

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

Date of decision: March 26, 2015

+ **OMP No. 641/2012**

N.S.MITTAL AND ANOTHER Petitioner

Through: Mr.Vishwa Bhushan Arya,
Advocate

versus

M/S. ERICSSON INDIA PRIVATE LIMITED Respondent

Through: Mr.Anil Kr. Kher, Sr. Advocate
with Mr.Kunal Kher, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J. (Oral)

1. The challenge in this petition is to the award dated February 29, 2012 (initial award being November 11, 2011) passed by the learned Arbitrator, whereby the claim of the respondent for refund of security was allowed with interest and counter claims of the petitioners were rejected.

2. Brief facts are, the respondent had taken on rent property No. E-8A, Hauz Khas, Main Market, New Delhi-16 from one Mr. Raj Singh Gehlot and Mrs.Sheela Gehlot. Mr. Raj Singh Gehlot and Mrs. Sheela

Gehlot sold the property to 18 purchasers and the tenancy rights were transferred in favour of the purchasers, which included the petitioners herein. Some disputes arose between the parties in the performance of terms of lease deed dated August 16, 1995 and a tripartite agreement dated February 6, 1996, whereby the tenancy rights were transferred in favour of the petitioners. According to the learned counsel for the petitioners, they together had purchased, the entire ground floor of the property. It is not denied that the rent was paid by the respondent to the petitioners. The lease of the property expired on June 19, 1998. The respondent company vide its letter dated May 20, 1998 called upon the petitioners and other purchasers of other floors of the premises to take back the possession of their respective portion of the premises on June 19, 1998. It was desired by the purchasers including the petitioners that they should inspect the premises. The respondent vide its letter dated June 8, 1998 informed the purchasers that they may inspect the premises on June 11, 1998. It is the case of the respondent that during discussions, the purchasers desired that the respondent demarcate their respective portions in the building prior to handing over the premises. The respondent did not accept the proposal. The possession was not handed over nor taken by the

petitioners.

3. As disputes arose between the parties, the respondent herein filed an application before this Court under Section 11 of the Arbitration and Conciliation Act, 1996 (Act, in short) for appointment of an Arbitrator. The respondent herein by way of a separate application, requested the Court for depositing the key in this Court. The prayer was allowed and the premises was locked and the key was deposited with the Registrar of this Court. The application under Section 11 of the Act was allowed and Justice S.K.Mahajan (Retd.) was appointed as the learned Arbitrator. The petitioners were also directed to furnish a bank guarantee to secure the payment of the security deposit given by the respondent and retained by some of the purchasers, including the petitioners. As stated above, the claim of the respondent was for the refund of security deposit with interest. The counter claims of the petitioners were for the rent till March 2004. The petitioners had also claimed electricity charges in the sum of Rs.82,05,759/-.

4. It is the case of the petitioners, that the property having been damaged and the electricity having been disconnected, they were not effectively put into possession. It is their case that the liability of the

respondent to pay rent continues till the electricity is restored and the premises is made habitable. The net revised counter claim of each of the petitioners was Rs.3,03,28,796/-.

5. The learned Arbitrator framed fourteen issues. The learned Arbitrator has held that the respondent is entitled to refund of security deposits of Rs.4,42,837/- with interest @ 9% p.a. in terms of the award dated February 29, 2012 from both the petitioners. As stated above, the learned Arbitrator rejected the counter claims of the petitioners.

6. Learned counsel for the petitioners on a specific query from the Court, has stated, that the petitioners have settled the issue with the electricity department by paying an amount of Rs.29,889.56/-. In other words, the counter claim of the petitioners for Rs.82,05,759/- would not survive as the petitioners have not paid the said amount to the electricity department except Rs.29,889.56/-. The learned Arbitrator framed issue No. 5 with respect to the electricity charges which reads as under”

“Whether Ericsson is not liable to pay electricity charges upto March 1, 2004?”

7. The learned Arbitrator in this regard was of the view that the

petitioners have not placed on record any evidence to prove that they had paid electricity charges for restoration of electricity pursuant to disconnection.

