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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.809 OF 2016

Union of India	...Petitioner
V/s.	
Digital Signage Networks India Pvt. Ltd. & Anr.	...Respondents

Mr.Chetan Agrawal for the Petitioner.

Mr.Rohan Cama with Mrs.Sapna Rachure for the Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 30TH JUNE, 2016.

P.C. :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the Arbitration Act") the petitioner has impugned the arbitral award dated 10th October, 2014 passed by the learned arbitrator allowing some of the claims made by the respondents. Some of the relevant facts for the purpose of deciding this petition are as under :

2. The respondent no.1 had submitted a proposal in the year 2007 to exploit the new avenue of revenue by display through LCD installation at stations from Churchgate to Virar. The petitioner agreed to accept the said proposal made by the respondent no.1. On 7th November, 2007 the petitioner issued an authority letter to the

respondent no.1 on receipt of certain payment.

3. The dispute between the parties was as to whether the respondent no.1 – contractor was liable to pay the license fees in respect of the area of 686 sq. ft. which was to be made available to the respondent no.1 for displaying all the advertisements or the area actually allowed to be used by the petitioner to the respondent no.1.

4. It was the case of the petitioner that since the respondent no.1 had agreed to pay the license fees in respect of the area admeasuring 686 sq. ft., the learned arbitrator could not have accepted the claim of the respondent no.1 for payment of license fees for the area 465 sq. ft.

5. On the other hand, it was the case of the respondent no.1 – contractor that since the actual area available to the respondent no.1 was 465 sq. ft. on which the respondent no.1 could affix its LCDs and display advertisements, the respondent no.1 was not liable to pay the license fees to the petitioner for an area of 686 sq. ft.. It was the case of the respondent no.1 that the petitioner was separately charging from the respondent no.1 in respect of balance area of 218 sq. ft. for affixing stickers in open booking area.

6. Pursuant to the directions issued by the learned arbitrator, the representative of both the parties conducted joint survey of the site and found that the actual area available for display to the

respondent no.1 was only 465 sq. ft.

7. The learned arbitrator after considering the joint survey report and various documents, accepted the case of the respondent no.1 for payment of license fees for the actual area allowed to be utilized by the petitioner to the respondent no.1 and allowed certain claims based on that basis.

8. Mr.Agrawal, learned counsel appearing for the petitioner submits that though there was no arbitration agreement recorded in writing between the parties, the learned arbitrator has entertained the claims. He submits that the entire award is without jurisdiction in view of there existed no arbitration agreement between the parties. The next submission of the learned counsel for the petitioner is that once the respondent no.1 had agreed to pay the license fees for 686 sq. ft. area, the learned arbitrator could not have accepted the case of the respondent no.1 for payment of license fees for a smaller area. He submits that the respondent no.1 had specifically asked for permission for utilizing the area of 218 sq. ft for affixing the stickers in open booking area.

9. The next submission of the learned counsel for the petitioner is that the learned arbitrator could not have directed the parties to conduct the joint survey after completion of the contract period.

10. Mr.Cama, learned counsel appearing for the respondent no.1 on the other hand submits that the issue of jurisdiction cannot be raised by the petitioner for the first time in this petition filed under section 34 of the Arbitration Act in view of the fact that the petitioner never raised this objection under section 16 of the Arbitration Act before the learned arbitrator.

11. Insofar as the second submission of the learned counsel for the petitioner is concerned, it is submitted that since the petitioner did not permit the respondent no.1 to utilize the entire area of 686 sq. ft. for the purpose of displaying the advertisements and had actually permitted to use the area of 485 sq. ft., the petitioner could not have charged the license fees from the respondent no.1 for the entire area of 686 sq. ft.. He submits that even in respect of the balance area of 218 sq. ft., the petitioner had charged the respondent no.1 separately. He submits that thus the petitioner had charged the respondent no.1 for the said area of 218 sq. ft. twice. He submits that the learned arbitrator thus rightly directed both the parties to conduct the joint survey and to ascertain whether the actual area allowed to be used by the petitioner to the respondent no.1 was 686 sq. ft. or lesser area. He submits that it was found upon the joint survey carried out by the representatives of the parties that the actual area permitted to be used by the petitioner to the respondent no.1 was

less. He submits that the learned arbitrator has thus rightly considered the actual area made available to the respondent no.1 by the petitioner and has rendered a finding of fact which cannot be interfered with by this Court under section 34 of the Arbitration Act.

