

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.12.2016

+ **O.M.P. (COMM) 243/2016 & IA Nos.5813/2016 & 15159/2016**

FARM MANUFACTURING CO.

..... Petitioner

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr H. C. Mittal, Advocate.

For the Respondent : Mr Dinesh Relan, Standing counsel with
: Ms Kanika Singh, Assistant Standing counsel.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 14.01.2016 (hereafter 'the impugned award') made by the sole arbitrator.

Factual Background

2. The principal dispute between the parties relates to the imposition of misuse charges for a plot bearing No. A-18, G.T. Karnal Road, Industrial Area, Delhi-110033 (hereafter 'the Property').

3. By a perpetual lease deed dated 29.08.1972, the Property was leased to the petitioner. The petitioner sub-leased a portion of the Property to the

State Bank of India on 30.03.1995 for five years for operating its branch. This was without prior permission of the respondent (hereafter 'the DDA').

4. The petitioner terminated the said sub-lease on 24.11.1997. Thereafter, the petitioner instituted a Civil Suit (being Civil Suit No. 2476/1997) against the State Bank of India in this Court for seeking possession of the Property. It is stated that by virtue of an order dated 10.09.2008 passed by this Court, the petitioner obtained the possession of the premises in question.

5. On 06.12.2002, DDA issued a show cause notice calling upon the petitioner to show cause as to why the misuse charges at the rate of ₹828 per sq. mtr. per annum be not imposed on the petitioner. Thereafter, DDA sent a letter dated 31.03.2003 stating that the lease of the property had been determined by the lessor - Lieutenant Governor of Delhi - by an order dated 17.02.2003.

6. The aforesaid order was challenged by the petitioner by way of a writ petition (being Writ Petition (Civil) No. 2622/2003). The said writ petition was disposed of by an order dated 11.02.2005; the court held that *“the appropriate course, in my opinion would be to direct the DDA to reconsider the petitioners’ case and indicate the terms and conditions and/or the amounts which have to be paid by it for the breach of the conditions in the lease deed.”*

7. Pursuant to the aforesaid order, DDA calculated the misuse charges and sent a letter demanding a sum of ₹1,91,34,858/- on account of misuse charges. The said demand letter was challenged by the petitioner by way of

a writ petition (being Writ Petition (Civil) No. 5023/2008) which was dismissed by a Single Judge of this Court on 18.02.2011.

8. The aforesaid order was impugned by the petitioner in an appeal (LPA No. 552/2011) captioned ***Farm manufacturing Co. v. Delhi Development Authority***. In the said appeal, the petitioner urged that there was no basis for calculation of the misuse charges of ₹1,91,34,858/-. The Division Bench of this Court disposed of the above appeal on 02.12.2011 by observing that the lease deed contained an arbitration clause and by granting liberty to the petitioner to raise a dispute about misuse charges. The court further directed that on such disputes being raised, DDA would appoint an arbitrator in accordance with the arbitration clause and the disputes would be settled by arbitration.

9. The petitioner invoked the arbitration clause, however, the DDA did not appoint an arbitrator and therefore, the petitioner was constrained to file another application before the Division Bench of this Court. The said application was disposed of on 13.01.2014 by recording the statement of the learned counsel for DDA that an arbitrator would be appointed in terms of the order dated 02.12.2011, within a period of six weeks from that date.

10. In conformity with the said statement, DDA appointed the sole arbitrator on 07.02.2014, to adjudicate the disputes regarding the demand of misuse charges.

11. The petitioner filed its statement of claim, *inter alia*, praying for damages in the sum of ₹1,00,00,000/- (Rupees One Crore) on account of loss of fame resulting into worries and pains, responsible for causing death

of Sh. P.L. Verma on 13.12.2012; damages in the sum of ₹1,00,00,000/- on account of loss of business goodwill and business; and ₹50,00,000/- as damages on account of unnecessary and forced litigations. DDA, on the other hand, filed counter claims for a sum of ₹1,91,34,858/- as misuse charges till 04.10.2005; interest at the rate of 15% per annum computed at ₹2,43,96,994/- from 04.10.2005 to 02.04.2014; and ₹10 lakhs as litigation and arbitration expenses.

12. The arbitrator rejected the claims made by the petitioner and allowed the counter claims of DDA. By the impugned award, the arbitrator held that DDA is entitled to recover a sum of ₹1,91,34,858/- as misuse charges. In addition, the arbitrator also awarded interest at the rate of 12% per annum on the aforesaid sum from 04.10.2005 till the date of actual payment of the entire amount with interest. The impugned award further provided that in the event the petitioner makes the payment within four weeks of the date of the award, the interest awarded would stand revised to 9% per annum.

Submissions

13. The learned counsel appearing for the petitioner submitted that the impugned award has been passed without any basis and only on certain scribbled notes submitted by DDA. He further pointed out that the show cause notice issued on 06.12.2002 called upon the petitioner to show cause why misuse charges at the rate of ₹828 per square meters not be levied. He submitted that the petitioner was ready and willing to pay the misuse charges as indicated in the said show cause notice but the charges claimed by DDA were much in excess of the misuse charges indicated in the show

cause notice. He further contended that in terms of clause 8 of Office Order No. 23/76 of Land and Development Office, Ministry of Works and Housing, only a token penalty could be levied in cases where the lessor had filed a suit against defaulting tenants.

