

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.176 OF 2017

IN

ARBITRATION PETITION NO.889 OF 2010

The Senior Superintendent of Post Office, Mumbai

and three others

... Appellants

Vs.

Kaushal Bagadia and others

... Respondents

Ms Jyotsna Pandhi for Appellants.

Mr. Sharan Jagtiani a/w. Ms Neeta Solanki i/b. Kiran Jain & Co. for
Respondents No.1(a), 1(b), 1(c).

**CORAM : NARESH H. PATIL &
R. G. KETKAR, JJ.**

DATE : NOVEMBER 13, 2017

P.C. : (PER R. G. KETKAR, J.)

Heard Ms Pandhi, learned Counsel for the appellants and
Mr. Jagtiani, learned Counsel for respondents at length.

2. By this Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'Act'), appellants have challenged the judgment and order dated 16.03.2016 passed by the learned Single Judge in Arbitration Petition No.889 of 2010. By that order, the learned Single Judge dismissed the Petition filed by the appellants under Section 34 of the Act impugning the arbitral award dated 18.01.2010 made by the learned Arbitrator allowing the claims of the original claimants / respondents herein. The learned Arbitrator directed the appellants to pay to the respondents a sum of Rs.1,03,74,991.29/- with interest calculated thereon at the rate of 10% p.a. from 01.02.2003 till the date of the award, a sum of Rs.4,89,000/- on account of cost of the arbitration with future interest at the rate of 18% p.a. from the date of award till payment.

3. In support of this Appeal, Ms Pandhi reiterated the submissions that were advanced before the learned Single Judge. She submitted that the learned Arbitrator had awarded the claim for compensation for the unauthorized occupation of the premises based on the rent alleged to have been paid by the Citi Bank which was allegedly prevailing at that time, without considering the fact that the premises was being used by Citi Bank for commercial purposes and the subject premises were requisitioned by the Collector and were being used by the appellants for public utility.

4. Ms Pandhi further submitted that the learned Arbitrator as also the learned Single Judge were not justified in awarding higher rate of interest. She however did not agitate the contention based on Order XXII, Rule 6 of the Code of Civil Procedure, 1908, which was raised before the learned Single Judge.

5. On the other hand, Mr. Jagtiani supported the impugned order. He relied upon the decision of the Apex Court in ***Associate Builders Vs. Delhi Development Authority***, AIR 2015 SC 620 to contend that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view of the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence. He also relied upon the decision in ***Indian Oil Corporation Limited Vs. Artson Engineering Limited***, 2016 (3) **Mh.L.J.** 506, and in particular, paragraph 17 thereof to contend that unless case of perversity and / or error on the face of the record and / or any issue of jurisdiction is raised which goes to the root of the matter and / or any Award and / or order is contrary to the agreed terms and conditions, no interference is called for. He submitted that the award

made by the learned Arbitrator is based on evidence and it cannot be said that there is any perversity in the award. The learned Single Judge has upheld the award. He, therefore, submitted that no case is made out for interfering with the impugned order.

6. We have considered the rival submissions advanced by the learned Counsel appearing for the parties. We have also perused the material on record. In paragraph 12, the learned Single Judge has considered the contention of the appellants that the learned Arbitrator awarded claim on the basis of rent paid by Citi Bank in respect of the commercial premises and observed that the Citi Bank was paying rent at much higher rate. With the assistance of the learned Counsel, we have perused the award made by the learned Arbitrator and in particular paragraphs 26 to 28 thereof. In paragraph 26, the learned Arbitrator has referred to the rent payable by the Citi Bank from March 1992 onwards. The learned Arbitrator observed that the evidence of the claimant and his witness was not demolished in cross-examination. In paragraph 27, after considering the evidence adduced by the claimant and his witness, the learned Arbitrator fixed the compensation payable by the appellants. In paragraph 28, the learned Arbitrator referred to the payment received by the respondents from the appellants. After deducting the amount received by the respondents, the learned Arbitrator held that appellants are liable to pay difference of Rs.1,03,74,991.29/-. Respondents have adduced evidence before the learned Arbitrator. The appellants however chose not to lead any evidence. In view thereof and for the reasons recorded by the learned Single Judge in paragraphs 12 and 13, we do not find any merit in the submission of Ms Pandhi.

7. In so far as rate of interest is concerned, the learned Arbitrator had awarded future interest at the rate of 18% per annum as per Section

31(7)(b) of the Act from the date of the award till the date of payment. As against this, the learned Single Judge reduced it to 12% p.a. In view thereof, we do not find any merit in the submission of Ms Pandhi that the future interest is awarded at higher rate. Appeal is devoid of any merit and is accordingly dismissed. In view of the dismissal of the Appeal, pending Motions, if any, stand disposed of accordingly.

(R. G. KETKAR, J.)

(NARESH H. PATIL, J.)

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