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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ O.M.P. 506/2015 & IA No. 21461/2015 (stay)

OVERNITE EXPRESS LTD. ..... Petitioner
Through: Mr. Ashish Upadhayay, Advocate.

versus

KANWAR SINGH PRADHAN (DECEASED)
THROUGH: LRS ..... Respondents
Through: Mr. Israel Ali, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
% **21.12.2016**

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 filed by Overnite Express Ltd. ('OEL') challenging the Award dated 3rd August, 2015 passed by the sole Arbitrator in the disputes between the parties arising out of lease deed dated 31st December, 2004 whereby the predecessor-in-interest of the Respondent, as owner, gave on rent the basement and ground floor admeasuring 9,000 sq.ft. of property no. A-221, Gali No. 6, Mahipalpur Extension, New Delhi (hereafter the premises) and lease dated 1st March, 2005 in respect of the first floor of the said premises in favour of the Petitioner.

2. The admitted position is that the lease deed dated 31st December, 2004 in respect of basement and ground floor was a registered lease deed. The clauses of the lease deed which are relevant for the purposes of the present

petition read as under:

> "5. The Lessor either on the expiration or at the time of any earlier termination of the agreement for any reason whatsoever, shall simultaneously upon the lessee handing over the possession of the premises, refund to the lessee the entire security deposit amount of Rs.1,80,000/- paid under the terms of the agreement, after adjusting therefrom any amount outstanding towards rent payable till the date of termination of agreement.
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> 18. That if the Lessee fails to pay the monthly rent for more than two months [on] the specified date as mentioned in clause 2 the lessor have the right to terminate this rent agreement.
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> 22. Any dispute, difference, claim, counter claim arising out of, under or in connection with this agreement or any other breach thereof shall be resolved by mutual negotiations by and between the parties. Any unresolved dispute, claim, counter claim or difference shall be finally settled by an Arbitrator to the nominated after mutual agreement or both parties has the option to refer the matter/dispute to the jurisdiction of Delhi Court.
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> 23. That the lease has been granted for a period of twenty one years. The hand over the physical vacant possession of the premises."

3. It requires to be noticed at this stage that there was a separate lease between the parties on 1st March, 2005 in respect of the first floor of the building at A-221, Gali No. 6, Mahipalpur Extension, New Delhi. That lease deed, however, was not registered.

4. As far as the present petition is concerned, the case of the Respondent is

that a legal notice was issued on 12th May, 2011 to the Petitioner stating *inter alia* that the Respondent was "no longer interested and desirous" to have the Petitioner as his tenant in the premises. The tenancy was accordingly terminated by giving the Petitioner two months' notice to vacate and to handover the vacant physical possession of the premises. Although the said time was not provided in the lease deed dated 31st December, 2004, the Respondent offered time to vacate considering that the Petitioner's articles and goods were in the premises. The Respondent made it clear that if the premises were not handed over in the time granted, the Petitioner would be liable to pay damages for the unauthorised dues and occupation of the premises at Rs. 2 lakhs per month which was the prevailing market rate for similar properties till such time the premises were handed over to the Respondent.

5. The Petitioner responded to the above legal notice on 23rd May, 2011 stating that the premises have been leased out for a period of 21 years and there was no provision in the agreement for termination of the tenancy at any time prior to the expiry of the said period. It was denied that there was any justifiable reason for the Respondent to terminate the tenancy. It was further alleged that cheques for the rent for the months of February, March and April 2011 were collected but deliberately not deposited by the Respondent in his account.

6. Meanwhile, Civil Suit No. 573 of 2011 was filed by the Respondent against the Petitioner in which permission was granted by the learned Additional District Judge ('ADJ') by an order dated 30th September, 2011

permitting the Petitioner to deposit the cheques in the Court. Subsequently, an application filed by the Petitioner under Section 8 of the Act in the above suit was allowed by the learned ADJ by referring the parties to arbitration.

7. The Petitioner then unilaterally appointed the Sole Arbitrator who proceeded to pass an Award dated 14th May, 2012 in respect of the issue as regards the non-registration of the lease dated 1st March, 2005, removal of generator sets located at the roof of the premises and a direction to the Petitioner to receive rent from June 2011 onwards. The said Award has been separately challenged by the Respondent in this Court by O.M.P. No. 738 of 2012.

