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

+ **O.M.P. 785/2014**

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Date of decision: 23rd July, 2014

M/S INDIAN INSTITUTE OF PLANNING & MANAGEMENT
& ANR. Petitioners

Through: Mr.Raman Kapur, Sr.Adv. with
Mr.Gursharan Singh, Adv.

versus

M/S DESEIN PVT LTD. Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

I.A.No.13361/2014 (for exemption)

Exemption is allowed subject to just exceptions.

Application is disposed of.

O.M.P. 785/2014

1. The present petition under Section 34 of the Arbitration and Conciliation Act has been filed challenging the interim award dated 6.1.2014.

2. It is submitted that the learned arbitrator has erred in allowing the

application of the respondent under Order 12 Rule 6 of CPC. It is submitted that the impugned award dated 6.1.2014 is wrong, illegal, contrary to law and against the terms of the contract and against the public policy of India and deserves to be set aside. It is further submitted that the learned sole arbitrator has erred in holding that it is a case of admitted liability for the payment of damages for the period 1.11.2012 to 11.12.2012 as the petitioner was admittedly in occupation of the premises in question and also liable to house tax as per terms of lease deed.

3. Heard. File perused.

4. Admittedly, the petitioner was the tenant in the building on the plot No.79 at measuring 4050 sq.mtrs. situated in Sector -32, Echnon, Gurgaon, Haryana under a lease deed dated 17.08.2007. There was a series of subsequent lease deed/rectification deed/assignment deed etc. The premises were to be vacated under the lease deed on 25.8.2011. The fact that the demised property was not vacated on that day. There is no dispute to the fact that the demised premises were handed over by the petitioner to the landlord only on 12.12.2011. The respondent/landlord invoked the arbitration clause between the parties and the proceedings

were started before the arbitrator. During the proceedings, the respondent/claimant moved an application under Order 12 Rule 6 of Civil Procedure Code. Pursuant to that application, learned tribunal passed its award dated 6.1.2014. It is this award which has been challenged by the petitioner. The petitioner has argued that the petition under Section 34 of the Arbitration and Conciliation Act is within time because certified copy of the said award was provided to him only on 15.3.2014.

5. The claim of the landlord/claimant and respondent in this proceeding, before the arbitrator on the counts that the demised premises was to be vacated on 25.8.2011 under the lease agreement and that it was vacated only on 12.12.2011, was not denied by the petitioner in his reply to the claim before the arbitrator. The only contention raised was that the premises were not in use during the period 1.11.2012 to 12.12.2012. It is also not disputed that the lease had expired by efflux of time on 25.8.2011. The petitioner has also raised the contention before the learned arbitrator that no order under Order 12 Rule 6 CPC could be passed by the learned arbitrator when the liability is disputed. The petitioner had relied upon certain case laws i.e. *Parivar Seva Sansthan*

vs. Veena Kalra AIR 2000, Delhi-349 and Dena Bank vs. Bindal Construction, AIR 1992, Delhi 171. The landlord/respondent/ claimant before the learned arbitrator had also claimed payment of property taxes which was one of the terms of the lease for the period of occupation of the property by the tenant/petitioner. The learned tribunal regarding liability to pay the property tax is concerned has observed as under:

“3. So far as the liability to pay the property tax is concerned. The clear clause is available in the deed/s as under:-

The parties mutually agree that at present there is no house tax/property tax/any other tax of similar nature applicable to the said plot and/or Demised Premises. However, in case such a tax/cess/levy is introduced anytime after the execution of the Lease Deed and during the term of the Lease Deed, Lessee shall bear the tax/cess/levy equivalent to 10% of the annual rent as paid on such date by the lessee to the lessor. Any tax/cess/levy over the above the 10% of the annual rent, shall be borne by the Lessor.

4. The claimant avers that in February 2013, it received a demand notice from the tax authority for paying the property tax for the period of July 2008 to March 2011 and that since respondents were in possession of the demised property during this period they are liable to pay the property tax as per the contract between the parties. The claimant further alleges that the respondent are liable to pay the property tax from July 2008 till 11.12.2011 which is assessed at Rs.63,20,946/-.”

6. It was only after discussing the case laws that learned tribunal had reached to the conclusion as under:

“11. The law cited does not say that an order u/o 12 R 6 CPC cannot be passed because the defendant makes a bald denial of liability despite admitting the facts which may entitle the plaintiff to a decree. The facts admitted lead to a decree. The respondents admit the relationship of landlord and tenants. The respondents also admit the rate of rent. The respondents admit the day on which the tenancy was handed over. The respondents’ mere plea that they were not using the premises cannot absolve them of the liability for mesne profits/rent. They are liable for this payment for the period upto which they retained possession which in this case is admittedly 12.12.2011.

12. It can be mentioned here that by way of preliminary issue the respondents dispute the liability of respondent No.2. They do not however, dispute or challenge the several lease agreements/assignment agreements which show that the respondent No.2 who had taken on assignment the entire premises/property and subsequently surrendered 25% of the same remain liable for the portion of the rent proportionate to its occupation. No other preliminary issue was pressed.

13. In view of the above, I find that the claimant is entitled to an Award for the mesne profit for the period of 01.11.2011 to 12.12.2011 assessed at Rs. 68,60,376/- and taxes assessed Rs.63,20,946/-, as well as the property tax for the period of July,2008 to 12.12.2011 amounting to Rs.63,20,946/-.

14. Hence the application u/o 12 R 6 CPC is allowed. The claimant is hereby granted an Award for the aforesaid sums making a total of Rs.1,31,81,322/- . The

responsibility to pay the amount awarded is joint and several – respondent no.1 being reliable for the entire the amount while the respondent No.2 is liable only for 75% of the same.”

7. In view of the above, it is apparent that the award of the learned arbitrator is well reasoned and all the contentions of the parties have been taken into consideration, the case laws relied upon were also discussed and thereafter only the learned arbitrator had reached to the conclusion that a decree could be passed under Order 12 Rule 6 CPC on account of admission. It is also apparent that even during the arguments before this court it was not disputed that the premises was to be vacated in August but the possession could be handed over on 12.12.2011. The rate of rent was not disputed at any stage in the arbitral proceedings. The learned arbitrator has calculated the mesne profit/damages on the basis of agreed rent.

8. In view of the above, it is apparent that the order of learned tribunal does not suffer with any illegality. It is not against any public policy. The petition has no merit and is hereby dismissed.

DEEPA SHARMA, J

JULY 23, 2014

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