

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.5981 of 2013 (O&M)

Date of decision : 13.12.2016

Satish Kumar

...Appellant

Versus

Municipal Corporation and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. I.B. Bhandari, Advocate for the appellant.

Mr. Ashish Rawal, Advocate for respondent No.1.

AMIT RAWAL, J. (Oral)

A dispute between the appellant and Municipal Corporation, Chandigarh arose on account of the charging of building up of Booth No.14 in Sub-way Sector-17/22, Chandigarh, which according to the Municipal Corporation was leased out to him on a monthly rent of ₹12,500/- in the open auction held on 11.08.1997. As per the facts revealed from the award, the appellant had deposited a sum of ₹37,500/- as a security equal to three months of rent. There was also a provision of 10% of liquidated damages and penalty on account of non-payment of monthly rent/arrears of rent. Appellants stated to have paid only ₹12,500/- as rent from September, 1997 to August 1998, and thereafter started paying ₹10,500/- on the premise that the area of the booth as agreed was lesser. Since, the terms and

conditions of the auction/allotment contained the resolution of the dispute through arbitration, the matter was referred to the Arbitrator. The arbitrator in view of the respective claims of the parties, in its award dated 21.03.2003 passed the following order:-

“5. The undersigned has taken into consideration submissions made by both the parties. The petitioner as well as his counsel has categorically submitted that they are ready and willing to clear the entire arrears of rent within a reasonable period in case the lease of the said booth is restored to the petitioner. Both also submitted that they are agreeable for extension of lease with with an increase of 50% in rent after the expiry of period of 5 years. In the circumstances, the petitioner is directed to clear the upto date arrears of the rent within a period of 30 days reckonable from the issue of the award. The office of the Additional Commissioner, Municipal Corporation, Chandigarh is directed to supply the petitioner detailed account statement indicating the arrears of rent outstanding against him within a period of 7 days from the issue of this award. Since the petitioner has agreed for extension of lease with an increase of 50% in rent, therefore, Additional Commissioner, Municipal Corporation, Chandigarh is directed to initiate necessary action for extension of lease for a further period of 5 years with an increase of 50% in rent as agreed by the petitioner. In case, the petitioner fails to clear the entire arrears of rent within the said period of 30 days, the impugned order dated 31.12.02 shall become operative.”

He submits that the aforementioned consent notice in the order was not given, much less, alleged inspection report got conducted through Inder Gulati, Draftsman which as per the mandatory provisions of the law

i.e. Sub-Section 3 of Section 24 of 1996 Act was required to be given to the appellant. The award is also lacking reasons which is also recorded as per the provision of Sub-Section 3 of Section 31 of the Act.

After hearing the arguments of Mr. Bhandari, Advocate, and without calling upon Mr. Ashish Rawal, Advocate representing the Municipal Corporation, this Court has pointed out the provision of Section 33 of the Arbitration and Conciliation Act, 1996, which reads as under:-

“33. Correction and interpretation of award; additional award.—

1. Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

2. If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

3. The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

4. Unless otherwise agreed by the parties, a party with

notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

5. If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

6. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

7. Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

On going through the aforementioned provisions, Mr. Bhandari, Advocate submits that since he had been representing his client before the Arbitrator as well as before the Objecting Court, he was not aware of the provisions and, therefore, opportunity be given to move an application provided, the rigours of limitation should not come in his way.

Mr. Ashish Rawal, learned counsel appearing on behalf of respondent-Municipal Corporation submits that appellant had been defaulter in not paying the licence fee, even warrant of possession had also been issued but he had been delaying the matter. In fact, he wanted to wriggle out from the commitment of payment of rent @ ₹12,500/- and as well as 50% increase after five years, thus, he had committed the default of terms and conditions and, thus, do not entitled to retain the possession.

Before I could form an opinion, I called upon Mr. Bhandari,

Advocate for the appellant, as to whether his client would be able to pay cost of ₹75,000/- for availing the remedy under Section 33 of 1996 Act, though time period prescribed therein is already over. On instructions from his client, submitted that his client is willing to pay the cost of ₹75,000/- provided the period of one month is granted. In case, cost of ₹75,000/- is paid to the counsel representing the Municipal Corporation in the High Court in the shape of cheque, liberty is granted to the appellant to move an application under Section 33 of the Act and time spent herein shall be condoned as per the provision of Section 14 of the Limitation Act. On receipt of the application, Arbitrator shall consider the application and decide in accordance with law.

Appeal stands disposed of, in the aforementioned terms.

In the meantime, after payment of the cost, application shall be filed within a period of a week thereafter and Arbitrator shall decide the application within a period of one month thereafter, till then, there shall be stay of possession.

13.12.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No