

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing & decision 10.11.2010

+ **FAO(OS) No.646/2010**

D.S.I.D.C. LTD.

.....APPELLANT

.....Through

Mr. Amiet Andlay

Versus

BALESWER VERMA & ANR.

.....Respondent

.....Through

Nemo

CORAM:

* **HON'BLE MR. JUSTICE VIKRAMAJIT SEN**
HON'BLE MR. JUSTICE G.P.MITTAL

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

G.P.MITTAL, J (ORAL)

We have heard Mr. Amiet Andley, learned counsel appearing for the Appellant.

2. The appellant takes exception to the order dated 31.08.2010 passed by the learned Single Judge in OMP No. 519/2010 whereby the petition under Section 34 of the Arbitration and Conciliation Act, 1996(the 'Act') was dismissed.

3. An agreement dated 07.08.1998 was entered into between the parties whereby appellant was permitted to use the

premises measuring about four hundred square feet bearing No. 12, Block-J, Saket, New Delhi – 110017 on payment of commission by way of license fee/rent compensation @ 12½ per cent on the gross profit out of difference between the wholesale price and retail sale price minus excise duty and taxes fixed per bottle by the Commissioner of Excise, Delhi. Under another agreement, an additional space of 80 sqr. ft. was also provided to the appellant on a monthly rent of Rs.8000/- w.e.f. 01.04.2003(the said space is not the subject-matter of dispute in the instant appeal as there was no arbitration agreement in respect thereof).

4. It is admitted case of the parties that letters dated 26.09.2005 and 23.12.2006 were written by the respondent to the appellant seeking enhancement of rent for use and occupation of the premises. There was no response from the appellant though the appellant in para 7 of the appeal says that while the matter was under consideration, a legal notice dated 17.09.2007 issued on behalf of the respondent was served upon the appellant terminating the agreement between the parties.

5. The disputes having arisen between the parties, the same were referred for arbitration with the intervention of this Court

vide order dated 15.02.2008. The Arbitral Tribunal passed an award dated 13.05.2010 whereby the respondent was held to be entitled to recover a sum of Rs. 1,25,000/- per month towards damages for unauthorized use and occupation of the premises by the appellant w.e.f. 19.12.2007 till the date of passing of the award and further damages at the aforesaid rate from the date of the award till the date of actual handing over possession of the shop to the respondent. The learned Arbitral Tribunal further awarded interest @ 9 per cent per annum from the date of the award till the delivery of possession.

6. An Objection Petition under Section 34 of the Act was filed challenging the award by the Arbitral Tribunal. The contention raised on behalf of the appellant that the agreement in question was a commission agreement and not a rent agreement did not find favour with the learned Single Judge. The learned Single Judge drew support from various clauses of the agreement to reach the conclusion that it was a rent agreement. The contention raised on behalf of the appellant that the learned Arbitral Tribunal had travelled beyond the scope of the agreement was also rejected on the ground that the primary

issue pertains to the claim for eviction consequent upon the issuance of the termination notice by the respondent.

7. It has been urged by the learned counsel for the appellant that the learned Arbitral Tribunal ignored the terms and conditions of the agreement and travelled beyond the agreement dated 07.08.1998 and adjudicated the dispute not contemplated in the agreement. This is not so. In this connection, a reference can be made to Clause 13 of the Arbitration Agreement according to which "if any dispute or difference arises between the parties hereto or their representatives or in regard to any matter relating to touching these presents, save as to any manner the decision whereof is herein before expressly provided of the same shall be referred to the sole arbitration of the Managing Director of the licensee.....". The terms of agreement were very wide and any dispute or difference with regard to the agreement dated 07.08.1998 was liable to be referred for arbitration. An award given by Arbitral Tribunal could be challenged under Section 34 of the Act only on limited grounds. It is now well-settled that an award can be set aside if it is " (i) contrary to (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or

morality; or (ii) is patently illegal or (iii) is so unfair and unreasonable that it shocks the conscience of the court. No ground has been made out. Even if it is assumed that the agreement dated 07.08.1998 was not a rent agreement; but was an agreement for payment of commission, still the premises i.e. Shop No. 12, Block-J, Saket, New Delhi – 110017 was part of the agreement and thus it was within the domain of the Arbitrator to allow eviction of the premises and compensation/damages in respect thereof after the said agreement had been terminated by the respondent. There is no error or infirmity in the impugned order passed by the learned Single Judge.

8. The appeal is accordingly dismissed in limini. All pending applications also stands disposed of.

(G.P. MITTAL)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

November 10th, 2010