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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP No. 223/2005

Reserved on : November 30, 2009

Pronounced on: January 07, 2010

SHRI TIKKA BRIJINDER SINGH BEDI & ORS. ...Petitioners

Through: Mr. D.S.Narula with Mr. Rajesh Kumar,
Advocate.

VERSUS

METSO MINERALS (NEW DELHI) PVT. LTD & ANR. Respondents

Through: Mr. Ravi Gupta, Sr. Advocate with
Ms. Meenakshi Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

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JUDGMENT

VALMIKI J.MEHTA, J

1. By means of this petition under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioners, who are the landlords, are challenging the Award dated 5.3.2005 of the sole Arbitrator.

2. Two suits were filed by the tenant M/s Mesco Private Limited, previously known as Svedala Industries Pvt. Ltd., against the landlords, being suit Nos. 1565/2001 and 1566/2001. The first suit pertained to the rear portion (ground

floor and basement) of the premises No. E-7/14, Vasant Vihar, New Delhi and which was let out by the landlords, Mr. Tikka Bijender Singh Bedi and others. The second suit pertained to the front portion (ground floor and basement) of the same premises whose landlords were Sonali Bedi and others. These suits were filed by the lessee, and who was the claimant in the arbitration proceedings, for refund of the security deposit and other related disputes arising pursuant to the lessee's vacation of the leased premises.

3. During the pendency of the suits, a common order dated 21.1.2003 was passed in both the suits referring the disputes to the arbitration of the Sole Arbitrator. The relevant portion of the order by which all the disputes between the parties were referred to Arbitration reads as under:-

“After hearing the counsel for the parties, and considering the nature of the controversy between the parties, I am of the view that this can be best resolved by arbitration. Senior counsel Mr. Nayyar, on instructions, states that the plaintiff is willing to have the disputes, which are subject matter of the suits, resolved by reference to a sole arbitrator who may be appointed by this Court. Mr. Mahajan, on instructions, from Mr. Tikka BS Bedi and RHS Chopra, who are present in the Court, state that they are also willing to have the disputes referred to a sole arbitrator to be nominated and appointed by the Court. Accordingly, with the consent of the parties, I appoint Master Anup Kothari, partner of M/S Sathe & Kothari as the sole arbitrator to go into the disputes between the parties, which are subject matter of the suits as also the counter claims of the defendant that may be preferred relating to leasing of the premises in question to the plaintiff. It will be open to the parties to make their claims with regard to interest also.

Parties to appear before the Arbitrator on 15.2.2003 at 11 a.m. The Arbitrator shall give a reasoned award as expeditiously as possible. Fee of the Arbitrator is fixed at Rs.1,11,000/-(One lakh eleven thousand only) to

be shared by the parties equally subject to final directions, as may be given in the award.

Liberty granted.”

(Emphasis added)

4. It is relevant to note that this order was a consolidated order with respect to both the suits and certain I.As which were filed therein.

5. It is with respect to these aforesaid disputes relating to leasing of the premises that this Award has been passed thereby adjudicating upon the disputes which were referred to arbitration vide the order of this Court dated 21.1.2003.

6. Some relevant facts of the case are as under:-

By virtue of lease deeds and agreements for fittings and fixtures dated 9.5.1995, the landlords of the subject premises let out the two portions of the premises to the present respondent No.1(hereinafter referred to as the respondent). For the sake of convenience reference to the lease deeds hereinafter will whenever the context so requires will include reference also to the agreements of furniture and fixtures. Rent per flat was fixed at Rs. 39,000/-. Fixtures etc. charges were Rs. 9,500/- and for which seven agreements per flat were executed. The total of the rent including the charges for furniture and fixtures for both the flats was fixed at Rs.2,11,000/- per month. A security deposit totalling to Rs.34,20,000/- at the rate of Rs.17,10,000/- per flat was paid by the lessee to the lessors. Identical lease deeds and identical agreements for the furniture and fixtures were executed between the parties with respect to

