

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

Date of hearing and order: 25th September 2014.

+ **FAO(OS) 256/2014**

KARAMYOGI SHELTERS PVT LTD Appellant
Through **Ms. Nitya Ramakrishnan & Mr.**
Aswath Sitaraman, Advocates

versus

BENARSI KRISHNA COMMITTEE & ORS Respondents
Through **Mr. T.K. Gunju, Sr.Advocate with**
Mr. Rohit Gandhi & Mr. Varun Garg,
Advocates

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **25.09.2014**

KAILASH GAMBHIR, J. (ORAL)

1. In the instant appeal filed under Section 37 (1) (b) of the Arbitration and Conciliation Act, 1996 read with Section 10(1) of the Delhi High Court Rules, the appellant seeks to challenge the impugned judgment dated 03.02.2014 passed by the learned Single Judge, whereby the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed.

2. Ms. Nitya Ramakrishnan, the learned counsel appearing for the

appellant vehemently contended that the learned Single Judge failed to appreciate that the alleged letters of termination dated 10.10.1992 and 26.10.1992 were signed by one of the Attorneys, who alone was not competent to rescind the Collaboration Agreement, because of the fact that as per the terms of the Power of Attorney, only both the attorneys could take a joint decision to rescind the agreement.

3. The other contention raised by the learned counsel for the appellant is that the learned Single Judge also misconstrued the terms of the Collaboration Agreement dated 16.11.1990 as amended on 02.05.1991 whereunder the payment of amount of Rs.240 lacs was to be made by the appellant within a period of 90 days of handing over the possession of the cinema house to the appellant. The possession of the cinema house in question was never delivered by the respondent to the appellant. Therefore, the appellant was not obligated to make the said payment of Rs.240 lacs to the respondent.

4. Another contention raised by the learned counsel for the appellant is that the reciprocal obligations arising under the Collaboration Agreement could be performed by the appellant only after the plans were duly approved by the MCD, that at the time of the execution of the Collaboration

Agreement, the Zonal Plan did not explicitly permit the development and/or conversion of the cinema house into a commercial complex, therefore, any demand for the said amount of Rs.240 lacs could be raised by the respondent only after the approval of the Zonal Plan, which itself at that time was then in a state of flux. The learned counsel further submits that the learned Arbitrator and the learned Single Judge failed to appreciate that as per the terms of Clause (xvii) of the Collaboration Agreement, once the possession was taken over by the appellant, the appellant was obliged to make payment @ Rs.35,000/- per month to the respondent during the first 27 months of the development of the commercial complex, an amount which was subject to further rise in terms of the said clause. Thus the appellant would not have incurred the said liability after having paid the amount of Rs.240 lacs, that too without being given the possession of the cinema house of the respondent and also, the building by-laws being still in a state of flux.

5. We have heard the learned counsel for the appellant and given our thoughtful consideration to the arguments advanced by her.

6. The petitioner /appellant is in appeal to assail the judgment dated 03.02.2014 passed by the Hon'ble Single Judge, wherein the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 was

dismissed along with costs of Rs. 25,000/-. The learned counsel for the appellant reiterates the contentions raised before the learned Single Judge. The learned Single Judge in the impugned judgment held that the objections raised by the appellant herein lacked any legal or factual merit.

7. As can be observed, a detailed award was passed by the learned Arbitrator based on the evidence led by the parties and on careful examination of the terms of the Collaboration Agreement dated 16.11.1990 which stood amended on 02.05.1991 and other materials placed on record in the form of documentary evidence. Though the learned Single Judge did not find any illegality, infirmity or perversity in the award dated 12.05.2004 passed by the learned Arbitrator, the impugned order delved deeply into each and every issue and after a detailed discussion the judgment was in agreement with the reasoning given by the learned Arbitrator.

8. It is a settled legal position that the Court is precluded from re-appraising the evidence and the findings recorded by the learned Arbitrator and substitute its own view in preference to the view taken by the learned Arbitrator. The scope of interference by the Court in interpreting the terms of the contract is limited and the consistent judicial view has been that when a view taken by the learned Arbitrator is a plausible one, then even if there is

latitude for another view or interpretation the Court would refrain and desist from interfering. It is only when the Court is satisfied that the reasons given by the learned Arbitrator are totally perverse or illegal, that the Court would exercise its jurisdiction to interfere with such an award. We may usefully refer to a recent Supreme Court judgment in ***Civil Appeal No. 9048 of 2014*** titled as ***Swan Gold Mining Ltd. V. Hindustan Copper Ltd.***, where, in the following para, it was held as under:-

"Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of Sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal."

"It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him."

9. This Court shall not reiterate the reasons given by the learned Single Judge in dealing with all the said contentions raised by the learned counsel for the appellant, as such an exercise would merely be repetitive in nature. We find ourselves in complete agreement with the reasoning given by the learned Single Judge in dismissing the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 while upholding the award dated 12.05.2004 passed by the learned Arbitrator.

10. The learned Single Judge is correct in observing that Clause (xviii) (d) after the amendment, clearly provided that the amount of Rs.240 lacs had to be paid on demand for taking possession of the cinema house, by the party of the first part from the tenant and in this background the contention of the appellant that the amount of Rs.240 lacs were payable by the appellant to the respondent, only upon the appellant taking possession from the respondent, has absolutely no basis. The learned Single Judge also reasoned as to why the said amount was cited in the Collaboration Agreement, and concluded that the same was because of the respondent having entered into an agreement on 15.03.1991, with the tenant of the cinema house, wherein the tenant agreed to vacate the premises prematurely in consideration of Rs. 1.50 crores and therefore, to make the payment of the agreed amount to the

tenant, the respondent felt the need to acquire the said funds to the tune of Rs.240 lacs from the appellant.

11. In the light of the above discussion, we do not find any merit in the present appeal, the same is hereby dismissed.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 25, 2014

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