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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ARB.P. 444/2012

SUNIL GUPTA ..... Petitioner
Through: Mr. Vivek Kohli, Ms. Mansha Anand and Ms. Aastha Chawla, Advocates.

versus

ROOTS CORPORATION LTD ..... Respondent
Through: Mr. Akhil Sibal, Mr. Nikhil Chawla and Mr. Saswat Pattnalu, Advocates.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

% **04.10.2016**

ARB.P. 444/2012 & I.A.No. 5623/2016

1. IA No. 5623 of 2016 is an application filed by the Respondent for a direction to the Collector of Stamps, Ludhiana to determine the Stamp Duty (inclusive of penalty) afresh on the basis of the average monthly rent as per Clause 9.3 of the Agreement. The alternative prayer sought is to direct the Petitioner to pay the deficit stamp duty (inclusive of penalty).

2. The background facts are that the Petitioner Mr. Sunil Gupta filed the accompanying petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking the appointment of a Sole Arbitrator for adjudication of the disputes between the Petitioner and the Respondent i.e., Roots Corporation Limited ('Roots') arising out of Agreement of Lease

dated 1st March, 2007. It is stated in the petition that Sonia Farms Private Limited ('Sonia') had purchased freehold land measuring 29 Kanals, equivalent to 3.625 Acres in Village Kadian, Hadbast No.91, Tehsil & District Ludhiana, Punjab from M/s Scott Industries Limited by a Sale Deed dated 24th August, 2004. Sonia entered into a Collaboration Agreement dated 18th February, 2005 with Aerens Gold Souk Limited ('Aerens'), the Developer, for the development and construction of a Commercial Complex known as 'The Souk' on the said land.

3. In March, 2007, Roots offered to take on lease an area of 43,125 square feet located at the 4th and 5th floor of the Commercial Complex for running a hotel known as 'Ginger Hotel'. An Agreement to Lease dated 1st March, 2007 was then entered into between Aerens (Developer), Sonia (erstwhile owner) and Roots (Respondent). *Inter alia*, under the said agreement, Roots was to pay an agreed monthly rent of Rs.22 per square feet for super area of 43,125 square feet. In addition to the fixed Lease Rentals, Roots was also to pay 2% per month of its gross revenues as variable fee computed on a quarterly basis. The fixed lease rental was to be increased by 7.5% on the last paid rent after every three (3) years.

4. It is stated that during the subsistence of the Lease Agreement, Aerens decided to sell the premises. The Agreement to Lease contained the right of first refusal in favour of Roots. It is stated that a letter dated 2nd April, 2007 was addressed to Roots giving it the first right of refusal to purchase the premises. According to the Petitioner, Roots refused to exercise its right. Thereafter, on 31st July, 2007 Aerens and Sonia sold the premises to the

Petitioner who was, at the relevant time, the Director of Sonia.

5. It is stated that by letter dated 23rd August, 2007, Aerens requested Roots to execute a lease deed. A Letter of Attornment was said to have been issued on 28th July, 2008 by Aerens to Roots attorning the lease in favour of the Petitioner. Roots was further asked by Aerens to pay the monthly rent to the Petitioner with effect from 1st September, 2008. According to the Petitioner, the lease commenced on 1st November 2008 and Roots paid a rent of Rs. 9,48,750 per month in terms of Clause 9.3 of the Agreement to Lease without demur. According to the Petitioner, Roots defaulted and failed to perform its part of obligations and in successfully running the hotel and persistently made requests for reduction of rent and maintenance charges due to recession in the economy. According to the Petitioner, on humanitarian grounds, the rent was reduced for a period of two years with effect from 1st April, 2009 till 31st March, 2011 to Rs.19.20 per square feet per month i.e., for a total sum of Rs. 8,28,000 per month and the maintenance charges were reduced to Rs. 4.20 per square feet per month. However, in the event that the turnover of the hotel exceeded Rs. 2 crores in the Financial Year ('FY') 2009-10 and 2010-11 respectively, the rent was to be treated as Rs. 22 per square feet per month. It is stated that despite agreeing to the changed terms, Roots defaulted in paying the rent and maintenance charges. It is stated that in response to several reminders, Roots sent a reply on 16th December, 2011 denying that it was liable to pay the revised rent. The Petitioner then issued a legal notice dated 13th January, 2012 which was replied to on 4th February, 2012 by Roots denying its liability. This was followed by Roots issuing a termination notice dated 29th