the front portion and the rear portion of the premises E-7/14, Vasant Vihar, New Delhi. The lessors of both the portions are closely related to each other. The lease and the related agreements were signed by all the landlords. The lease period was of three years from 9.5.1995 to 8.5.1998. After the expiry of the lease period, fresh lease deeds and also agreements for fixtures and fittings was entered into on 15.5.1998 for a fresh lease period of two years which on behalf of the landlords was only signed by one of them namely Sh. RHS Chopra. The total rent increased to Rs.56,000/- per month per flat. The hire charges for the fixtures and fittings also increased and which became Rs.18,500/- per month from Rs.9,500/- per month. The security deposit was increased by 30% i.e by Rs.5,30,000/- and therefore the total amount of the security deposit with the landlords for the two premises increased to Rs. 44,46,000/-. The respondent/claimant vide its letter dated 15.10.1999 terminated the agreement of 1998 and asked for the presence of the landlords at the premises on 15.4.2000 for handing over of the possession. By the same letter, the respondent also asked that the landlords to bring the amount of security deposit of Rs.44.46 lacs, which had to be paid simultaneous to the handing over of the vacant possession. At this stage, without referring to other detailed facts, I may only state that disputes arose with regard to the handing over of the possession on account of the landlords claim of the obligation of the lessee to do certain repairs and painting/polishing in the subject premises and possession therefore, remained with the respondent/lessee inasmuch as the landlords neither came on 15.4.2000

to take possession and nor paid the security deposit. The basic and the main dispute between the parties therefore revolves around the stand of the landlords on one hand that the respondent did not bring the premises to its required state as required under the lease agreements for the possession to be taken back and whereas on the other hand the stand of the lessee was that the necessary works were done, but, the landlords either not having the requisite moneys or probably the inclination, did not take back possession or for the reason that they did not want to refund the security deposit amount. Documents have been filed on record which show that at this relevant time of handing over possession there took place an exchange of draft agreements whereby the landlords had suggested refund of the security deposit by payment of Rs.10 lacs upfront and the balance thereafter in 24 equal instalments and to which a counter offer was made by the lessee of the payment of amount by upfront payment of Rs.10 lacs and the balance in four equal monthly instalments. The possession was ultimately handed over/taken over on 22.3.2002 during the pendency of the suits which were filed by the respondent in this court, namely the Suit Nos. 1565/2001 and 1566/2001.

7. By the impugned Award the Arbitrator has decided each issue separately and has disallowed the claim of the landlords for rent during the period 16.4.2000 to 22.3.2002 ie. the period from the date of termination of tenancy, to the date of the landlord's taking over of the possession. Similarly, the claim of the landlords for loss of rental due to disconnection of electricity has been

disallowed. The Arbitrator has further ordered for the refund to the lessee of the security deposit amount of Rs.44,46,000/- , but has disallowed the claim of the lessee under Issue No.7 for alleged depreciation on furniture and fixtures. Similarly, the claim of the respondent/lessee for security and maintenance charges for the period from 16.4.2000 to 22.3.2002 has been disallowed. So far as the electricity charges are concerned, the Arbitrator has allowed an amount of Rs.5 lacs for the electricity consumption from 16.4.2000 till 22.3.2002. The Arbitrator held that the rent agreements of 1998 were binding between the parties and not the agreements of 1995.

8. The counsel for the objector has argued before this court, the following objections:-

- (i) The first objection was that the Award was beyond the terms of reference as the Arbitrator dealt with the subject matters which were not the subject matter of the suits and the order of reference;
- (ii) The second objection was that the Arbitrator was bound to have passed two separate Awards because there were two separate suits and the Arbitrator has therefore committed an illegality in passing a single Award;
- (iii) The third objection was that the Award was apprehended to have been passed by a person other than the Arbitrator;
- (iv) The fourth objection was that the Award is not supported by reasons and also that the Arbitrator has committed an illegality in not taking any evidence before deciding the issues, and fifthly

(v) The Arbitrator ought to have awarded charges for use and occupation of the premises from 16.4.2000 to 22.3.2002 and the claim of the landlords for the repairs and renovation charges at the higher amount of Rs.7.5 lacs for each flat instead of a total amount of Rs. 3 lacs which has been ordered by the Arbitrator towards restoration of subject premises.

