

Mr. Hemant Prabhalkar alongwith Mr. Yogesh Bhoge i/by
Juris Consultant, Advocate for the appellant.

Mr. A.A. Kumbhakoni, Senior Counsel i/by Mr. U.B. Nighot,
Advocate for the respondent.

Coram : Smt. R.P. SondurBaldota, J.

Date : 11th September, 2015

P.C.

1 The above appeals are the counter-appeals arising out of the same arbitration proceedings and the order of the District Court on the challenge to the arbitral award under Section 34 of the Arbitration and Conciliation Act.

2 The appellant in the first appeal is the original claimant and the appellant in the second appeal is the original respondent. The parties shall hereinafter be referred to by their original nomenclature. The claimant is the owner of the land at gat No.1042, survey no. 124/4A, admeasuring 61 Are, situate at village Varchi Bhamburwadi, Taluka Khed, District Pune, which is adjoining to the Pune-Nasik highway. He desired to start a petrol pump and had approached the respondent for dealership. The respondent had agreed to offer dealership provided the land of the claimant was leased to it. The claimant agreed for the same and obtained "No Objection Certificate" from the Collector, Pune for storage of petroleum substances on the land. Then there were two agreements executed between the parties, one was for lease of land dtd.28th September, 2005 and the other dealership agreement dtd.15th September, 2006. Both the agreements

contained clause for arbitration. The dispute herein arises out of the two agreements.

3 The brief facts of the dispute are as follows:

The inspection carried out by the respondent of the petrol pump on 17th October, 2008 revealed certain irregularities. Therefore, by the notice dtd. 18th April, 2008 the claimant was called upon to show cause as to why action should not be taken against his dealership for the irregularities, which were in violation of Marketing Discipline Guidelines of the year 2005. The serious irregularities found and noted at the time of inspection read as under:

“1 Normal HSD was decanted in Xtramile HSD tank on following dates as per entries in the Daily Sales Register (DSR):

Date	Quantity	Invoice No.
15.12.07	6 KL	622628980
22.01.08	12 KL	623340574
14.02.08	12 KL	623749988
11/03/08	6 KL	624245643
28.03.08	Approx. 6KL	624580423
17.04.08	12 KL	624944056

This is a case of selling normal HSD as Xtramile HSD.

2 The Xtramile Dispensing unit was delivering short by 160 ml.

3 Xtramile and normal HSD receipts were not mentioned separately in the DSR.

4 Copies of invoices were not available at the RO during the inspection.

Sub.: Discrepancies found at the time of Inspection on 17.04.08

5 Cash memos are issued without relating carbon copies.”

The claimant submitted his say to the show cause notice on 25th April, 2008 admitting the irregularities, but with a promise not to repeat mistakes in future. Then the respondent initially suspended the dealership licence of the claimant on 17th July, 2009. Later by the letter dtd.20th August, 2008, it terminated dealership of the claimant. Then the claimant invoked arbitration under both the agreements by making application dtd. 24th August, 2009. The respondent appointed it's Senior Manager, Mr. B.L. Parihar as the sole Arbitrator by it's letter dtd.9th November, 2009.

4 The learned Arbitrator adjudicated the disputes under both the agreements by the award dtd. 4th November, 2010. As regards the termination of dealership by the respondent, he held that the same was legal and valid. But as regards the lease agreement, he partly allowed the claim of the claimant by reducing the lease period from 29 years to 19

years and 11 months and by increasing the lease rent to Rs.10,000/- p.m. from Rs.1,750/- p.m..

5 The award was challenged by the respondent by preferring Civil Miscellaneous Application No.115 of 2011. The claimant filed his “cross-objections-cum-counter claim” challenging the award. The District Court by its judgment and order dtd.29th January, 2013 partly allowed the Miscellaneous Application by restoring the lease period to 29 years. It however maintained the increase in the lease rent awarded by the learned Arbitrator. Being aggrieved by the order, both the sides have preferred the present appeals under Section 37 of the Arbitration Act.

6 In view of the admission by the claimant of serious irregularities committed by him in running the petrol pump and violation of the Marketing Discipline Guidelines, 2005, there can be no interference with the award relating to termination of the dealership of the claimant. As regards the lease agreement, the claimant desired further enhancement of the lease rent to Rs.35,000/- p.m. whereas the respondent desired it to be reduced back to Rs.1750/- p.m.. The other objection raised by the respondent was to the reduction in the period of lease from 29 years to 19 years and 11 months.

7 The reasons set out by the learned District Judge for maintaining the enhancement of the lease rent and setting aside the award as regards decrease of the lease period are at paragraphs 15 and 16 of the impugned order. The learned Judge has opined that if the term of an agreement is wholly prejudicial or causes grave injustice to one of the parties, the same cannot be overlooked by the Court of Justice as well as the Arbitrator. According to it, since the land of the claimant is being used for commercial purposes even the enhancement of lease rent to Rs.10,000/- p.m. was on the lower side. He however maintained the enhancement in the award. About the reduction of the lease period, the learned Judge held that it was not within the province of the Arbitrator to decrease the lease period to 19 years and 11 months because the claimant had agreed to lease out the property for the period larger than that mentioned in the advertisement. According to the learned Judge, this part of the order can be taken to be contrary to law or beyond his jurisdiction of the dispute.

8 Mr. Kumbhakoni, the learned Senior Counsel appearing for the claimant submits that that the adjudication of the dispute under the lease agreement was in fact beyond the jurisdiction of the learned Arbitrator. He points out that the lease agreement provided for a specified Arbitrator i.e. the Managing Director of the respondent or any other person designated or nominated by the Managing Director. He argues

that it is not the case of the respondent that the Managing Director had nominated Mr. B.L. Parihar as an Arbitrator in his place. Therefore the dispute as regards the land leased to the respondent under the lease agreement could not have been adjudicated by the Arbitrator. The adjudication of dispute by him was without his jurisdiction.

9 Perusal of the record however shows that no such contention was taken before the Arbitrator as also in the application filed under Section 34 of the Arbitration Act. Therefore, the appellant cannot be allowed to raise it for the first time before this court. Because it would mean that the claimant has accepted Mr. B.L. Parihar as the Arbitrator for the dispute under the lease agreement.

10 Coming to the interference by the appellate court with the award on the dispute under the lease agreement, it is patent from the impugned order that the interference with the same was beyond the provision of Section 34 of the Arbitration Act. The learned Judge on the one hand permitted enhancement of the lease rent but denied the reduction of the lease period. The learned Judge lost sight of the fact that the claimant had contended before the learned Arbitrator that he was compelled by the respondent to agree for the lease of 29 years and 11 months, though the advertisement permitted him dealership for only 19 years and 11 months. It is

nobody's case that the lease rent of Rs.1,750/- per month was at the market rate at the relevant time. It is obvious that the claimant had agreed for the extended period of the lease only because the same was coupled with the dealership agreement. In the circumstances, there was no scope for the District Court to interfere with the impugned award. To that extent, the appeal of the claimant must be allowed and the directions contained in the impugned order at paragraph "2" be set aside. Hence, Arbitration Appeal No.39 of 2013 is dismissed. Arbitration Appeal No.19 of 2013 is partly allowed. The direction at para 2 of the impugned order is set aside.

(Smt. R.P. SondurBaldota, J.)