June, 2012 by which the Agreement to Lease was purportedly terminated by it with effect from 31st July, 2012. According to the Petitioner, as per the terms of the lease deed, Roots was liable to pay the Petitioner Rs. 43,70,09,502 towards monthly rent for the lock-in period of 36 months. The Petitioner by notice dated 25th July, 2012 called upon Roots to withdraw the termination notice. By reply dated 3rd September, 2012, Roots declined to do so.

6. The Petitioner invoked the Arbitration Clause in terms of Clause 22 of the Agreement to Lease by notice dated 17th September, 2012 and nominated a former Judge of this Court as its Arbitrator. By its reply dated 1st October, 2012, Roots declined to concur with the appointment of the Arbitrator. Thereafter, the present petition was filed.

7. Pursuant to the notice issued in this petition, a reply was filed by Roots on 15th May, 2013 where among the preliminary objections raised, it was submitted that this Court had no territorial jurisdiction to entertain the present petition. Secondly, it was pointed out that the Agreement to Lease was between Aerens, Sonia and Roots and there was no Arbitration Agreement as between the Petitioner and Roots. Thirdly, it was pointed out that the Agreement to Lease dated 1st March, 2007 was improperly stamped and was thus liable to be impounded. *Inter alia* it is pointed out that Aerens had created a deemed lease in terms of Section 2(7) of the Registration Act, 1908 and stamp duty levied on the lease should have been paid on the Agreement to Lease. It is, therefore, submitted that the Agreement to Lease must be impounded by the Court under Section 33 of the Indian Stamps Act,

1899 ('ISA'). It is further submitted that since the Agreement to Lease was improperly stamped and it contained the Arbitration Clause, such Arbitration Clause could also not be acted upon under Section 35 of the ISA.

8. There were other objections on the merits of the case. However, what is relevant for the present purposes is to note that the above preliminary objections regarding the Agreement to Lease not being properly stamped was raised at the hearing of the matter on 3rd September, 2014 when the Court passed the following order:

> "The learned counsel for the respondent has sought an accommodation on the ground that the counsel concerned is not available.
>
> Dehors the above, the learned counsel for the respondent says that preliminary objection that they have to the maintainability of the petition, is that, the lease agreement, which contains the arbitration clause, on which the petitioner seeks to rely is, insufficiently stamped. He also submits that the petitioner herein is not the original lessor and, therefore, cannot maintain the petition.
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> Mr. Kohli while conceding that the document in issue is, insufficiently stamped, says that though the petitioner is not the original lessor, the lease in issue was assigned to the petitioner and the respondent has attorned to the petitioner.
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> As regards deficit stamp duty, Mr. Kohli submits that the petitioner is willing to pay the deficit stamp duty on the same being determined by the Controller of Stamps.
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> Accordingly, an attested copy of the document in issue will be sent by the Registry to the Controller of Stamps. The Controller of Stamps will determine the deficit stamp duty, if any, payable by the petitioner in accordance with the extant provisions of

law. A report in this behalf will be generated and placed before this court on the next date of hearing.

Mr. Kohli, at this stage, says that if the petitioner were called upon to pay the deficit stamp duty, it should be open to the petitioner to recover the same as part of the arbitration proceedings, if and when, an arbitrator is appointed. Needless to say, if the court is persuaded by the petitioner that an arbitrator needs to be appointed, it would be open to the petitioner to lodge a claim in that behalf before the arbitrator.

List on 02.02.2015."