8. The learned counsel for the petitioners would state that the learned Arbitrator had only considered the restoration charges and not the actual charges which the petitioners had paid to the electricity department for the period December 10, 1998 to February 29, 2004. The answer to this issue would lie in the finding of the learned Arbitrator as to whether the respondent was holding on to the property even after December 10, 1998 and did not give physical possession to the petitioners. The findings in this regard are to the issue Nos. 1 to 3. The said issues are as under:

- 1. Whether each of the Non-claimants have purchased separate specified portion of the property? Onus on Respondent.*
- 2. Whether tenancy agreement is one composite agreement for whole of the property, if so its effect? Onus on Claimant.*
- 3. Whether Ericsson could not deliver possession of different portion of the properties to individual purchasers? If so to what effect?*

9. The findings on the aforesaid issues of the learned Arbitrator are as under:

“From the narration of facts and documents

mentioned above, it is clear that though the area sold to the respondents by the erstwhile landlord was mentioned in the sale deeds, however, there was no demarcation done at site. It is admitted case of the respondents that even when demarcation was to be done, certain common area had to be left open for use of all other persons who had purchased property from the erstwhile landlord. In my opinion, it was not the obligation of the claimant to demarcate the property at site and give separate possession of the portion after such demarcation. Demarcation had to be done only by the respondents themselves independent of the claimant. The claimant could only give possession jointly to all the respondents and it could not deliver physical possession of different portions of the property to individual purchasers. There was one composite agreement of tenancy with the erstwhile owners and specified portions of different owners were not specified at any time. By calling upon all the owners to come and take possession and in case, any one of the respondents had not taken possession on the ground that he should have been delivered physical possession of his portion, claimant cannot be blamed for the same. Respondents no. 10 to 18 had admittedly authorized Mr. Raj Singh Gehlot to take possession on their behalf and Mr. Gehlot after taking possession had issued receipt clearly admitting that the premises had

been vacated by the claimant and that the claimant will not be responsible or liable for any payment of rent or other charges in respect of the premises to any of the co-owners after 19th June, 19998. Issues no.1 to 3 are, accordingly, decided in favour of the claimant.”

10. From the perusal of the conclusion arrived at by the learned Arbitrator to issue Nos. 1 to 3, it is clear that the respondent could not have demarcated the property at site and give separate possession of the portion after such demarcation. The learned Arbitrator was right in holding that the claimant could only give possession jointly to all the purchasers and could not deliver the physical possession of each portion of the property to individual purchasers. The learned Arbitrator was right in holding all the owners should have taken possession and in case any one of the purchasers had not taken possession on the ground that he should have been delivered physical possession of his/her portion, the respondent could not have been blamed for the same.

11. The learned counsel for the petitioners would counter this finding of the learned Arbitrator by stating, since the portion of the property of the petitioners was demarcated i.e. the ground floor, the respondent could have given the possession without any hitch, which

the petitioners got only on February 29, 2004, the petitioners are entitled to the rent/electricity charges.

12. Such a submission need to be rejected as the learned counsel for the petitioners during submissions has conceded that there is only gate at the ground floor for the whole premises where the lock was put. In other words, the possession could have been given together to all the purchasers and not individually. Even otherwise, the petitioners could have filed an application before this Court, to take possession of the ground floor. They did not do so. They cannot for their inaction, seek benefit from the respondent, whose liability, if any, cannot be beyond December 10, 1998, when the key was deposited in this Court.

13. Learned counsel for the petitioners during the submissions raised an issue, that the respondent in fact, was using the property even after December 10, 1998. He placed reliance on the report of one Ms.Sandhya Saxena, Advocate dated May 2, 2000, who in her report has referred to the fact that she inspected the site/building bearing E-8A, Hauz Khas Market, New Delhi and on inspection, she had found certain articles lying in different floors of the building.

14. He would state, the report revealed that the building was occupied even after December 10, 1998 by the respondent and

accordingly, the petitioners would be entitled to the rent till February 29, 2004. He would state that the learned Arbitrator has not even considered this issue. He would pray that to this extent, the matter be remanded back to the learned Arbitrator for re-consideration.

15. Having noted this submission of the learned counsel for the petitioners, I am of the view that this request of the petitioners need to be rejected as he could not able to convince this Court that the claim raised by the petitioners is liable to be granted. In fact, I note that Mrs. Sandhya Saxena, Advocate was not even called as a witness to prove her report. Learned counsel for the petitioners states that the said report was placed on record by way of an affidavit through one Mr. Wig. On a pointed query, whether Mr. Wig was produced before the learned Arbitrator as a witness, the answer was in the negative. In any case, I am not going into the issue whether Mr. Wig could have proved the report of Mrs. Sandhya Saxena. Suffice to state, when the key was deposited with the Registrar of this Court, the lock could not have been opened. Even otherwise, the petitioners, could have brought to the notice of this Court the aforesaid position by filing an application, which they did not do. I am of the view, no case for remand has been made.

16. I am of the view, the final conclusion of the learned Arbitrator is justified in the facts, and he has rightly rejected the counter claims of the petitioners. I do not think, it is a fit case where this Court should interfere in the impugned award.

17. The petition is accordingly dismissed.

(V.KAMESWAR RAO)
JUDGE

MARCH 26, 2015

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