9. The counsel for the respondent has replied to each of the aforesaid objections.

10. So far as the first objection is concerned, that the Award is beyond the terms of reference, I find that this objection is wholly misconceived in as much as the order of reference passed by this court on 21.1.2003 makes it more than abundantly clear that all the disputes between the parties pertaining to the leasing of the premises which were the subject matter of the suits as also of the counter claims of the landlords and the claims of interest were referred to the decision of the Arbitrator. Reference of the main disputes to arbitration will also naturally include reference to all the incidental disputes necessary for deciding the main disputes between the parties, more so because the order dated 21.1.2003 uses the language “relating to leasing of the premises in question”. The Arbitrator has decided the issues pertaining to the claims of rent, electricity charges and repairs/renovation charges as claimed by the landlords and has decided the claims of the respondent/lessee inter alia with respect to refund of the security deposit and security charges for the period from 15.4.2000 to 22.3.2002 and other incidental disputes. All these disputes between the lessors

and the lessee were related to the leasing of the premises and were very much referred to arbitration by the order dated 21.01.2003. I therefore fail to see as to how the Award is beyond the terms of the reference. I have also reproduced the relevant portion of the order passed by this Court dated 21.1.2003 above and which makes it more than clear that all the disputes between the parties related to leasing of the premises viz. arising out of the relationship of landlord and tenant and including which were the subject matter of the suits, were referred to Arbitration. Thus the disputes adjudicated by the Arbitrator are within the fold of the order dated 21.01.2003. Therefore, this objection is misconceived and is rejected.

11. The next objection of the objector was that two Awards should have been passed and not one Award. Before dilating on this issue, I may state that as per the provision of Order 2 Rule 7 of the CPC, the objection as to misjoinder of causes of action is only a technical objection and which objection is capable of being waived. The counsel for the Objector failed to point out to me as to any application filed by him before the Arbitrator that two Awards should have been passed and not one. In fact, it was not even open to the objector to move such an application because this Court by its reference order dated 21.1.2003, specifically directed the Arbitrator to pass “a reasoned Award”, making it more than clear that it was only a single Award which was to be passed. No objection has been raised or challenge has been made to the Order of this Court dated 21.1.2003 and therefore, it does not lie in the mouth of the objector to say that

not one but two Awards should have been passed. I note that though the leases of the two portions of the property were separate, however, all the terms and conditions of both the lease agreements were identical. The landlords are also closely related to each other and were in fact therefore, represented by a common representative. The landlords are related to each other as father, daughter, father-in-law, and daughter-in-law etc. and therefore, the order of this Court dated 21.1.2003 and the Award also proceeds on the basis of the requirement of passing a single Award. Importantly, what is the prejudice on account of only one Award having been passed has not been argued and therefore if there is no prejudice, it cannot be said that the Arbitrator has committed an illegality, which in any case, he has not, in passing the impugned Award, more so because as already stated that the objection of misjoinder is one which is only technical in nature and is one capable of being waived.

12. The third objection was in fact not effectively pressed because nothing could be shown as to on what basis was there an apprehension that the Award has been passed by a person other than the Arbitrator. Therefore, I do not find any basis to sustain this self serving pleading and argument, and, which is accordingly rejected.