9. At the subsequent hearing on 2nd February 2015, the following order was passed:

"On the last date of hearing, learned counsel for the petitioner conceded that the document in issue i.e. agreement to lease is insufficiently stamped. This court noting such a submission had directed the Registry to send the document to the Collector of Stamps. In terms of the said order, the Collector of Stamps was to determine the deficit stamp duty, if any. I note that the petitioner had represented to the Collector of Stamps to which a response has been received by the petitioner, the same has been filed by way of an affidavit. Since then the Registry has not received the report from Collector of Stamps. Collector of Stamps, Ludhiana is directed to send the report on the document sent by this court in terms of the order of this court dated 03.09.2014 within four weeks from today.

Let a copy of this order be sent to the Collector of Stamps, Ludhiana, within one week.

Renotify on 16.03.2015."

10. From the affidavit filed by the Petitioner on 30th January, 2015 it appears that on 15th January, 2015 itself the Sub-Registrar, Ludhiana (West) District,

Ludhiana issued an order determining the stamp duty payable as Rs.6,83,100 and the registration fees as Rs.2 lakhs and the pasting fee as Rs.100. A copy of this order along with the translated version thereof has been annexed as Annexure A. The said translation reads as under:

> "Office of the Sub Registrar, Ludhiana (West) District Ludhiana.
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> From:-
> Shri Sunil Gupta S/o Sh. D.R. Gupta
> R/o N-155, Puncheel Park,
> New Delhi-110017
>
> No. 982/S.R (P) dated 15-1-15
>
> Sub:- Regarding stamp Duty of Lease Deed of Khasra No. 33/16, 17, 18, 19, 34/20, Khewat No. 66, 67 Khatoni No. 76, 77, according to Jamabandi year 1999-2000 Village Ladian, Tehsil and District Ludhiana.
>
> With regard to the above subject and your application dated 2.1.2015, it is written that as per Memo No. 25/46/13-S.T.1/9812-33, Chandigarh, dated 17.05.2013 of Punjab Govt. for as per stated rent i.e. Rs.9,48,750/- per month, stamp Duty is made Rs.6,83,100/- and its is Registration fees Rs.2,00,000/- & pasting fees Rs.100/- is made, therefore, total amount is Rs.8,83,700/-
>
> Sd/-
> Sub Registrar
> Ludhiana (West)"

11. From the above document it appears that an application had been made by the Petitioner on 2nd January, 2015 in which it was stated that the rent was Rs. 9,48,750 per month. It appears that the stamp duty was calculated on that basis. By a letter dated 20th January, 2015 addressed to this Court,

the Collector of Stamps, Ludhiana simply enclosed the said order of the Sub-Registrar and informed that the stamp duty and the registration fees was payable as above.

12. Mr. Akhil Sibal, learned counsel appearing for Roots raised a serious objection to the above procedure adopted for determination of the stamp duty. He pointed out in the first place that the order of this Court dated 3rd September, 2014 was very clear that it was the Controller of Stamps who had to determine the deficit stamp duty. No permission had been granted to the Petitioner to make an application in that behalf to the Collector. Without the leave of the Court and without notice to the Respondent, such application ought not to have been made. Secondly, it is pointed out that under the Agreement to Lease, the rent was to be revised by 7.5 % after every three years. The rent was, therefore, not Rs. 9,48,750 per month as stated by the Petitioner in the application before the Collector of Stamps. There was, in fact, no enquiry made at all in the matter. The Sub-Registrar appears to have simply accepted the rent as indicated by the Petitioner in his application. Mr.Sibal, therefore, pointed out that the actual rent would work out to a much higher figure. The Respondent has calculated on a rough and ready basis the average rent for a period from 1st March, 2007 to 28th February, 2010 for the entire period of 36 months which works out to Rs. 13,42,205 approximately. He, accordingly, submits that the entire exercise is a flawed one and the Petitioner should not have been allowed to take any further benefit of the improperly stamped lease deed.

