

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 19th February, 2014
Judgment Pronounced on: 13th March, 2014

OMP 132/2014

BHARAT LAL MAURYA

..... PETITIONER

Through: Ms. Sneh Lata Srivastava,
Advocate

versus

M/S. GODREJ & BOYCE MFG. CO. LTD

..... RESPONDENT

Through: Mr. Vikas Tiwari, Advocate
with Mr. Raji Abraham, AR
of the Respondent.

OMP. 133/2014

M/S. SANGUINE ENTERPRISES PVT. LTD

.... PETITIONER

Through: Ms. Sneh Lata Srivastava,
Advocate

versus

M/S. GODREJ & BOYCE MFG. CO. LTD

..... RESPONDENT

Through: Mr. Vikas Tiwari, Advocate
with Mr. Raji Abraham, AR
of the Respondent.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. These petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') are objections to two separate but identical arbitral awards both dated 04.10.2013. Since the awards are identical and the facts are similar the objects are being disposed of by a common judgment.
2. The disputes relate to two separate tenanted premises taken on rent by the Respondent. The terms and conditions of letting are identical, identical pleas were raised and evidence led by the parties and both petitions were argued together.
3. The two tenanted premises being shop/space No.G-03 (in OMP No.132/2014) & shop/space No.G-02 (in

OMP No.133/2014) situated in Parsavnath Arcadia Complex, 1, Gurgaon Mehrauli Road, near Sector 14 Gurgaon were taken on lease on 16.02.2007 by the Respondent from M/s. Parsavnath Developers Ltd. for a period of 12 years.

4. Lease Agreements dated 16.02.2007 were executed between M/s. Parsavnath Developers Ltd. and the Respondent. The said lease agreements stipulated that the term of the lease to be 12 years and initial monthly rent to be Rs.1,24,000/-. The lease agreements were executed on a Rs 100/- Stamp paper each and were unregistered.
5. Subsequent to the creation of the tenancy of the Respondent, the respective spaces were sold to the Petitioners/objectors ~~were sold the respective spaces~~ by M/s. Parsavnath Developers Ltd. Subsequent to the purchase of the said spaces by the Petitioners, the

Respondent attorned their tenancy in favour of the Petitioners.

6. As per the Petitioners, the lease agreements also stipulated that there would be a 36 month lock-in-period w.e.f 16.04.2007 to 15.04.2010 in which neither of the parties could terminate the lease. As per the Petitioners, the Respondent in violation of the terms and conditions of the lease agreement, by letter dated 20.01.2009, terminated the lease agreement, paid rent only upto 31.01.2009 and abandoned the shops on 30.03.2009. The Petitioners demanded the rent from the Respondent for the month of February and March, 2009 and also for the unexpired period of the lock-in-period. The Petitioners further contended that the Respondent had never handed over physical possession of the shops to the Petitioners and had failed to remove the fittings and fixtures affixed therein.

7. The Petitioners filed a suit for recovery against the Respondent in the Court of Additional District Judge, Saket on 01.08.2011. The said suit was disposed of with a direction to the parties to settle the dispute through arbitration. The present ~~A~~arbitral Tribunal was constituted by this Court under Section 11 of the Act. The Arbitral Tribunal has published the Awards dated 04.10.2013 that are impugned herein.
8. The Petitioners before the Arbitral Tribunal claimed the rent for the month of February 2009 and March 2009 and further rent from 01.04.2009 to 15.04.2010 being the rent for the balance of the lock-in-period.
9. The Respondent contested the claim of the Petitioners on the ground that the premises were vacated by the Respondent on 30.03.2009 after two months notice to the Petitioners and as such, their liability to pay rent after they vacated the premises ceased. Further, with

respect to the lock-in-period, the Respondent set up a defence that the lease agreements were neither duly stamped nor registered and as such, no term of the lease agreement could be enforced. The Respondent further took a plea that as the lease agreements were not registered, the tenancy was a month to month tenancy terminable by 15 days' notice and no clause of the lease agreements could be relied upon or enforced. The Respondent further claimed adjustment of the security deposited that was admittedly being held by the Petitioners.

