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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-5964-2013
Date of decision : 16.02.2016

Daya Pal Singh and others

...Appellants

Versus

Bharat Sanchar Nigam Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Rana, Advocate
for the appellants.

Mr. G.C. Babbar, Advocate
for respondent No.1-BSNL.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

<u>AMIT RAWAL, J. (ORAL)</u>

The appellants are aggrieved of the order dated 01.05.2013 whereby the objection filed under Section 34 of the Act, 1996 (hereinafter called 'the 1996 Act') on behalf of the Bharat Sanchar Nigam Ltd. (BSNL) seeking setting aside the Award dated 16.03.2009, has been accepted.

Mr. P.S. Rana, learned counsel appearing on behalf of the appellants submits that the claim (Annexure A-6) did not pertain to eviction, and therefore, statutory provisions of the Rent Act, would not come into play. The Objecting Court mis-interpreted and misread the contents of the claim petition. The claim pertained to increase in the rent as during the pendency of the arbitration proceedings, BSNL had agreed to vacate the premises, but refused to increase the rent. In earlier round of the litigation, the matter was adjudicated by the Arbitrator, whereby the claim pertained to increase in the rent, was declined, thus, the objections were not falling within the realm of Section 34 of the 1996 Act and prays for setting aside of the order under challenge.

Mr. G.C. Babbar, learned counsel appearing on behalf of respondent No.1-BSNL submits that claim petition pertained to eviction and therefore, in view of the statutory provisions as per prevailing Act, the Arbitrator did not have jurisdiction, dehors of the fact that the Arbitrator has jurisdiction to try and entertain the dispute between the parties, rightly so, the objections have been accepted. The Arbitrator, without therebeing any reason ordered eviction. During the pendency of the arbitration proceedings, an undertaking was given to vacate the premises, however, premises were vacated in the month of October 2010. The Arbitrator could not entertain the claim and rightly so, the objections were filed under Section 34 of the 1996 Act and the same have been accepted. In support of his contentions, he relies upon the judgment of this Court rendered in CR No.3303 of 2015 titled as ***"Bharat Sanchar Nigam Ltd. and others V/s Sh. Rajinder Mohan Lal and another"***, decided on 27.07.2015, whereby this Court has relied upon the judgment of Hon'ble Supreme Court of India in ***"St. Joan's Education Society Vs. National Thermal Power Corporation Limited and others" 2012 (4) RCR (Civil) 136***, and held that it would be the Rent Controller or the competent Court having the jurisdiction to try and entertain the dispute and not the Arbitrator, in essence, the Arbitrator do not have jurisdiction to resolve the dispute.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit in the contentions of Mr. P.S. Rana, Advocate, for the reason, that the claim did not pertain to eviction of the demise premises. It would be apt to reproduce the claims extracted in the claim petition, which read thus:-

> *"2. That the following arbitrable points of dispute arise between the owner/landlord and BSNL:-*
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> *i) Whether BSNL had willfully failed to fix the rate of rent of demised premises i.e. SCO No.359-60 Sector 44-D Chandigarh in terms of its undertaking in the Court of District Judge, Chandigarh in its appeal decided on 10.01.2001 in terms of that undertaking and as accepted by the owners by way of compromise with a stipulation therein that the rate of rent will be revise after the expiry of 3 years over the agreed rate of rent ₹ 30,000/- per month in accordance with the rules and if so with what effect?*
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> *ii) Whether General Attorney of the owners was mislead by the then Executive Engineer to agree to the rate of rent with increase of 24% over the amount of ₹ 30,000/-*

fixed in compromise dated 10.01.2001, on the assurance that be will get the demised premises vacated by BSNL as explained to the demand notice dated 03.03.2008 and that assurance was not kept and intentionally violated and if so to what effect?

iii) The claimants are entitled to ask for the increase in the rent @ 40/ sq. ft. which is still far less than the rental prevalent in the vicinity. In the demand notice the amounts were mentioned to the tune of ₹ 20/- per sq. ft. but now with the passage of time the central in the vicinity has gone too high and claimants has right to amend alter the demand notice claiming the rental @ 40 per sq. ft. and the BSNL is liable to compensate the claimants by making the payment on market rental from the date of its in-occupation that after expiry of 3 years of earlier leased deed. Claimant is also entitled or interest on the said amount."

Since, the appellants had not sought the eviction, in my view, the Arbitrator had jurisdiction to entertain and try the claim, viz-a-viz the increase in the rent as there is no provision under prevailing rent law for increase of rent. The increase was sought as per the terms and conditions of the Lease Agreement. Clause 17 of the Lease Agreement, provided a resolution of dispute through Arbitrator. Though the BSNL had not accepted the increase in the rent in arbitration proceedings, but the fact remains that the Arbitrator after appreciation of the terms and conditions of the Lease Agreement, ordered for increase in the rent. The operative part of the Award reads thus:-

"An attempt to reconciliation was made in order to

narrow down the difference between the parties.

The main issue is regarding interpretation of the understanding about re-assessment of the rent "as per rules" submitted before Hon'ble Court. On 10.01.01, whereas Shri Dayapal Singh Landlord contended that 'as per the rules' he understood as per the CPWD rules, where FRAC and prevailing market rent was to be applied, the BSNL interpreted 'as per rules' as framed by BSNL. Shri Daya Pal Singh pleaded ignorance of BSNL Rules.

Both the parties were called separately to understand their concerns, and arrive at reconciliation.

Shri Daya Pal Singh request for:-

a) Vacation of the said premises bearing number SCO No.359-360, Sector 44-D, 2nd Floor, Chandigarh.

b) Increase in lease rent @ ₹ 20/- per sq. feet of the covered area w.e.f. 10th January 2007, i.e. the date of expiry of the last lease period, till date of vacation.

The EE (Civil) informed that their building in Sector 27, Chandigarh is under construction and he would apply to occupation certificate to the Estate Officer during March 2009 and shall try to vacate the premises by 30th June. In case completion certificate is received earlier the premises at SCO No.359-360, Sector 44-D, 2nd Floor, Chandigarh shall be vacated within one month. Shri Dayapal Singh assured that he would extent all co-operations.

As regards, payment of rent @ ₹ 20/- per Sq. feet to covered area w.e.f. 10th June 2007 till the date of vacation. BSNL informed that they could not raise the rent beyond the limits prescribed by the BSNL. BSNL is *advised to submit a copy of FRAC to the undersigned."*

The ratio decidendi culled out by the judgment of this Court in ***BSNL's case*** (supra) does not apply to the facts of this case, as the landlord has not sought any eviction, dehors of fact that the Arbitrator has ordered for eviction of the same. The fact remains that once the BSNL has undertaken to vacate the premises and had allegedly vacated the premises on 23.10.2010, they are liable to pay rent for the occupied period and as well as the increase as per the letter and spirits of the agreement.

Keeping in view the aforementioned facts, the impugned order dated 01.05.2013 under challenge is hereby set aside and the Award dated 16.03.2009 of the Arbitrator, viz-a-viz the increase in rent is upheld.

With the aforesaid observations, the appeal is allowed.

16.02.2016 **(AMIT RAWAL)**
yogesh **JUDGE**