased out to the appellant, it had four walls and a toilet block with a separate and an independent entry gate having full-fledged partitioned wall from floor up to the ceiling between the demised flat No.1502 and contiguous adjoining flats No.1503A and 1508A and that the appellant who was also in possession of the adjoining contiguous flats dismantled the wall of flat No.1502 so as to make all the flats into a one full hall.

The appellant has disputed that the flat in question was given in the manner as stated by the respondents.

The arbitrator after examining evidence led before him has held that the flat as initially let out to the appellant was having four walls and a toilet block. The arbitrator while giving this finding has, particularly, made reference to the affidavit of Shri Subhash Sharma, XEN (Electrical) who was examined by the appellant as its

witness. The relevant paragraph, where the arbitrator has discussed the evidence of this witness, runs as under:-

“x x x x x x

12. The claimants' attorney in his Affidavit had categorically stated on oath that that flat No.1502 with four walls and independent gate for entry and exit having a toilet block was the one let out to the respondent. The respondent in the Affidavit of Shri Subhash Sharma, XEN (Elect.) did not take any specific stand-controverting stand of the claimants. The respondent's Shri Rakesh Mathur, the then Electrical Engineer had responded to the claimants letter dated 10.4.2003 enclosing letter of builders M/s. Pragati Construction Company of Devika Tower and had taken entirely absurd stand that M/s. Pragati Construction Company might have handed over the possession of the flat to the claimants as per contents of their letter. But that did not mean that the flat was handed over to the respondent in the same state. Hence, the respondents are not liable to construct any partition wall etc. The letter date 7.3.2003 of M/s. Pragati Construction Company which was enclosure of claimants letter dated 10.4.2003 clearly mentioned confirming enquiry of the claimants that flat No.1502 in Devika Tower measuring 400 Sq. feet was handed over to the claimants on 1.5.1986, complete in all respects viz. partition walls, toilet, wiring of electricity and telephone, fire/smoke detectors etc. On page P-55 of the statement of facts and claims is a provisional letter of possession dated 28.3.1986 vide which M/s. Pragati Construction Company had given provisional possession and the claimants had taken over provisional possession of flat No.1502 in all respects.”

Having regard to the aforementioned finding of the arbitrator who has relied upon the appellant's own witness, it is not open to the appellant to contend that the flat in question when it was leased out did not have four walls and a toilet block or a separate independent entry gate. In any case, the issue before the arbitrator was a question of fact and the arbitrator having given a finding, this Court will not

re-appreciate the evidence led before the arbitrator and superimpose its own finding on the issue raised and decided by the arbitrator.

The arbitrator has also given the finding that the actual physical possession of the flat was given over to the respondents in his presence on February 14, 2005 when he had himself visited the flat in question and there the representative of the appellant and the respondents were also present. The arbitrator in his award has also noted the condition of the flat as it existed on February 14, 2005. The relevant part of the observations made by the arbitrator in this regard run as under:-

“x x x x x x

13. During the site inspection carried out on 14.2.2005 by the undersigned in the presence of the parties, was had found a toilet block in the corner of flat No.1501 owned by Shri T.S.Oberoi and also let out to the respondent along with flat No.1502, 1503A and 1508A. We had also found only one gate which was in fact the gate of flat No.1501 for entry which led us to a big hall comprising of flat No.1501 of Shri T.S.Oberoi and flat No.1502 of the claimants with a passage opened into flat No.1508A by breaking into the partition wall separating flat No.1502 and 1508A. We had also found that the partition wall separating flat No.1502 from flat No.1508A and 1503A had a passage opened into flat No.1508A and portion of the wall between flat No.1502 and 1503A had been lately raised for an area of about size of two passages i.e. about 10 feet but was left un-plastered. This shows that there was indeed a full partition wall from floor up to roof between demised flat No.1502 and adjoining contiguous flat Nos.1503A and 1508A. The inspection had also showed prominence of plaster of the exterior wall of flat No.1502 adjoining the gate of flat No.1501 which clearly revealed entry and identical entrance gate which had been walled up. Shri Tilak Raj Baweja, who was the concerned A.E. (Elect.) at the time the termination of lease notice was given could not point out any independent entry to flat No.1502. The inspection had shown that there was no partitioned wall between the demised

flat No.1502 of the claimants and flat No.1501 of Shri T.S.Oberoi in existence to distinguish one from the other but on the floor and the ceiling there were clear and corresponding tell tale marks that such a partitioned wall once existed.....”

After having given the aforementioned findings, the arbitrator made the following award in favour of the respondents:-

- (i) The respondents were allowed rent @ Rs.10,862/- per month up to March 31, 2004, i.e. up to the expiry of the period of the lease deed, amounting to Rs.1,30,344/-.
- (ii) The respondents have also been awarded compensation/ damages @ Rs.12,491/- per month from April 01, 2001 till February 14/15, 2005 when the keys of the flat were actually handed over to the respondents, amounting to Rs.1,12,419/- from April 01, 2004 to December 31, 2004 plus Rs.18,736/- up to February 14, 2005, totaling Rs.1,31,155/-.
- (iii) The respondents have also been awarded Rs.30,000/- towards the restoration cost and, Rs.21,118/- as maintenance charges for the period April 01, 2003 to February 14, 2005.

It is apparent from what has been noticed above that the two questions of fact, which arose before the arbitrator with regard to the original condition of the flat and the date on which the possession was actually handed over to the respondents, have been decided by the arbitrator against the appellant and in favour of the respondents. The rest of the award was only consequential and the respondents became entitled to the claims as raised by them because those claims flowed from the findings of fact given by the arbitrator. It is well settled that

the decision of the arbitrator upon the question of facts is final and binding on the parties and the Court shall not re-appreciate the evidence led before the arbitrator. It has been conclusively held by the Apex Court in the case of *Oil & Natural Gas Corporation Ltd. Versus SAW Pipes Ltd.* reported in AIR 2003 SC 2629 that an arbitral award can be set-aside if it is against the public policy of India or if it is contrary to the fundamental policy of Indian law; the interest of India; or justice or morality; or if it is patently illegal. The award in question does not fall within the ambit of any of the aforesaid grounds as have been laid down by the Supreme Court. I find no merit in the appeal. The same is dismissed, with no order as to costs.

The appellant has already deposited in this Court the awarded amount. The Registrar General is directed to release the amount along with interest that has accrued thereon in favour of the respondents on their making an application for releasing the same.

REKHA SHARMA, J.

MAY 20, 2010
ka