13. The counsel for the objector then contended that the Arbitrator has committed an illegality in not calling for evidence before deciding the case. Before proceeding to consider this objection I note that in terms of Section 19 of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal is not bound

by the strict provisions of the Code of Civil Procedure, 1908 and the Evidence Act, 1872. Keeping this provision in mind, and the fact that there was otherwise considerable documentary evidence before the Arbitrator in the form of correspondence, lease deeds, draft lease deeds and also various other documents, it cannot be said that no evidence has been led before the Arbitrator or considered by him. So far as the issue of leading oral evidence is concerned, I do not find that any such application was moved before the Arbitrator. Considering that in the present case, the main dispute centred around the issue in a narrow compass, as to whether the respondent/lessee was bound to carry out repairs and renovation in the premises before the same could be taken back by the petitioners/landlords the parties appear to have chosen the course of not leading oral evidence. It is not in dispute that if theoretically the lessee had brought the subject premises to the condition it was in at the time of letting out of the premises subject however to the natural wear and tear, then the lessors/petitioners were bound to take possession of the leased premises on 15.4.2000 and also at that time refund the security deposit, and for deciding this narrow issue evidence was filed and was available to the arbitrator. There is also evidence on record with regard to the repairs and renovations carried out by the respondent, besides the evidence with regard to the fact that correspondence had been exchanged on the aspect of refund of the security deposit including the issue that whether the same is to be refunded with Rs.10 lacs upfront and four monthly instalments or 24 monthly instalments. Thus, looking at the issue

from any angle, either from the aspect of Section 19 or the fact that there was otherwise enough evidence or that the issue was such as to not require mandatory oral evidence or that no application was made by the petitioners for leading of evidence before the Arbitrator, I am of the opinion that this objection is not well merited. The objection therefore that no evidence has been led is misconceived and rejected.

While considering the present objection I may also consider the incidental issue and argument as to whether the parties are bound by the lease deeds of the year 1995 or of the year 1998. The Arbitrator has taken the lease deeds/agreements of furniture and fixtures of the year 1998, and not of 1995, to be binding between the parties and has accordingly proceeded ahead. The findings of the Arbitrator in this regard are indeed persuasive and categorical, and instead of my encapsulating the same, I would prefer to reproduce the relevant portion of the Award on this aspect and which is as under:-

“1. In regard to the issue of which Lease governs the Leasing relationship between the parties i.e. the Lease Deed of 1995 or the Lease Deed of 1998, I hold as follows:

a) It is not disputed that the Lease Deeds of 1995 was executed between the parties to the dispute.

b) It is further not disputed that:

i) One of the co-owners executed the Lease Deed of 1998 for himself and purportedly on behalf of the remaining Co-owners.

ii) That each of the co-owner Respondent were aware of the execution of the Lease Deed of 1998 and did not raise any objections thereto until Dec. 01(after 43 months of signing the lease in 1998)

iii) That each of the co-owner Respondents acted pursuant to the Lease Deed of 1998 in so much as they accepted additional rent and

security deposit. Furthermore, the terms of rental payment were also altered as per the Lease Deed of 1998.

iv) That the Respondents neither insisted on a renewal of the Lease Deed of 1995 nor acted pursuant thereto.

In view of the above, I am of the considered opinion that the tenancy in question between the disputing parties was governed by the Lease Deed of 1998.”

There is absolutely no illegality in the above findings of the Arbitrator nor is there any perversity. At the very best, it can be said that two views are possible. It is however, settled law that merely because two views are possible, this court will not interfere with the Award if the view which is taken by the Arbitrator is one plausible view. This finding of the Arbitrator that the parties are governed by the lease of 1998 is clearly justified and I reject the objection that the parties should continue to be governed by the lease deeds of 1995.

