

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

% *Order delivered on: 7th April, 2016*

+ **O.M.P. (COMM.) No.68/2016**

SUN CAFES AND BARS PVT. LTD. & ORS. Petitioners
Through Mr.Rajesh Raina, Adv. with
Mr.Shankar Jha and Mr.Manu Monga,
Advs.

versus

SHRI ATUL MARWAH Respondent
Through Mr.Sudhanshu Batra, Sr. Adv. with
Mr.Arvind K. Gupta, MrAnshul Garg
and Mr.Rajeev Mishra, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. The petitioners have filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 21st December, 2015.
2. Brief facts of the case are that the petitioners and respondent entered into a lease agreement for the first time in the year 2009 in respect of property No.70, Khan Market, New Delhi, and the lease was valid upto 21st January, 2012. Subsequently another lease deed was executed by both the parties for a further period of three years in respect of the said premises with effect from 22nd January, 2012 to 21st January, 2015.

3. The disputes arose between the parties. The matter was referred to the sole Arbitrator to adjudicate the disputes between the parties.

4. The contention of the learned counsel for the petitioners is that the intention of the parties was to execute the lease deed from 21st January, 2015 to 21st January, 2018. Therefore, the respondent cannot ask the petitioners to vacate the premises.

5. On the other hand, learned counsel for the respondent has informed that there is no lease deed executed after expiry of the lease period i.e. on 21st January, 2015. There is no registration of the said alleged period of six years. The question of taking the advantage by the petitioners does not arise as after expiry of period on 21st January, 2015 the tenancy has become month to month tenancy. He further submits that no rent was paid by the petitioner from January, 2015. It is also stated that the petitioners have merely paid part agreed rent of December, 2014. When the objections were listed before Court on 22nd March, 2016, the following order was passed:

“The petitioners have filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the impugned Award dated 21st December, 2015.

Without going into the merits of the case, the learned Senior counsel appearing on behalf of the respondent submits that the rent has not been paid from January, 2015 till date and even, in December, 2014 part-payment of the rent was made. Learned counsel for the petitioners states that he will take the instructions from his client and make the statement on the next date about how to secure the said admitted rent as per the agreement.”

6. Today when the matter is listed, the learned counsel for the petitioners has indicated that his clients have not paid the rent due. He is raising the

objections since his clients have spent huge amount on renovation therefore the said amount has to be adjusted. Another submission made by him is that the rent due can be adjusted from the security amount and from the month of April, 2016, the petitioners will pay the regular rent to the respondent who is the landlord of the property. The said request of the learned counsel for the petitioners is strongly opposed by the respondent who states that more than Rs.60 lac is due towards rent and secondly, in the absence of any registered lease deed, the petitioners are not entitled to enjoy the property.

7. I have gone through the Award passed by the learned Arbitrator. The relevant extract from the Award reads as under:

“Accordingly, Notices were issued to the parties by the Delhi International Arbitration Center to complete pleading. The Claimant alongwith his Statement of Claim had also filed an Application under Section 17 of the Arbitration & Conciliation Act, 1996.

The parties filed their Reply as well as Rejoinder and after the pleadings were completed, arguments on the Application filed under Section 17 of the Arbitration & Conciliation Act, 1996 were heard. However, after this Arbitral Tribunal had pronounced the Order In the said Application on 26.09.2015, the Respondent Nos.1 to 4 and 6 stopped appearing, as such, this Arbitral Tribunal had proceeded ex parte against them.

The Counsel for the Claimant also filed an Application under Order XV (A) of the Code of Civil Procedure, 1908 for striking of the defense of the Respondents on account of their failure to comply with the Order dated 26.09.2015, which was to be complied with within 10 days from 26.09.2015.

Since none had appeared for the said Respondents, this Tribunal proceeded ex-parte against the Respondents, as such, no further Orders were called for on the said Application. The Counsel for the Claimant had deleted the Respondent No.5 and an amended memo of parties was filed. Accordingly, the Claimant was

directed to file their Evidence by way of Affidavit and the matter was adjourned to 28.10.2015 for arguments. The arguments were heard on the said date and the matter was reserved for Award to be pronounced on 06.11.2015.