14. Learned counsel for the DDA countered the submissions made on behalf of the petitioner.

Reasons and conclusion.

15. The petitioner had relied on clause 8 of the Officer Order No. 23/76. The said clause reads as under:

“8. In case where the lessee/ex-lessee files suit for eviction against defaulting tenants on receipt of our notice for misuse and are successful in evicting such tenants one percent of the charges will be recovered as token penalty in consultation with the Ministry of Works and House and Finance.”

16. A plain reading of clause 8 of the Office Order No. 23/76 indicates that it would be applicable only in a case where the lessor had filed a suit for eviction of defaulting tenants, on receipt of a notice for misuse. It is apparent from the plain language that it would be applicable only in cases where the tenants of lessors had defaulted by misusing the premises. This court cannot readily accept that this clause would be applicable even in cases where the tenants had not defaulted and had used the premises for the purposes for which the premises were leased. In other words, where the lessor had rented out the premises for a particular use which amounted to misuse, the aforesaid clause may not be applicable.

17. Secondly, it is also apparent that the said clause would only be applicable where the landlord had acted bonafide and taken steps to successfully vacate the tenant on receipt of a notice of misuse. In the present case, the petitioner had instituted the proceedings for eviction of State Bank of India prior to receipt of notice of misuse.

18. The arbitrator had considered petitioner's contention that in terms of clause 8 of Office Order No. 23/76 only one percent of the charges as token penalty could be recovered and he held as under:-

“IV. Contention of the Claimant that as per Clause IV of the lease deed the Respondent can claim misuses charge as per Office Order No. 23/76 has no basis at all because the Clause IV of the lease neither states so nor even mentions about any Office Order at all. Rather, the aforesaid Clause provides that Lessor may in his discretion relieve the forfeiture or re-entry on such terms and conditions as he thinks proper. In any case the aforesaid Office Order is applicable only in the cases where the lessee/ex-lessee has filed the suit for eviction against the defaulting tenants on receipt of notice for misuse, whereas, this Tribunal has already noted above that the suit was filed by the Claimant for recovery of possession was not because of issuance of any notices or non-reply of letters by the Respondent or non-grant of permission, but because of its disputes with the State Bank of India and was filed much before the issuance of the show-cause notice.”

19. In the facts of the present case, this Court finds no infirmity with this view. It is also relevant to observe that even if it is accepted that the interpretation of the arbitrator as to the applicability of Office Order No.23/76 is erroneous - which this Court does not - the same is within the jurisdiction of the arbitrator and would not warrant any interference under Section 34 of the Act.

20. The second contention that the misuse charges calculated by the DDA were without any basis is also unmerited. The arbitrator had relied upon the Office Order No. 14 dated 25.08.1989, which provided the basis for computation of the misuse charges. The said office order is reproduced below:-

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Government of India
Ministry of Urban Development
Land & Development Office
Nirman Bhawan, Delhi

L&DO/24(11)89-CDN *Date 25.08.89*

Office Order No.14

Subject: Formula for calculating misuse charges in respect of land leased by Government.

Reference:

- 1. Ministry's letter No.J-20011/6/77-LII dated 24.04.1981.*
- 2. Min's O.M. No.G-25018/1/85-Bi dated 7.6.89*

With effect from 1.9.89 onwards misuse charges shall be recovered in accordance with the following formula with reference to above orders-

<i>Size</i>	<i>Misused</i>	<i>Present</i>	<i>The land rate</i>	<i>13.9%</i>
<i>Of</i>	<i>area</i>	<i>Commercial rate</i>	<i>on the date of</i>	
<i>Plot X</i>	<i>Permissible X</i>	<i>of land for the</i>	<i>Minus last transaction X</i>	
	<i>Covered</i>	<i>purpose for which</i>	<i>for the purpose</i>	
	<i>area</i>	<i>the property is</i>	<i>for which land</i>	
		<i>misused.</i>	<i>was leased.</i>	

The above formula is based on the borrowing rate of Government of India at 11.40% P.A. plus 2.50% PA= 13.9%

The above formula will not be applicable in leases of residential leases in Rehabilitation Colonies.

*(Dr. G.S. Jariya)
Land & Development Office”*

21. The contention that the DDA had not indicated the basis of computation of the misuse charges also cannot be accepted as the record admittedly indicates that the DDA had submitted a statement indicating the calculations of the misuse charges and the same were in conformity with the formula as indicated in Office Order dated 25.08.1989.

22. The scope of interference in the arbitral award is very narrow and no interference in the arbitral award would be warranted unless the Court finds that the arbitral award is perverse, without jurisdiction or militates against the established principles of justice and cannons of law. In the present case, this Court is unable to accept that the impugned award is perverse or is contrary to the public policy of India.

23. Accordingly, the petition is dismissed. The pending applications also stand disposed of. No orders as to costs.

VIBHU BAKHRU, J

DECEMBER 16, 2016

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