10. The following issues were framed by the ~~A~~arbitral ~~I~~tribunal:

- "1) Whether the claimant has no locus standi to file the present claim petition? OPR.
- 2) Whether the claim petition is time barred as alleged in Para 2 of the preliminary objections of the reply to the statement of

claim? OPR.

- 3) Whether the claim petition is hit by section 17(1)(d) r/w section 49 of Indian Registration Act and also hit by section 35 of the Indian Stamps Act. If so, its effect? OPR.

This issue No.3 was amended with the consent of parties on 15-07-2013 as under:

Whether the lease deed dated 16-02-2007 is hit by section 17(1)(d) r/w section 49 of Indian Registration Act and also hit by section 35 of Indian Stamps Act. If so, its effect? OPR.

- 4) Whether the claimant is owner of the suit premises? OPC.
- 5) To what amount, if any, is the claimant entitled to recover from the Respondent? OPC.
- 6) To what rate of interest, if any, is the claimant entitled and if so, for what period

and on which amount? OPC.

7) Relief.”

11. The ~~A~~arbitral ~~I~~tribunal after considering the evidence and the submissions of the parties on issues Nos.1 & 4 returned a finding that the Petitioners ~~were~~as ~~the~~ an owners and landlord of the suit premises and, as such, ~~were~~as entitled to maintain the claim petition. This finding has not been assailed by the Respondent. On issue No.2 pertaining to limitation, the arbitral tribunal has returned a finding that as the premises was vacated on 01.04.2009, the suit for recovery, in which the parties were referred to arbitration, was filed on 15.04.2010 well within limitation. This finding has not been impugned by the Respondent. The Respondent has not impugned the awards.
12. With regard to issue No.3 i.e. issue pertaining to the objection of the Respondent that the claim of the

petitioner for payment for the unexpired lock— in period was hit by the provisions of the Indian Stamp Act and the Indian Registration Act, the arbitral tribunal has held that the Lease Deed was insufficiently stamped and it compulsorily required registration and as it was unregistered, it was inadmissible in evidence and the clause of lock— in period could not be enforced.

13. The Supreme Court in the case of **K.B. SAHA AND SONS PVT. LTD. VERSUS. DEVELOPMENT CONSULTANT LTD. 2008 (8) SCC 564** has laid down as under:

“21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not

be using it as a collateral purpose.”

14. A document that is compulsorily required to be registered and is not registered is inadmissible in evidence. A document compulsorily required to be registered but not being so registered cannot be used as evidence except for any collateral purpose. A collateral transaction must be independent of and divisible from the transaction to effect which the law requires registration. A collateral transaction must be a transaction not itself required to be effected by a registered transaction. Some examples of collateral transaction in transactions pertaining to landlord-tenant would be the relationship between the parties, nature of premises, purpose of letting, rate of rent. An unregistered lease deed can be looked into for the purposes of ascertaining any of the above collateral purposes but not for enforcing a term of the lease.

15. A clause in a lease deed fixing or stipulating a term of

=====

the lease or a fixed term of lock-in-period is not a collateral purpose. The said clause would be one of the main clauses of the lease which in the absence of registration would be inadmissible in evidence and unenforceable in law. The arbitral tribunal has rightly held that the clause vis-a-vis the lock-in-period cannot be called a collateral purpose and the tenancy between the parties was not a fixed term tenancy but a month to month tenancy terminable by a notice on either side.

16. The arbitral tribunal has further rightly held that the document was insufficiently stamped and as such, inadmissible in evidence. If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. (**SMS TEA ESTATES PVT. LTD. ~~/~~VERSUS~~/~~ CHANDMARI TEA COMPANY PVT. LTD. 2011 (14) SCC 66**).

