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

+ **FAO 81/2014 and CMs 4845/2014 (stay) & 4846/2014 (Exemption)**

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14th March, 2014

PRADEEP SAINI

.....Appellant

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. Rohit Goel, Mr. Aman Bhalla,
Advocates

VERSUS

SHEELA ARORA

..... Respondent

Through: Ms. Priya Kumar, Mr. Prashan
Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM 4846/2014 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed off.

FAO 81/2014 and CMs 4845/2014 (stay)

1. This first appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') impugning the judgment of the court below dated 25.3.2013 which had dismissed the

objections filed by the appellant/objector under Section 34 of the Act. The Award of the arbitrator dated 1.12.2011 decreed the petition filed by the respondent/claimant/landlord for possession and mesne profits.

2. There is no dispute that the appellant is a tenant. The dispute was as to what is the rate of rent. Whereas the appellant contends that the rent was only Rs. 2,000/- per month; the respondent-landlord pleaded that the rate of rent was Rs. 4,500/- pm initially, and which was subsequently increased to Rs. 6,500/- p.m. This issue is relevant inasmuch if the rent is less than Rs.3,500/- p.m., then a civil court or the arbitrator will not have jurisdiction and jurisdiction as regards eviction of tenant would have to be of the Rent Controller under the Delhi Rent Control Act, 1958.

3. The arbitrator in his detailed Award has given the following findings:

(i) The stand of the appellant/respondent/tenant that the lease agreement dated 1.5.1999 is forged and fabricated document because it does not bear the signatures of the appellant is a misconceived defence. The finding that the lease agreement does bear appellant's/tenant's signature is arrived at by reference to the report of a handwriting expert and in which report a finding is given that the lease agreement thus contained the signatures of the appellant/tenant.

(ii) Once the lease agreement is proved, it is also proved that at the time

of commencement of the lease the rent was Rs. 4,500/- p.m as stated in the lease agreement and consequently this takes away the jurisdiction of the Rent Controller under the Delhi Rent Control Act and a civil court or an arbitrator will have jurisdiction to decide the proceedings for possession and mesne profits.

(iii) A civil case has to be decided on preponderance of probabilities, and therefore considering the entire evidence led by the parties, the respondent's/landlord's claim must succeed.

4. Learned senior counsel for the appellant very emphatically argued two aspects for setting aside of the Award. Both the aspects pertain to lack of jurisdiction of the arbitrator in deciding the disputes. Firstly it is argued that the arbitrator could not decide disputes pertaining to the subject of fraud and forgery because such issues can only be decided by the civil courts and not by arbitrators. The second aspect urging lack of jurisdiction of the arbitrator is that the lease agreement was for a limited period and the arbitration clause contained therein hence stood expired after the period as stated in the lease agreement and in any case the clause can only be qua the disputes within the period of the lease agreement and not for the period beyond the same.

5. In my opinion the arguments urged by the appellant are liable to be rejected for a very simple reason that, I do not find that these two aspects/ issues were urged before the arbitrator. Learned senior counsel for the appellant has drawn the attention of this Court to preliminary objection no. 2 of the statement on defence to contend that this should be read as to include both these defences. In my opinion, the argument is misconceived and for this purpose let me reproduce preliminary objection no. 2 of the statement of defence as under:

“2. It is respectfully submitted that the arbitration tribunal lacks inherent jurisdiction to hear the present matter. It is submitted that the alleged lease agreement dated 01.05.1999 relied upon by the Claimant containing an arbitration clause is a false, fabricated and forged document. The Respondent denies having ever executed or entered into the alleged lease agreement dated 01.05.1999. It is submitted that no indenture, agreement or lease deed was ever entered into or executed between the parties. It is submitted that there was an oral agreement for tenancy between the husband of the Claimant – Shri J.R. Sundrani (who is owner of ½ undivided share of the property in question) alongwith the Claimant, and the Respondent, which had commenced in the year 1997 (and not 1999) and has been continuing since. The agreed rent with the Respondent has been paying to jointly the Claimant and her husband is a sum of Rs. 2,000/- (Rupees Two Thousand only). It is submitted that, in the absence of existence of any written agreement dated 1.05.1999, there exists no arbitration clause between the parties and thus the Ld. Arbitrator lacks inherent jurisdiction. The proper and necessary forum for the adjudication for the claimants claim for recovery of possession is the court of competent jurisdiction under the Delhi Rent Control Act, 1958.”

6. A reading of the aforesaid para shows that only defence which was raised before the arbitrator was that the agreement is forged and fabricated and it therefore cannot be looked into and thats all. Also, there is no defence in the written statement that the arbitration clause stood expired on conclusion of the lease agreement, and therefore, arbitration proceedings were not maintainable.

7. It bears note that as per Section 16 of the Act, objection as to jurisdiction of the arbitrator have to be specifically taken before the arbitrator, and if any such objection is not raised, surely that objection is deemed to be waived. Therefore, once the objections which are urged before me are found not to have been raised in the arbitration proceedings, and therefore also have not been decided by the arbitrator, hence, it is not permissible for the appellant to raise any of the such objections under Section 34 in this Court in first appeal and much less under Section 37 for the first time in appeal in this Court. Such issues can be waived and were waived by not raising the same before the arbitrator.

8. No other issue is urged before this Court.

9. In view of the above, it is clear that the appeal is an unnecessary

continuing harassment of the respondent-landlord, and whose premises are obdurately not being vacated by the appellant. I may also note that issues of appreciation of evidence and conclusions of facts are in the realm/jurisdiction of the arbitrator and a court hearing objections under Section 34, much less a court hearing an appeal against the judgment dismissing objections under Section 34, can go into the aspects of appreciation of evidence, once evidence has been appreciated by the arbitrator and out of two views possible and plausible, one view has been taken.

10. In view of the above, this appeal is without any merit whatsoever and is accordingly dismissed with costs of Rs. 50,000/-. Supreme Court in the judgment in the case of *Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249* has observed that it is high time that in certain litigations, actual costs must be imposed. I am also empowered to impose actual costs in terms of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*. Costs be paid within six weeks from today.

VALMIKI J. MEHTA, J

MARCH 14, 2014
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