

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

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THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

**Original Petition No.706 of 2015
and Application Nos.1834 & 1885 of 2017**

M/s.Bharti Airtel Ltd.,
rep. by its Authorised Signatory,
Circle Office, Oceanic Tower,
No.101, Santhome High Road,
Santhome, Chennai - 28. .. Petitioner

Vs.

1.T.Mohideen Pitchai
2.V.Thangaraj,
District Judge (Retd.),
Sole Arbitrator,
Vadaveeranaickenpatty,
Theni District - 625 523. .. Respondents

Petition filed under Section 34 of the Arbitration and Conciliation
Act, 1996 to set aside the Award dated 01.07.2014.

For Petitioner : Mr.P.J.Rishikesh
For Respondents : Mr.A.S.Alaguraja for R1

ORDER

Seeking to set aside the award dated 01.07.2014, the present Original Petition has been filed.

2. On 27.07.2006, a lease agreement was entered into between the petitioner as the lessee and the respondent as lessor. The leased premises was made to use for installation and usage of telecommunication equipments. The agreement speaks about the usage of roof top space of not less than 600 sq.ft. It further provides for 10% enhancement after the fixed period of time.

3. The lease was terminated by the first respondent on the premise that the petitioner was in possession of the excess extent than the one permitted. It is the case of the first respondent that the petitioner has neither paid the admitted rent nor the enhanced one. Apart from that, damages are also said to have been caused to the building. After the termination of lease, the first respondent has invoked the arbitration clause. The arbitration clause did provide for any dispute between the parties to be dealt with by the Tribunal.

4. During the pendency of the arbitral proceedings, an expert was appointed to find out the actual extent of area in occupation of the petitioner. This was on the premise that the petitioner was in possession of excess extent. It was recorded in the award by the learned Arbitrator that a contention was raised by the petitioner that it was not in possession of the excess extent. The expert engineer under Ex.C1 series found that the petitioner was in occupation of 899 sq.ft. Accordingly, an award was passed for the rent payable, arrears, future enhancement, damages and mental agony. This award is put into challenge in this petition.

5. Learned counsel appearing for the petitioner would submit that Ex.P1, which is a lease agreement would only state that the extent is not less than 600 sq.ft. Therefore, what was rented out was about 900 sq.ft. The petitioner did not agree that it was only 600 sq.ft. that was leased out. Therefore, the learned Arbitrator has gone into an issue, which is not available under the agreement. It is further submitted that the learned Arbitrator has committed an error in awarding specified amount towards mental agony. The transaction being commercial in nature, there is no question of any claim followed by payment under

mental agony. It is the first respondent, who did not permit the petitioner to be in occupation. Thus, the payment under the other heads towards rent, arrears and enhanced one also cannot be sustained. To buttress his submissions, reliance has been made on the celebrated judgment of the Apex Court in ***Associate Builders Vs. Delhi Development Authority ((2015) 3 SCC 49)***.

6.Learned counsel appearing for the first respondent would submit that what was leased out was only 600 sq.ft. The petitioner was not prevented from enjoying the lease hold premises. As the adjudication was on facts, no interference is required.

7.A perusal of the lease deed would show that what is guaranteed is only 600 sq.ft. Anything beyond this has to come by way of concession from the first respondent being the lessor. Therefore, it is for the petitioner to substantiate that what was leased was above 600 sq.ft. The arbitration Tribunal has recorded the statement made by the learned counsel on behalf of the petitioner, though a plea has been raised otherwise. This submission was to the effect that what was leased out was only 600 sq.ft. Only this statement warranted the appointment of an expert. The award was passed based upon the

report of the expert, which was admitted by both sides. It was also relied upon with respect to the extent in occupation and the damage caused. Therefore, the contentions raised in this regard cannot be countenanced.

8. Coming to the submission made with respect to the prevention by the first respondent in allowing the petitioner to get into the premises, being a question of fact, it is for the petitioner to contend and prove. There is absolutely no material to come to the aforesaid conclusion. It is not as if the first respondent has taken possession. Similarly, the enhancement of rent was awarded by the learned Arbitrator by taking note of the covenants available under Ex.P1. When a lease is executed, after its termination, the lessor has to see to it that the premises in question is handed over in a good condition. As it was found that there was a damage, the award passed to that extent cannot be faulted with. सत्यमेव जयते

9. One more submission has been made by the learned counsel for the first respondent on the question of limitation. It is submitted that the petition has been filed after nearly one year. Learned counsel for the petitioner would submit that the award was not served on the

petitioner and therefore the limitation would start running from the date of its receipt. It appears that the learned Arbitrator did not send the award to the petitioner but sent it to the Registrar. After receipt of the award, the petitioner filed this petition before this Court. If that receipt is taken into consideration then the petition is not barred by limitation. Thus the submission made in this regard by the learned counsel for the first respondent stands rejected.

10. This Court finds some force in the submission made by the learned counsel appearing for the petitioner with respect to mental agony. As rightly submitted by the learned counsel, we are dealing with commercial transaction. There is no provision under the contract which paves way for any compensation towards mental agony. Therefore, clause 4 of the award, by which, a sum of Rs.75,000/- has been paid towards mental agony, being not governed by the agreement, cannot be sustained as the Tribunal, on the face of it, lacks jurisdiction to go into it.