17. The finding of the Arbitral Tribunal, that the Lease agreement compulsorily required registration and in the absence of registration and being insufficiently stamped was inadmissible in evidence and unenforceable and further that the clause stipulating a lock—in period was one of the main clauses of the lease and in the absence of registration could neither be relied upon nor enforced, cannot be faulted with.
18. The arbitral tribunal has, on the appraisal of the evidence of the parties, returned a finding of fact that the tenancy was terminated by the Respondent by the legal notice dated 20.01.2009, which notice also intimated the intention of the Respondent to vacate the premises w.e.f 01.04.2009. The arbitral tribunal has further returned a finding of fact that the premises were vacated w.e.f 01.04.2009. The arbitral tribunal has held the Respondent liable to pay rent for the months of February and March 2009 at the agreed

rate of Rs.1,24,000/- besides service tax and maintenance charges.

19. The arbitral tribunal has held that the Respondent is entitled to the balance of the security deposit after adjustment of the amount held to be payable by the Petitioners alongwith interest @ 18% per annum.

20. The Petitioners haves disputed the pure findings of fact by the arbitral tribunal. @@@@

21. A perusal of the impugned petition filed by the Petitioners shows that the Petitioners haves claimed rent for the month of February and March, 2009 separately and rent from 01.04.2009 to 15.04.2009 as rent from the lock-in-period. This segregation by the Petitioners gives an indication that the Petitioners ~~himself~~were aware that the premises had been vacated on 01.04.2009 and further in the legal notice dated 29.04.2009 (Ex.CW1/10) issued on behalf of the

Petitioners, the Petitioners have ~~himself-themselves~~ admitted that the Respondent had vacated the premises on 30.03.2009. However, as disputed, the physical possession of the same was not handed over. The finding by the arbitral tribunal that the Respondent had vacated the premises w.e.f 1.04.2009 is a pure finding of fact.

22. The power exercised by the Court while deciding objections under Section 34 of the Act are not appellate powers. The Court does not sit as a Court of appeal. If the arbitral tribunal has taken a plausible view, the Court while dealing with objections under Section 34 would not substitute its view for the view of the arbitral tribunal even in a case where the Court were to come to a conclusion that a different view is plausible from the view that the arbitral tribunal has taken provided the view taken by the arbitral tribunal was a plausible view. The Court entertaining

objections under Section 34 is not to appreciate or re-appreciate the evidence for the purposes of returning a finding of fact. The findings of fact returned by the arbitral tribunal are not to be interfered with unless they are perverse. No such perversity has been pointed out in the present case. The findings of the arbitral tribunal that the agreement being unregistered and insufficiently stamped and thus inadmissible in evidence and further that no clause of the said agreement can be interfered with, are the correct findings in accordance with the settled judicial pronouncement.

**The scope of interference with an Award
under Section 34 of the Act**

***1. McDermott International Inc. v. Burn Standard
Co. Ltd. : (2006) 11 SCC 181.***

“34. After the 1996 Act came into force, under
Section [16](#) of the Act the party questioning the

jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the Arbitrator would be subject matter of challenge under Section [34](#) of the Act. In the event, the arbitrator opined that he had no jurisdiction in relation thereto an appeal there against was provided for under Section [37](#) of the Act.

35. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving

the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it. However, this Court, as would be noticed hereinafter, has the occasion to consider the matter in great detail in some of its decisions.

36. In Primetrade AG v. Ythan Ltd. (2006) 1 All ER 367, jurisdictional issue based on interpretation of documents executed by the parties fell for consideration having regard to the provisions of the Carriage of Goods by Sea Act, 1992. It was held that as the appellant therein did not become holder of the bills of lading and alternatively as the conditions laid down in Section 2(2) were not fulfilled, the arbitrator had no jurisdiction to arbitrate in the disputes and differences between the parties. ”

2. *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 at page 736

“54. It is true that if the Arbitral Tribunal has committed mere error of fact or law in reaching its conclusion on the disputed question submitted to it for adjudication then the court would have no jurisdiction to interfere with the award. But this would depend upon reference made to the arbitrator: (a) if there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the court could interfere; (b) it is also settled law that in a case of reasoned award, the court can set aside the same if it is, on the face of it, erroneous on the proposition of law or its application; and (c) if a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit its being set aside, unless the court is satisfied that the

arbitrator had proceeded illegally.