14. So far as the objection that the Award is not a reasoned Award, in my opinion, such objection is wholly without any basis. The Award is a detailed Award running into 13 pages and of which the conclusions with additional reasons are contained the last four pages of the Award. The Arbitrator has taken each issue specifically and has given his findings thereon. The last four pages of the Award are prefaced by the first nine pages of the Award portion i.e before juxtapositioning of the issues, wherein is found discussion about the facts of the case, the correspondence exchanged, the relevant dates with the events related thereto and also the other facts and implicit findings and which factual substratum has been subsequently considered by the Arbitrator to arrive at the conclusion qua each issue. Once the Arbitrator in an earlier part of the Award

has given detailed facts and also some findings, it was not necessary for him to reproduce those detailed facts and findings already given in the earlier part of the Award while subsequently giving his additional findings and conclusion on each issue. It is settled law that reasons do not have to be detailed like the judgment of a court of law and nor is there any fixed format for an Award. Once reasons are given at different places in the Award and the reasons are such which have a necessary nexus to the conclusions arrived at, the requirement of the Award being a reasoned Award stands complied with. When I refer to the conclusions in the last four pages of the Award, from paragraphs 1 to 10, along with the factual narration and findings given in the earlier pages, it is quite clear that there are sufficient reasons as required in law. If such a detailed Award giving factual findings, reasons and conclusions exists then I cannot appreciate the argument that the Award is not a reasoned Award. The contention therefore of the counsel for the petitioners that the Award is not a reasoned Award and therefore the Award must fail, does not have any substance and is accordingly rejected.

15. The final objection, and which really is the crux of the issue, is with regard to the liability of respective parties for the period from 16.4.2000 to 22.3.2002 : the period during which the premises remained vacant and for which period whereas the landlords are claiming rent and other incidental charges, and the tenant is disputing the liability for such period. I must at this

stage, advert to certain clauses of the 1998 lease deed between the parties and which are as under:-

“4. The lessee shall keep in deposit with the lessor before the execution of these presents a sum of Rs.22,23,000/- (Rupees twenty two lacs twenty three thousand only) by way of security without carrying any interest to be refunded simultaneously at the time of vacating the demised premises on the expiry of the agreed period under this lease or its earlier termination as provided herein.”

“12. That the premises have been painted and polished. On termination of the lease period/extended lease period, the lessee shall hand over the premises duly painted, polished, repaired, alterations restored and floors rubbed and polished. In case the Lessee wants the Lessor(s) to get this work done, the lessee shall pay for the costs at the prevailing market rate and time taken to perform the work.”

“17. That the expiry of the lease period/extended lease period, the Lessee shall hand over vacant possession of the premises including servant quarters failing which the Lessor(s) shall be entitled to move the appropriate court for eviction orders. Further, it is explicitly agreed between the parties that in this event, the lessee shall pay double the last paid rent.”

“19. That the lessee may at any time vacate the demised flat by giving the lessor a notice of 6(six) months. The lessor shall upon such notice and simultaneously with handing over of the vacant possession of the demised premises refund to the Lessee the security deposit along with advance rent, if any, for the unexpired portion of the lease.”

“20. On expiry of the term of the present lease, the lessor shall refund the security deposit to the lessee simultaneously with handing over of the possession of the demised premises by the lessee.”

16. A conjoint reading of the aforesaid clauses show that the handing over vacant possession is simultaneous to the refund of the security deposit. However, the refund of the security deposit, by its very nature, is to be made after adjusting the claims of the landlords for the dues of the lessee with respect to the leased premises and there is no contrary intention or clause in the lease

deed. In terms of para 12 of the lease deed which has been reproduced above, the landlords have a right of renovation of the leased premises. This right is of getting the premises painted/polished/repaired/alteration restored and floors rubbed and polished.

17. I may note that before the Arbitrator, on this subject, various documents including the letters exchanged between the parties were filed. Some of the documents which are relevant in this regard are the letters of the respondent to the petitioners dated 3.3.2000, letter of the petitioners to the respondent dated 18.4.2000, letter of the respondent to the petitioners dated 24.4.2000, letter dated 5.5.2000 of the respondent to the petitioners, letter dated 12.6.2000 of the respondent to the petitioners, legal notice dated 14.8.2000 of the respondent to the petitioners, the reply to the legal notice dated 20.10.2000 by the petitioners to the respondent, a draft agreement of February, 2001 with respect to refund of the security deposit as proposed by the petitioners to the respondent for refund by making upfront payment of Rs.10 lacs and balance in 24 equal monthly instalments, letter dated 26.3.2001 of respondent to the petitioners responding to the aforesaid draft agreement with its own draft agreement reducing the number of instalments from 24 to 4, and lastly the letter dated 1.6.2000 from the petitioners to the respondent.

