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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) (COMM) 52/2017**

M/S FARM MANUFACTURING CO Appellant
Represented by: **Mr.H.C.Mittal, Advocate**

versus

DELHI DEVELOPMENT AUTHORITY Respondent
Represented by: **None**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

ORDER

% **28.02.2017**

CM No.8245/2017

Allowed subject to just exceptions.

FAO (OS) Comm.No.52/2017

1. The admitted position is that the term of the perpetual lease-deed granted by the respondent to the appellant prohibited any sub-lease of the property, in full or in part, without the permission of DDA and that without obtaining permission the appellant sub-leased a portion of the property to State Bank of India for a period of 5 years, resulting in DDA cancelling the lease, but required by a judicial verdict to withdraw the order cancelling the lease inasmuch as DDA was held entitled to levy and recover misuse charges.
2. DDA calculated and determined misuse charges to be payable in sum of ₹1,91,34,858/-. Appellant challenged the demand by way of a writ petition, but was relegated to the remedy of arbitration.
3. Before the Arbitrator appellant claimed damages in sum of ₹1.5 crores

for harassment. DDA demanded, by way of counter claim, the misuse charges plus interest which had accrued thereon.

4. Learned Arbitrator demised the claim of the appellant and upheld the misuse charges levied by DDA. Interest awarded thereon is @ 12% per annum from the date of the demand till realization.

5. The award was challenged by the appellant. Learned Single Judge has repelled the challenge.

6. As was before the learned Single Judge, in appeal, the appellant places reliance upon an office order No.23/76. The learned Single Judge has noted the relevant clause in para 15 of the impugned order and has reasoned therewith in paras 16 onward.

7. We concur. If a lawful tenant misuses the premises, the office order would be attracted. It has no relevance where a property is let out or sub-leased without the permission of DDA.

8. Second contention concerns the quantum of the misuse charges determined. The learned Arbitrator, as has been noted by the learned Single Judge, has held that the misuse charges had to be levied in terms of an office Order No.14 dated August 25, 1989. It prescribes a formula. The levy is as per the office order.

9. We concur with the view taken by the learned Single Judge that the award does not suffer from any infirmity wanting interference under Section 34 of the Arbitration and Conciliation Act, 1996.

10. The appeal is dismissed in limine.

11. No cost.

PRADEEP NANDRAJOG, J.

V.KAMESWAR RAO, J.

FEBRUARY 28, 2017/mamta