56. Dealing with the similar question, this Court in *Alopi Parshad & Sons Ltd. v. Union of India* [AIR 1960 SC 588 : (1960) 2 SCR 793] observed that the extent of jurisdiction of the court to set aside the award on the ground of an error in making the award is well defined and held thus: (AIR p. 592, para 16)

“The award of an arbitrator may be set aside on the ground of an error on the face thereof only when in the award or in any document incorporated with it, as for instance, a note appended by the arbitrators, stating the reasons for his decision, there is found some legal proposition which is the basis of the award and which is erroneous—*Champsey Bhara and Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.* [(1922-23) 50 IA 324 : AIR 1923 PC 66] If, however, a specific question is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law, does not make the award bad on

its face so as to permit its being set aside — *In the matter of an arbitration between King and Duveen, Re* [(1913) 2 KB 32 : 82 LJ KB 733 : 108 LT 844] and *Govt. of Kelantan v. Duff Development Co. Ltd.* [1923 AC 395 : 129 LT 356 (HL)]

Thereafter, the Court held that if there was a general reference and not a specific reference on any question of law then the award can be set aside if it is demonstrated to be erroneous on the face of it. The Court, in that case, considering Section 56 of the Indian Contract Act held that the Indian Contract Act does not enable a party to a contract to *ignore the express provisions thereof and* to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity and that the *arbitrators were not justified in ignoring the expressed terms of the contract prescribing the remuneration payable to the agents*. The aforesaid law has been followed

continuously. (*Rajasthan State Mines & Minerals Ltd. v. Eastern Engg. Enterprises* [(1999) 9 SCC 283] , *Sikkim Subba Associates v. State of Sikkim* [(2001) 5 SCC 629] and *G.M., N. Rly. v. Sarvesh Chopra* [(2002) 4 SCC 45] .)

57. There is also elaborate discussion on this aspect in *Union of India v. A.L. Rallia Ram* [AIR 1963 SC 1685 : (1964) 3 SCR 164] wherein the Court succinctly observed as under: (AIR p. 1691, para 13)

“But it is now firmly established that an award is bad on the ground of error of law on the face of it, when in the award itself or in a document actually incorporated in it, there is found some legal proposition which is the basis of the award and which is erroneous. An error in law on the face of the award means: ‘you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can

then say is erroneous. It does not mean that if in a narrative a 'reference is made to a contention of one party, that opens the door to setting first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound': *Champsey Bhara and Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.* [(1922-23) 50 IA 324 : AIR 1923 PC 66] But this rule does not apply where questions of law are specifically referred to the arbitrator for his decision; the award of the arbitrator on these questions is binding upon the parties, for by referring the specific questions the parties desire to have a decision from the arbitrator on those questions rather than from the court, and the court will not, unless it is satisfied that the arbitrator had proceeded illegally, interfere with the decision."

(emphasis supplied)

58. The Court thereafter referred to the decision rendered in *Seth Thawardas Pherumal*

v. *Union of India* [AIR 1955 SC 468 : (1955) 2 SCR 48] wherein Bose, J. delivering the judgment of the Court had observed: (AIR p. 475, para 18)

“Therefore, when a question of law is the point at issue, unless ‘both’ sides ‘specifically’ agree to refer it and agree to be bound by the arbitrator's decision, the jurisdiction of the courts to set an arbitration right when the error is apparent on the face of the award is not ousted. The mere fact that both parties submit incidental arguments about a point of law in the course of the proceedings is not enough.”