On 06.11.2015, before an Award could be pronounced, an Application was filed by the Counsel for the Respondents for recalling the ex-parte Orders dated 19.10.2015 and 28.10.2015 of this Tribunal.

Since the Application under Order XVA of CPC, 1908 filed by the Claimant was also pending, both the parties were directed to file Reply to each other's Application on or before the next date. In the interest of justice, the ex-parte Order was set aside, vide this Tribunal's Order dated 21.11.2015 and the Respondents were given another opportunity to file Reply to the Claimant's Application under Order XVA of CPC, 1908.

On 01.12.2015, arguments on the said Application under Order XVA of CPC, 1908 were heard and after hearing the parties, since the Respondents failed to comply with the said Order, accordingly, the defense of the Respondents was struck off and the Application of the Claimant was allowed. Since the evidence of the Claimant was already on record, the matter was adjourned for arguments on 15.12.2015. When the matter came up on 15.12.2015, the counsel for the Respondents drew the attention of this Tribunal to their Application filed before the Center wherein they requested that since an Appeal has been filed against the Orders dated 26.09.2015 and 01.12.2015, the matter may be adjourned as the Appeal is likely to be listed for hearing on 16.12.2015 before the Hon'ble Court. Since there is no stay, this Tribunal proceeded to hear the arguments and after hearing the arguments, the matter was reserved for Award.

The Claimant is the owner of the property No.70, Khan Market, New Delhi, comprising of First Floor and Second Floor alongwith open terrace on Second Floor (hereinafter called as "**the Demised Premises**"). It is alleged initially, the Respondent No.2, Mr. Kashif Farooq represented that he was one of the partners of Sun Cafe's & Bars, a Partnership Firm and a Lease Deed dated 16.03.2009 was signed and registered.

The Lease was for period of three years at a monthly rent of Rs.3,75,000/-. The said Lease Deed was duly registered, vide Registration No.3949 in Additional Book No.1, Volume No.3323, Page Nos.128 to 141 with Sub-Registrar, Deeds and Assurances. It is further alleged that subsequently, the Respondent No.2 converted the said Partnership Firm into a Private Limited Company i.e. the Respondent No.1 and upon expiry of the Lease Deed dated 16.03.2009, a fresh Lease Deed was entered into between the Claimant and the Respondent No.1 through Respondent No.2, dated 14.03.2011 in respect the Demised Premises for a period of three years at a monthly rent of Rs.4.50 lacs per month. The said Lease was duly registered on 14.03.2014, vide the Registration No.4547 in Book No.1, Volume No.4323 on pages 121 to 128. The Respondent No.1 gave a sum of Rs.22,50,000 / - by way of security. The said Lease Deed was duly exhibited as **Exh. CWI/I**. The said Lease was till 21st January, 2015.

In terms of the said Lease, the Respondent No.1 was required to pay electricity and water charges to the concerned Authorities directly and further pay all taxes to the Authorities concerned, including VAT. It has also been alleged that various cheques issued by the Respondent No.1 from time to time, which had been issued in advance, had been dishonored on the ground of insufficient funds. However, it is not disputed that ultimately, the Respondent No.1 had cleared all arrears of rent till November, 2014. However, there was default in payment of rent for the months of December and January. Only part of rent was paid by the Respondent No.1 for the month of December, 2014 and no rent was paid by the Respondent No.1 for January, 2015 i.e. till 21st January, 2015. The Lease expired by efflux of time. As the Respondent No.1 failed to vacate the demised premises and the lease contained Arbitration Clause, an Application under Section 11 of the Arbitration and Conciliation Act, 1996 was filed as a result of which this Arbitral Tribunal was constituted.”

8. The Arbitrator has considered all the pleas of the respondent as well as contentions raised by the petitioners. Having gone through the same, no

interference is called for because of the reason that the petitioners herein are not ready to pay the arrears of rent. It appears to the Court that the petitioners are not in a position to pay the current rent and in the absence of any registered lease deed and after the expiry of lease deed, the petitioners cannot be permitted to enjoy the said premises without paying any even agreed amount of rent. The issue of public policy raised by the learned counsel for the petitioners does not arise. The objections filed by the petitioners are accordingly dismissed. No costs.

APRIL 07, 2016

**(MANMOHAN SINGH)
JUDGE**

