

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO 908/2017

Date of decision:05.09.2017

M/s Gini and Jony Limited

.....Appellant

v.

Ashish Dhingra and others

.....Respondents

Coram: Hon'ble Mr.Justice Jaswant Singh

Present:- Mr.Paras Money Goyal,Advocate for the appellant.

Jaswant Singh,J,(Oral).

Lessee is in appeal under Section 37 of the Arbitration and Conciliation Act,1996(for short the Act) assailing the award dated 13.12.2012 passed by the Arbitrator and the order dated 16.9.2016 passed by the learned Additional District Judge, Gurgaon whereby the objections of the lessee filed under Section 34 of the Act have also been dismissed.

Learned counsel for the appellant has argued that the learned Arbitrator has wrongly awarded damages after returning the finding of termination of lease deed w.e.f. 15.7.2009, by relying upon Clause 16.1 of the lease deed, without actually determining the loss suffered by the lessor qua the property.

After hearing the learned counsel for the appellant, no ground for interference is made out.

It is not in dispute that respondents-Ashish Dhingra and his mother Smt.Bimla Dhingra were/are owners of property bearing Shop Nos. 47 and 48 having a built up area of 1073 square feet on ground

floor of centrally air conditioned Shopping Mall known as "The Metropolitan" situated on Mehrauli Gurgaon Road.

It is an admitted fact that the lease deed between the parties was firstly executed on 8.8.2003 renewable every three years. On expiry of first three years, admittedly the lease deed was renewed w.e.f. 16.7.2006 to 15.7.2009. It has been established that there was no further renewal w.e.f. 16.7.2009 and the lease had been terminated by efflux of time. It is also admitted that the appellant-lessee has vacated the premises before the passing of the award in June 2012. It is also a conceded fact that as per the lease agreement the admitted rent payable on 16.7.2009 was at the rate of Rs.1,60,950/- per month. The learned Arbitrator has by relying on Clause 16.1, determined the damages from the date of termination of the lease till actual vacation of the premises. For ready reference, Clause 16.1 of the lease deed is reproduced hereunder:-

VACATION AND HANDING OVER OF DEMISED PREMISES:

"16.1 That subject to the provisions regarding renewal, extension of lease on expiry of lease period the lease shall be deemed to have been determined by efflux of time and no separate notice shall be required to determine and revoke the tenancy. In case lessee fails to surrender peaceful possession of the demised premises to the LESSERS upon expiry of lease or on its earlier termination/forfeiture in that event LESSEE shall be liable to pay compensation for use and occupation at a rate 50% higher than the monthly rent being paid at that time by the LESSEE. This amount of compensation for use and occupation shall be subsequently stand enhanced by 50% every year till actual vacation of demised premises by the LESSEE. The liability of the LESSEE to pay compensation for use and occupation at the aforesaid rates shall commence from the date of expiry of lease or on its earlier termination/forfeiture

It is apparent that the lessee was liable to pay compensation for use and occupation @ 50% higher than the monthly rent paid at the time of termination of lease to be calculated every year. In view of the

said clause, the compensation has been determined as follows:-

<i>Period</i>	<i>Rent (Rs.) per month</i>	<i>50% enhancement (Rs.)</i>	<i>Total (Rs.)</i>
July 2009 to June 2010	160950/-	80,475x12 months	9,65,700/-
July 2010 to June 2011	160950/-	1,20,712.50 p. x 12 months	14,48,550/-
July 2011 to June 2012	160950/-	1,81,068.75p x 12 months	21,72,825/-
Total			46,07,075/-

In view of the above, it is apparent that the learned Arbitrator has awarded the damages in terms of the contract, therefore, the plea that the Arbitrator was required to determine the actual loss suffered by the Lessor by leading of some positive evidence and evaluation of the same, is without any merit.

Dismissed.

05.09.2017
joshi

(Jaswant Singh)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No