13. In response to the above submission, it is submitted by Mr. Vivek Kohli,

learned counsel appearing for the Petitioner that the Respondent is somehow trying to delay the adjudication of the petition. There was nothing illegal in the Petitioner facilitating the determination of the appropriate stamp duty and registration charges by going before the Collector of Stamps with an application. This had not been kept back from the Court and the order dated 2nd February, 2015 notes that the Petitioner had "represented to the Collector of Stamps to which the response had been received by the Petitioner..." Mr. Kohli offered that in case the Court was not satisfied with the exercise, it should ask the Collector of Stamps to determine the correct stamp duty in a time bound manner and submit a fresh report to the Court. Mr. Kohli pointed out that the stamp duty determined by the order dated 15th January, 2015 of the Sub-Registrar, Ludhiana had already been paid by the Petitioner. He accordingly asked that the consideration of the present petition be further deferred.

14. The Court is unable to accept the submissions of Mr. Kohli.

15. This is a petition under Section 11 of the Arbitration and Conciliation Act, 1996 which has been pending in this Court since November 2012 i.e., nearly four years now. The matter has not progressed essentially as a result of the Petitioner, in the first instance, failing to observe the essential legal formality i.e., having the Agreement of Lease containing the arbitration clause properly stamped and registered. The Court is not meant to facilitate a party to comply with a law as a pre-condition to entertain a petition for the appointment of an Arbitrator. That responsibility was of the Petitioner.

16. The Court finds merit in the petition raised by the Respondent that the

exercised undertaken by the Sub-Registrar, Ludhiana is not in consonance with the ISA at all. Without going into the question whether the function of determining the proper stamp duty could at all have been delegated to the Sub-Registrar, Ludhiana by the Collector of Stamps, Ludhiana, the Court finds that the exercise undertaken by the Sub-Registrar was not in consonance with the legal requirements as per the ISA. The Sub-Registrar appears to have simply accepted the rental value indicated by the Petitioner in its application dated 2nd January, 2015 and determined the stamp duty and registration fees payable on that basis. The question whether penalty be imposed on the Petitioner was not all considered. The Respondent was right in pointing out that the rent had to be calculated in terms of the relevant clauses of the Agreement to Lease which does not even appear to have been examined by the Sub-Registrar.

17. Consequently, this Court is not able to accept the correctness of the report dated 15th January, 2015 of the Sub-Registrar which has simply been forwarded by the Collector of Stamps by a letter dated 20th January, 2015 addressed to the Registrar of this Court. The said report is accordingly rejected.

18. The Court is unable to accept the plea of the Petitioner that the petition should be kept pending till a fresh exercise is conducted by the Collector of Stamps. The Court ought to have, in the first instance, impounded the Agreement to Lease under Section 33 of the ISA and, thereafter, asked the Collector to determine the correct stamp duty in a time bound manner. The Court is, therefore, not prepared to postpone the present petition to await the

completion of that exercise. The course that commends to the Court itself is to dispose of the present petition with liberty to the Petitioner to revive its plea after he gets the Agreement to Lease properly stamped and registered by approaching the Collector of Stamps, Ludhiana again for that purpose. If the Petitioner files an appropriate application before the Collector of Stamps, Ludhiana within a period of four weeks from today, then the Collector of Stamps will endeavour to enquire into the matter and complete the exercise of determining the stamp duty, registration fees and the penalty payable by the Petitioner within a further period of eight weeks thereafter. The amount stated to have been already paid by the Petitioner will be accounted for while calculating the balance deficit stamp duty, registration fees and penalty payable by the Petitioner. As already indicated, after the said exercise is complete and the Petitioner has paid the amounts in the manner determined by the Collector of Stamps, it will be open to the Petitioner to revive its plea for appointment of an Arbitrator. However, it is clarified that the Court has not examined any of the other objections raised by the Respondent and all those objections are permitted to be raised by the Respondent at the appropriate stage.

19. The petition is disposed of in the above terms.

S. MURALIDHAR, J

OCTOBER 04, 2016
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