

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.889 OF 2010

The Sr. Superintendent of Post
Offices, Mumbai & Ors.

.. Petitioners

Versus

Kanahyalal Bagadia (deceased)
through Lrs. Kaushal Bagadia
and Ors.

.. Respondents

Ms. S.V.Bharucha for petitioners

Mr. Sharan Jagtiani with Ms. Neeta Solanki i/b. Kiran Jain & Co. for
respondents.

CORAM : R.D.DHANUKA, J

DATE : 16th March 2016.

P.C.

1] By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short "the Act"), the petitioners have impugned the arbitral award dated 18th January 2010 passed by the learned Arbitrator allowing the claims of the original claimant/respondents herein.

2] By the impugned award, the learned Arbitrator has directed

the petitioner to pay to the respondents a sum of Rs.1,03,74,991.29 with interest calculated thereon at the rate of 10% p.a. from 1st February 2003 till the date of award, a sum of Rs.4,89,000/- on account of costs of the arbitration with future interest at 18% p.a. from the date of award till payment.

3] The original respondent, Kanahyalal Bagadia was the owner of suit premises being Unit Nos. 10A and 10B on the Ground floor of Bharat Industrial Estate, situated at plot of land C.S.No.207, Parel Seweri Division, Mumbai 400 015. The said premises were requisitioned by the Collector by an order dated 17th February 1966, for accommodating the petitioner No.1 for post office and was handed over to the petitioner. The said requisition was continued from time to time.

4] The original owner filed a writ petition in this Court being Writ Petition No.2816 of 1991, inter alia, impugning the order of requisition dated 17th February 1966 and applying for recovery of possession of the requisitioned premises. The petitioner herein was respondent No.3 in the said petition. By an order dated 16th March

2002, the Division Bench of this Court allowed the said petition and directed the respondents thereto to deliver vacant and peaceful possession of the said premises to the original owner on or before 30th June 2002 and directed petitioners herein to appoint an Arbitrator in accordance with section 8 of the Arbitration Act.

5] By an order dated 27th August 2002, the Division Bench granted time to the petitioner herein to vacate the said premises on or before 31st January 2003, subject to an undertaking to be filed by the Post Master General.

6] The matter was thereafter referred to the Arbitration of learned Arbitrator. The learned Arbitrator made an award dated 15th January 2010 directing the petitioners herein to pay various amounts referred to above, which award is impugned by the petitioners in this petition filed under section 34 of the Act.

7] Ms. Bharucha, learned Counsel appearing for petitioners invited my attention to the documents annexed to the petition and also to the findings recorded by the learned Arbitrator. She submits

that the learned Arbitrator has awarded the claim for compensation for the unauthorised occupation of the premises, based on the rent alleged to have been paid by the Citi Bank which was allegedly prevailing at that time, according to the respondents, without considering the fact that the premises was being used by Citi Bank for commercial purposes whereas the subject premises were requisitioned by Collector and were being used by the petitioners for public utility.

8] The next submission of the learned Counsel is that the learned Arbitrator has made the impugned award against a dead person.

9] Mr. Jagtiani, learned Counsel for the respondents on the other hand invited my attention to the findings of fact recorded by the learned Arbitrator and would submit that the petitioners are factually incorrect in submitting before this Court that the learned Arbitrator had awarded compensation in respect of the unauthorised occupation of the petitioners on the basis of the rent paid by the Citi Bank. He submits that though the respondent had led oral evidence before the learned Arbitrator and had proved that, during the

relevant period, the Citi Bank was paying rent at much higher rate which evidence remained uncontroverted, the learned Arbitrator rather took a lenient view in the matter and awarded compensation at much lesser rate. In support of his submission, the learned Counsel invited my attention to the calculations reflected in the chart at pages 27 and 28 of the impugned award. He submits that the finding of fact recorded by the Arbitrator is not perverse and thus, cannot be interfered with by this Court under section 34 of the Act.

10] Insofar as the second submission of the learned Counsel for the petitioners, that the award was passed against a dead person and thus deserves to be set aside, is concerned, the learned Counsel for the respondents invites my attention to the minutes of the meeting of the learned Arbitrator held on 24th March 2009 and 25th March 2009. He submits that in the said meeting the learned Arbitrator had recorded that both the parties had already made their oral submissions and had also filed written statement. The parties had agreed not to make any further submissions. Learned Arbitrator recorded further that the hearing of the arbitral reference was accordingly concluded and reference was closed except for making

the award, which would be made available in due course. He submits that admittedly, the original claimant expired on 30th September 2009 i.e. much after closure of the reference by the learned Arbitrator.

11] My attention is also invited to the provisions of Order XXII Rule 6 of the Code of Civil Procedure and it is submitted that though the Arbitrator was not bound by the provisions of CPC, the principles of Order XXII Rule 6 of the C.P.C. would be applicable. He submits that since the hearing was already concluded by the learned Arbitrator, the death of original claimant during the period between the conclusion of hearing and pronouncement of award would not abate the proceedings.

12] Insofar as first submission advanced by the learned Counsel for the petitioners that the learned Arbitrator passed the claim on the basis of the rent paid by Citi Bank in respect of commercial premises is concerned, in my view, this submission is factually incorrect. A perusal of the record indicates that the original claimant had himself entered into the witness box and had examined the

other witnesses who had led specific evidence on the issue that during the relevant time and for the period in question, the Citi Bank was paying rent at much higher rate. Learned Arbitrator has observed that the deposition of the witness examined by the original claimant was not shattered in cross examination. The petitioners herein did not lead any oral evidence before the learned Arbitrator to prove any other prevailing rent amount during the relevant period.

13] A perusal of the award indicates that, the learned arbitrator has not awarded the amount of compensation at the rate which was paid by the Citi Bank, in respect of identical premises but at the rate much lesser than the amount paid by the Citi Bank. In my view thus there is no substance in the submission of learned counsel for the petitioner that the learned arbitrator had awarded compensation based on the rent paid by the Citi Bank. The learned arbitrator has considered the submissions made by the parties on the quantification and the evidence led and has awarded the claim at a lesser rate. The findings recorded by the learned arbitrator are findings of fact which are based on the oral evidence led by the original claimant. The findings are not perverse and cannot be

interfered with under section 34 of the Act.

14] In so far as the second submission that, the award was made against a dead person is concerned, a perusal of the minutes of the meeting held on 24 and 25th March, 2009 before the learned arbitrator indicates that both the parties had already closed arguments and the learned arbitrator had accordingly closed the reference except for making arbitral award. The original claimant expired admittedly on 30th September, 2009, which was much after the closure of the reference of arbitral proceedings. In my view the principles of Order XXII Rule 6 C.P.C. will apply to the arbitral proceedings. Since, the original claimant expired after closure of the proceedings and before pronouncement of the award, the arbitral proceedings were not abated. There is thus no substance in this submission of the learned Counsel for the petitioners.

15] In so far as award of interest at the rate of 18% per annum is concerned, in my view considering the facts of this case the award of interest at 18% as an by way of future interest granted by the arbitrator is exorbitant and is accordingly reduced to 12% per

annum.

16] Arbitration petition is disposed of in the aforesaid terms with a limited modification to the interest rate awarded. No order as to cost.

(R.D.DHANUKA, J)