The Arbitrator on considering the evidence as available before him has arrived at his finding by ordering the refund of the security deposit. The conclusion of the Arbitrator in this regard cannot be said to be unjustified or

illegal or perverse. While observing so, I must note that, the Arbitrator was not a legal man, but a technical man, being an architect. One cannot expect such a non legal person to write and give a judgment like a Civil Court. I have already stated that the Arbitrator has given certain factual findings and narration in the first 9 pages of the Award. These 9 pages also contain the relevant implicit and explicit conclusions. It is thus possible that it is for this reason that the Arbitrator has not again reproduced those findings and factual aspects when he has giving his conclusions on each issue. The Arbitrator in substance has held that the respondent cannot be said to be guilty in failing to handover the possession on 15.4.2000, inter-alia, firstly because there appeared to be discussions with regard to the petitioners wanting to take over the furniture and fixtures in the premises and secondly because of the disinclination of the landlords to refund the security deposit, especially at one go. Taking a conspectus of the entire factual narration in the Award along with the findings, it is clear that the Arbitrator's conclusions that the landlords defaulted by failing to take over possession on 15.4.2000, is one plausible view. After all, the respondent gained nothing by letting the possession of the premises remain with it, because, the respondent had already shifted from the subject premises in April 2000 itself. A premises was taken by them on rent and documents with respect thereto have been filed. It is also an admitted fact which is on record that the subject premises was vacant during the disputed period 16.4.2000 to 22.3.2002 and which becomes clear from the nominal electricity consumed

during this period. Also, and admittedly, the respondent had vacated the other floors of the same building in April, 2000 itself after carrying out the required restoration and taking back the security deposits from the landlords of the other floors. Thus, the aforesaid facts show that there was no benefit to the respondent in continuing possession and the findings of the Arbitrator, and who is a final fact finding authority, cannot be set aside by this Court while hearing objections as per the scope and the legal parameters of Section 34 of the Arbitration and Conciliation Act, 1996. With the aforesaid facts, it is also to be additionally noted that the petitioners had been dillydallying in refund of the security deposit by seeking to repay the security deposit amount in instalments whereas the security deposit amount has to be repaid in one lump sum (and not in instalments) at the time of handing over of the vacant possession. Further, a reference to the reply filed by the petitioners in the Arbitration proceeding do not show specific details as to what repairs the respondents did not carry out in the premises and how could not the leased premises be said to have been in a proper state for taking back its possession. Reference to para (h) at page 6 of the reply filed by the present petitioners before the Arbitrator shows that the petitioners are delightfully vague as to what was the work which was not carried out by the respondent. This aspect of the matter is indeed relevant because the respondent had written its letter dated 5.5.2000 in which it was stated that the premises were ready for being handed over and the same was after carrying out the work as per the stand of the respondent, and which work the respondent

claimed was done pursuant to the requirements contained in the letter dated 18.4.2000 sent by the petitioners to the respondent. Without affecting the finality of what I have observed above, I note that in the record there appears to be a letter dated 26.4.2000 of the respondent to a contractor for carrying out various works at the subject premises and also the subsequent letter dated 19.5.2000 of the contractor showing that certain work has been done at the subject premises and for which the subject contractor has received payment.