8. Meanwhile in Arb. Pet. No. 107 of 2012 filed by the Respondent, this Court passed an order on 26th July, 2012 appointing a sole Arbitrator to adjudicate the disputes.

9. The learned Arbitrator framed the following issues for consideration:

> "1 Whether the Respondent .company is duly incorporated under the Companies Act, 1956, if so, whether the. written statement & counter claim petition are signed, verified and instituted by the duly authorized person of the Respondent company? OPR
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> 2 Whether the parties entered into an oral agreement to lease for letting out the first floor of property no. A-221, Gali No.6, Mahipal Pur Extension, New Delhi on terms and conditions as mentioned in para-7 ((i) to (iii) of the written statement ? OPR
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> 3 Whether the claimant has no legal right or justification to determine the lease agreement dated 31.12.2004 &

01.03.2005 by legal notice dated 12 .OS .2011 in preliminary objection No.1 and para-7 of the written statement? OPR

4 Whether both the statutory notices dated 12.05.2011 u/s 106 T.P. Act, were served upon the Respondent Company, as alleged in para -16 of the written statement, if so, its effect? OPC

5 Whether the claimant is entitled for recovery of actual, vacant, physical and peaceful possession of the entire tenanted premises bearing No. A-221, Gali No. 6, Mahipal Pur Extn., New Delhi measuring 9000 sq. ft. consisting of all floors and open terrace? OPC.

6 Whether the claimant is entitled for the damages for unauthorized use and occupation of basement & Ground floor @ Rs.2,00,000/Lac (Rupees two Lac) for basement and ground floor and @ Rs.1,00,000/- (Rupees one Lac) for the first floor portion per month respectively, with cost and legal expenses? OPC

7. Whether the claimant is entitled for interest @ 24% P.A. as alleged? OPC

8. Whether the Respondent Company is entitled for an Award of Rs.25,00,000/- (Rs. twenty five lacs) with costs of litigation as prayed in the counter claim petition? OPR.

9. Relief."

10. The findings of the learned Arbitrator on the above issues were as under:

(i) The Petitioner failed to prove it was a company registered under the Companies Act, 1956 or that its authorised representative was duly authorised to sign and verify its statement of defence or its counter claim.

(ii) There was no evidence of any oral agreement or statement in relation to the lease agreement dated 1st March, 2005.

(iii) The lease agreement dated 1st March, 2005 was terminable by giving 15 days' notice. There was justification for the Respondent to terminate both the lease agreements. As far as the lease agreement dated 31st December, 2004 was concerned, apart from clause 5 of the agreement which gave the Lessor the right to terminate the agreement earlier than the such period for any reason whatsoever, even under clause 18 in case of failure of the Lessee to pay the monthly rent for two consecutive months, the Lessor would have a right to terminate the lease agreement.

(iv) The Petitioner defaulted in payment of rent for three continuous months i.e., February, March and April 2011 and tendered a cheque dated 19th May, 2011 towards arrears of rent and deposited it with the Court. This was clearly in violation of clause 18 of the agreement. Therefore, the Respondent was justified in terminating the said lease agreement dated 31st December, 2004 as well.

(v) Notice dated 12th May, 2011 in respect of both leases was served on the Petitioner.

(vi) The filing of one case for both tenancies i.e., in respect of basement and ground floor as well as the first floor was justified as the Respondent had proved the tenancy in respect of both portions and was entitled to possession of both portions.

(vii) The evidence tendered by the Respondent as regards the market rate of the premises was not challenged by the Petitioner by producing any oral or documentary evidence. The Respondent, on the other hand, had placed on record sufficient evidence to show that what the prevalent market value was. The market value for rental purposes is Rs.30 per sq.ft. i.e. Rs.2,70,000 for all the floors.

(viii) Interest @ 12% per annum on the amount of damages as far as basement and ground floor for the period after two months of the notice dated 12^{th} May 2011 and after 15 days from the date of service of the notice dated 12^{th} May 2011 for the first floor was allowed.