The learned Judge also observed at SCR p. 59 (AIR p. 475, para 18) after referring to *F.R. Absalom Ltd. v. Great Western (London) Garden Village Society* [1933 AC 592 : 1933 All ER Rep 616 : 102 LJ KB 648 : 149 LT 193 (HL)] , AC at p. 616:

“Simply because the matter was referred to

incidentally in the pleadings and arguments in support of, or against, *the general issue about liability for damages, that is not enough to clothe the arbitrator with exclusive jurisdiction on a point of law.*”

(emphasis supplied)

59. The Court also referred to the test indicated by Lord Russell of Killowen in *F.R. Absalom Ltd. v. Great Western (London) Garden Village Society* [1933 AC 592 : 1933 All ER Rep 616 : 102 LJ KB 648 : 149 LT 193 (HL)] and observed that the said case adequately brings out a distinction between a specific reference on a question of law, and a question of law arising for determination by the arbitrator in the decision of the dispute. The Court quoted the following observations with approval: (All ER p. 621 F-H)

“It is, I think, essential to keep the case where disputes are referred to an arbitrator in the

decision of which a question of law becomes material distinct from the case in which a specific question of law has been referred to him for decision. ... The authorities make a clear distinction between these two cases, and, as they appear to me, they decide that in the former case the court can interfere if and when any error of law appears on the face of the award, but that in the latter case no such interference is possible upon the ground that it so appears that the decision upon the question of law is an erroneous one.”

60. Further, in *Maharashtra SEB v. Sterilite Industries (India)* [(2001) 8 SCC 482] the Court observed as under: (SCC p. 486, paras 9-10)

“9. The position in law has been noticed by this Court in *Union of India v. A.L. Rallia Ram* [AIR 1963 SC 1685 : (1964) 3 SCR 164] and *Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd.* [AIR 1967 SC 1030 : (1967) 1 SCR 105] to the effect that the arbitrator's award both on facts and law is final; that there is no appeal from his

verdict; that the court cannot review his award and correct any mistake in his adjudication, unless the objection to the legality of the award is apparent on the face of it. In understanding what would be an error of law on the face of the award, the following observations in *Champsey Bhara & Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd.* [(1922-23) 50 IA 324 : AIR 1923 PC 66] , a decision of the Privy Council, are relevant (IA p. 331)

'An error in law on the face of the award means, in Their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.'

10. In *Arosan Enterprises Ltd. v. Union of India* [(1999) 9 SCC 449] this Court again examined this matter and stated that where the error of finding of fact having a bearing on the award is

patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference in the award based on an erroneous finding of fact is permissible and similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator.”

3.Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445 at page 451

“14. The High Court did not have the benefit of the principles laid down in *Saw Pipes* [(2003) 5 SCC 705] , and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in *Saw Pipes* [(2003) 5 SCC 705] has made

it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India.

15. After the matter was argued at some length, both counsel on instructions submitted that they agreed in principle on the following aspects:

(a) The Respondent is entitled to escalation in price, calculated as per the escalation clause (clause 5 of the Purchase Order) on the basis of the price difference between the actual price paid for the coal used and the base price of such coal on 8-11-1991.

(b) The Respondent had used Washery Grade II coal in regard to the supplies from 18-12-1991 to 13-7-1992. Therefore, in regard to supplies during the said period, the price escalation, if any, had to be calculated with reference to base price and actual price of Washery Grade II

coal.

(c) The Respondent had used Washery Grade I coal in regard to the supplies from 14-7-1992. Therefore, in regard to supplies between 14-7-1992 till 20-7-1994 (date of last supply), the price escalation had to be calculated with reference to the difference between the base price and the actual price at which the Respondent purchased Washery Grade I coal.

(d) The award of the Arbitral Tribunal was only in regard to the supplies made between 14-7-1992 to 20-7-1994 when the Respondent used Washery Grade I coal.

(e) The interest payable on the amount found due shall be 21 per cent per annum from the date when the amount became due till the date of the award, and 18% per annum from the date of award till the date of payment.

On 21-3-2006, we recorded briefly the aforesaid agreed position and granted time to the parties to file calculations of the amount

due on that basis.”

23. I find no merit in the petition. The petition is accordingly dismissed. No costs.

SANJEEV SACHDEVA, J

**March 13, 2014
st**