Lastly, I feel that there appears to be a ring of truth in the stand of the respondent, because, if the petitioners were sincere or genuine, and that assuming that requisite work was not done by the respondent towards repair and restoration, surely it was open to the petitioners to retain such amount as it thought fit out of the total security deposit of Rs.44,46,000/-and refund the balance amount on 15.4.2000 when premises were sought to be handed over by the respondent to the petitioner. Admittedly, this was not done by the petitioners though such a course of action was open to them if they wanted to act bonafidely. I may in this regard also refer to Clause 12 of the 1998 lease deed which envisages the position that the lessor in fact can be asked to do the work of repairs and renovation of the premises, subject of course to payment of costs by the lessees and meaning thereby that it is not that the lessee only had to carry out the repair work, and the same could well have been done by the petitioners/landlords by retaining a part of the security deposit. Therefore, it becomes quite clear that the petitioners were refusing to part with the possession

of the monies which they had in the form of security deposit of Rs.44,46,000/-. This could have been because the petitioners did not have the entire/requisite funds or that they had just about enough funds but were deliberately delaying or were acting malafidely. However, this court is not sitting as an appellate court but is in fact hearing objections under Section 34 and the challenge to an Award is permissible under Section 34 only if there is an apparent illegality or gross perversity shown in the Award. The detailed facts narrated by me above, as also the reasoning given in the Award shows that it cannot be said that there is any apparent illegality or gross perversity in this regard to entitle this Court to interfere with the findings of the Arbitrator in a petition under Section 34.

18. Accordingly, the objection to the findings of the Arbitrator with regard to refund of the security deposit or disentitlement of the landlords/petitioners for rent for the period 16.4.2000 to 22.3.2002 is not such that it can be sustained under Section 34. At the cost of repetition I may state that merely because two views are possible this court will not adopt a different view as canvassed by the objector, as long as the view taken by the Arbitrator is one other possible view. Accordingly, objection in this regard to the Award is rejected. At this stage, I take on record the statement of the counsel for the respondent, made during the course of hearing of the present objections, where he has very clearly stated that whatever are the electricity dues which are payable, till 22.3.2002, the respondent undertakes to pay the same. If that be so, even on the aspect of the dues of electricity till 22.3.2002 does not survive for determination by this

court. This statement of the counsel for the respondent is taken on record and will bind the respondent.

19. The counsel for the objector referred to a Division Bench decision of this Court reported as *Tamil Nadu Handloom Weaver's Co-operative Society vs. Harbans Lal Gupta 2009 (107) DRJ 418* and para 24 thereof to contend that the respondent is liable to pay charges for use and occupation till 22.3.2002. I do not find that the said judgment will apply to the facts of the case because in the said judgment there was a finding of fact that the tenant refused to offer possession, whereas in the present case there is a finding of fact that the respondent/tenant offered to handover the possession but the landlords/petitioners did not take back possession.

20. The last issue which has been urged by the counsel for the objectors is that the amount of damages granted towards restoration of premises of Rs. 3 lacs as per the finding of issue no.8 is inadequate. I have already noted that the arbitrator is a technical person. Both the parties agreed to his appointment. It is settled law that when the Arbitrator is a technical person, he is entitled to import his technical & practical knowledge while dealing with the case. To such a technical person, a certain lee-way is permitted in arriving at findings of facts and the amounts towards certain claims. In the present case, the Arbitrator is an Architect and he as per his experience and judgment, has granted a particular amount for restoration, and, it is not that such a finding is wholly illegal or perverse that the same can be interfered with it by this court while hearing

objections 34. I do not therefore find any reason to set aside this finding by allowing the objection that instead of Rs.3 lacs, the Arbitrator ought to have Awarded a sum of Rs.7.5 lacs per flat. While so holding on this issue, it is also relevant to keep in mind the aspect with regard to the stand of the respondent that certain repairs were carried out by the respondent. I have already noted above that the record shows payment made to a contractor by the respondent and also the fact that there is complete vagueness in the stand of the petitioner before the Arbitrator as to what were the repairs/renovations which the respondent was required to do, but it did not do. An overall reading therefore of the facts of the case and the law as applicable does not entitle this court to decide afresh this finding of the grant of damages of Rs.3 lacs granted towards painting and polishing with minor repairs.

21. In view of the aforesaid observations, the objection petition is without any merit and the same is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J.MEHTA, J

January 07, 2010

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