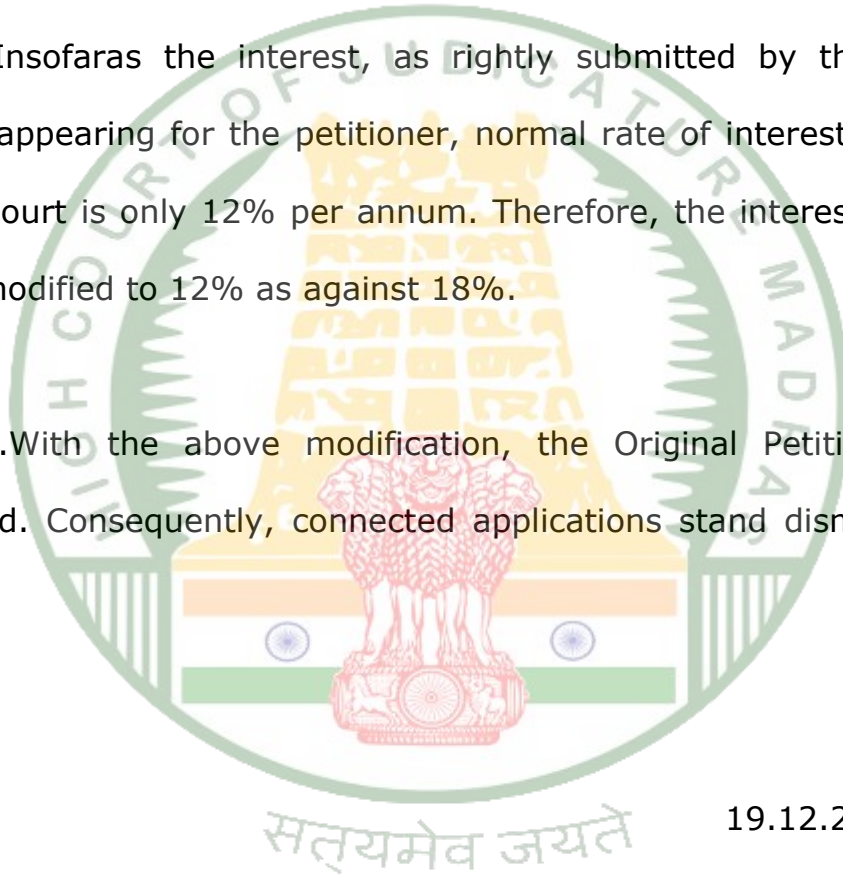
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11. The judgment relied upon by the learned counsel for the petitioner for the reasons aforesaid would actually help the case of the first respondent since factual adjudications cannot be gone into by

exercising the power under Section 34 of the Arbitration and Conciliation Act, 1996.

12. Accordingly, the award passed by the Tribunal stands confirmed except a sum of Rs.75,000/- awarded towards mental agony. Insofar as the interest, as rightly submitted by the learned counsel appearing for the petitioner, normal rate of interest approved by the Court is only 12% per annum. Therefore, the interest awarded stands modified to 12% as against 18%.

13. With the above modification, the Original Petition stands dismissed. Consequently, connected applications stand dismissed. No costs.



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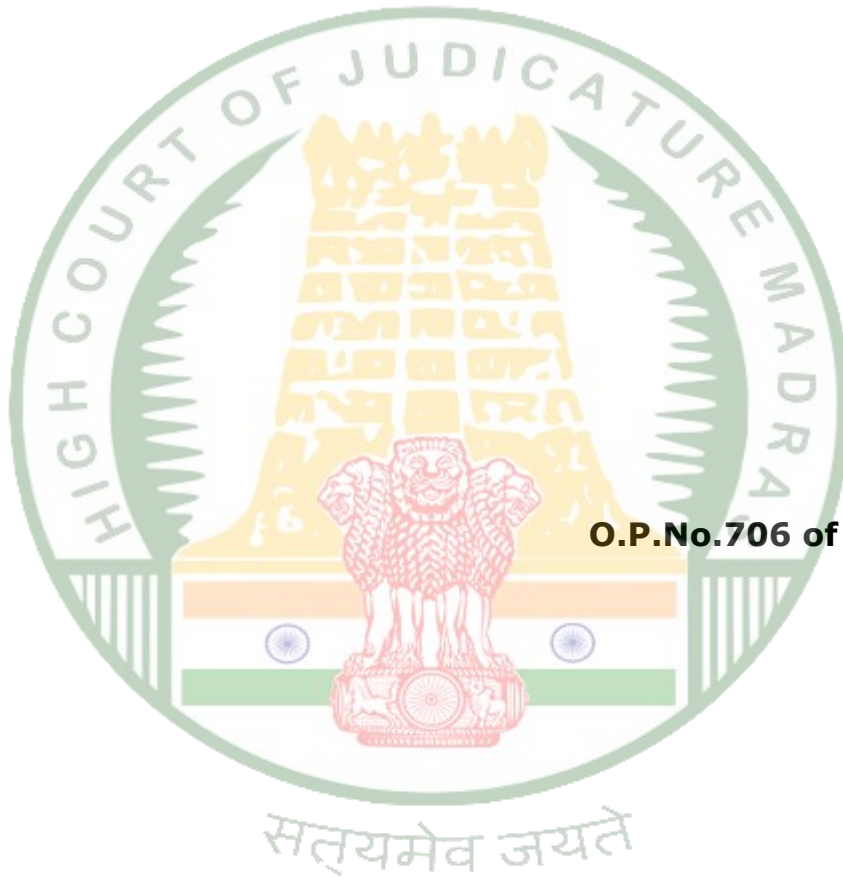
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M.M.SUNDRESH,J.

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