(ix) The Petitioner failed to prove that it had spent more than Rs.2,50,000 on electric fittings, toilet etc.

(x) Consequently, the Arbitrator held that the Respondent was entitled to recovery of the actual vacant physical possession of the premises and damages @ Rs.30 per sq.ft. together with the interest @ 12% per annum.

11. This Court has heard the submissions of Mr. Ashish Upadhayay, learned counsel for the Petitioner and Mr. Israel Ali, learned counsel for the Respondent.

12. It was repeatedly stressed by Mr. Upadhayay that as far as the lease deed in respect of the ground floor and basement of the premises was concerned, it was a registered document which guaranteed the Petitioner undisturbed

possession for 21 years subject to the Petitioner complying with the terms of the lease deed. He submitted that a distinction had to be drawn between the lease deed in respect of the basement and ground floor dated 31st December, 2004 and the lease deed dated 1st March, 2005 in respect of the first floor. While the former was a registered document, the latter was not. According to him, the whole purpose for going in for registration of the lease deed in respect of basement and ground floor would be defeated if the Respondent were to be permitted to terminate the lease at a time prior to the expiry of 21 years.

13. On the other hand, Mr. Israel Ali, learned counsel for the Respondent submitted that the learned Arbitrator has in the impugned Award interpreted both clauses 5 and 18 of the lease deed dated 31st December, 2014 which gave the right to the Respondent to terminate the lease for any reason whatsoever. In any event, there was a factual finding that the Petitioner did default in paying rents for three consecutive months and, therefore, clause 18 was definitely attracted. He further submitted that the scope of interference under Section 34 of the Act was limited and the Court should not re-appreciate the evidence and interfere with the Award merely because a different view is possible to be taken on the same evidence.

14. The Court has considered the above submissions.

15. The view that learned Arbitrator has taken on Clause 5 of the lease deed dated 31st December, 2014 is certainly a plausible one. A reading of the clause does appear to indicate that the parties envisaged a situation where the agreement could be terminated earlier than 21 years for any reason

whatsoever. Upon the happening of that event, in terms of Clause 5, the entire security deposit of Rs. 1.8 lakhs, after adjusting any outstanding amount towards rent payable till the date of termination, shall be refunded to the lessee. While Clause 23 does state that the lease has been granted for a period of 21 years, it has to be read along with other clauses in the lease deed.

16. As regards the non-payment of rent for three consecutive months, the case of the Petitioner was that the Respondent deliberately did not deposit the cheques that had been collected for the months of February, March and April 2011. The learned Arbitrator has returned a factual finding that the Petitioner was unable to establish that in fact it had tendered such cheques as claimed by it to the Respondent. In other words, the Petitioner was unable to counter the Respondent's case that till such time the rent was actually deposited in the Court, the Petitioner did not make any attempt to pay it to the Respondent.

17. Even as regards the service of notice for termination of the lease, the case of the Petitioner that it did not receive the notice for termination of lease dated 1st March, 2005 was unable to be established by it before the learned Arbitrator. It was in any event an unregistered lease. The Respondent was able to establish on facts that *vis-a-vis* both these agreements, statutory notices under Section 106 of the Transfer of Property Act, 1882 were in fact served upon the Petitioner and the Respondent was therefore within his rights to terminate the two lease agreements.

18. The case of the Petitioner that it had spent Rs. 2.5 lakhs on repairing the

premises was unable to be established by it before the learned Arbitrator.

19. As rightly pointed out by learned counsel for the Respondent, these proceedings are not in the nature of an appeal and this Court is not expected to re-appreciate the evidence. Unless the Court finds something in the impugned Award that shocks the judicial conscience, the Court is not expected to undertake a merit review and interfere with the Award simply because another view is possible to be taken on the evidence before the learned Arbitrator.

20. The impugned Award has several findings of fact which have not been shown by the Petitioner to be perverse. None of the grounds under Section 34 of the Act stand attracted.

21. The petition is, accordingly, dismissed but in the circumstances with no order as to costs. The pending application also stands dismissed.

S. MURALIDHAR, J

DECEMBER 21, 2016
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