12. Insofar as the last submission of the learned counsel for the petitioner that the learned arbitrator could not have directed the parties to carry out joint survey after completion of the contractual period is concerned, he submits that no such objection was raised by the petitioner against such directions issued by the learned arbitrator. He submits that the petitioner in any event already having complied with the directions issued by the learned arbitrator and participated in the joint survey, no such issue can be allowed to be raised at this stage.

13. Insofar as the first submission of the learned counsel for the petitioner that there was no arbitration agreement between the parties, the entire award was thus without jurisdiction is concerned, it is not in dispute that though the petitioner filed the detailed written statement before the learned arbitrator, no such issue of jurisdiction was raised by the petitioner under section 16 of the Arbitration Act. In my view, the petitioner not having raised an issue of jurisdiction before the learned arbitrator under section 16 of the Arbitration Act or at any stage prior to filing of the written statement, the petitioner

cannot be allowed to raise the issue of jurisdiction for the first time in these proceedings filed under section 34 of the Arbitration Act.

14. Insofar as the submission of the learned counsel for the petitioner that the learned arbitrator could not have directed parties to carry out joint survey after completion of the contract is concerned, in my view, this contention of the learned counsel for the petitioner is totally without merits. The dispute before the learned arbitrator was whether actual area allotted by the petitioner to the respondent no.1 was 686 sq. ft. area or less. In view of such dispute, which was the subject matter of the arbitration before the learned arbitrator, this dispute was admittedly filed after completion of the contractual period, the learned arbitrator could give such direction to carry out joint survey only after completion of the contract and not during the existence of contract. Be that as it may, the petitioner having participated in the said joint survey and having submitted the joint survey report before the learned arbitrator, cannot be allowed to raise this issue in this petition.

15. Insofar as the last submission of the learned counsel for the petitioner that the respondent no.1 having agreed to pay the license fees for 686 sq. ft. area and thus the learned arbitrator could not have directed the respondent no.1 to pay the license fees for 486 sq. ft. area only is concerned, a perusal of the record indicates that

though the respondent no.1 had initially agreed to pay the license fees for 686 sq. ft. area, since the petitioner had not handed over the site of 686 sq. ft. area, the petitioner in my view could not have demanded the license fees for the entire area of 686 sq. ft. The fact remains that it was found before the learned arbitrator upon the parties carrying out joint survey and submitting the report having found actual area allowed to be used by the respondent no.1 as only 486 sq. ft. In my view, the learned arbitrator has rightly considered the joint survey report and having found that the actual area allowed to be used by the petitioner to the respondent no.1 was 486 sq. ft., the learned arbitrator has rightly accepted the claim of the respondent no.1 for refund of the excess amount.

16. Mr.Agrawal, learned counsel for the petitioner upon taking instructions from the learned officer, who is present in Court, admitted that the said area of 218 sq. ft. was part of the area of 686 sq. ft. A perusal of the record indicates that the learned arbitrator has considered all these submissions made by the parties and the joint survey report, which was the report submitted by both the parties and has rendered a finding of fact that the petitioner herein had charged for the area beyond LCDs through separate arrangements and thus could not be charged twice for the said area from the respondent no.1. In my view, the findings of fact rendered by the learned

arbitrator are not perverse and thus cannot be interfered with by this Court under section 34 of the Arbitration Act.

17. In my view, no case is made out for interference with the impugned award rendered by the learned arbitrator. The arbitration petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)