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

+ FAO(OS) 220/2017 & CM Nos. 26916-26918/2017

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Date of decision : 31st July, 2017

MAHANAGAR TELEPHONE NIGAM LTD & ANR

..... Appellants

Through : Mr. Kirti Uppal, Sr. Adv.
with Ms. Sangeeta Bharti,
Mr. S.K. Singh, Mr. Ashish
Kumar, Ms. Surabhi Diwan,
Mr. Harsh Tayal and
Mr. Rameezuddin Raja,
Advts.

versus

M/S ANANT RAJ AGENCIES PVT LTD Respondent

Through : Ms. Biji Rajesh, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No. 26917/2017(consolation of delay)

1. Notice.
2. Ms. Biji Rajesh accepts notice.

3. Having regard to the nature of the application, counsels are orally heard. Delay of 52 days in filing the appeal is hereby condoned.

4. This application is allowed.

CM No.26918/2017 (exemption)

5. Allowed, subject to just exceptions.

6. The application is disposed of.

FAO(OS) 220/2017

7. By way of the instant appeal, the appellant assails the order dated 2nd March, 2017 whereby its petition under Section 34 of the Arbitration Act being OMP No. 637/2008 raising objections against the Arbitral Award dated 9th August, 2008 passed by the sole arbitrator in the arbitration between these parties was rejected.

8. We have been carefully taken through the impugned award dated 9th August, 2008 as well as the impugned order dated 2nd March, 2017 by Mr. Kirti Uppal, learned Senior Counsel for the appellant.

9. The facts giving rise to the instant appeal are within a narrow compass and to the extent necessary are briefly noted hereafter.

10. Vide an agreement dated 1st June, 1992, the respondent rented out two floors in the premises known as ARA Centre, E-2, Jhandewalan Extension, Delhi to the appellant at the monthly rental of ₹15 per sq. ft. for a period of five years. The agreement clauses 2 and 17 of this lease deed permitted the appellant, at the end of five years, to request for extension of the lease deed whereupon the

appellant was required to grant such lease for a further period of five years at the same rent.

11. The appellant has claimed that on 28th April, 1997, it wrote to the respondent requesting for renewal of the lease for the period of five more years on the same terms and conditions. On 8th May, 1997, the respondent replied to the appellant stating that it would consider renewing the lease for the period of five years only if the rent was increased to ₹66 per sq. ft. This demand was premised on the fact that the Income Tax Department, which had rented floors in the other floors in the same building, had increased rent for its tenanted premises and was paying rent at the rate of ₹39 per sq. ft.

12. The appellant refused this offer. As a result, the respondent responded by a letter dated 11th December, 1997 terminating the tenancy of the appellant pointing out as follows :

- (i) As the lease deed was unregistered, the tenancy was required to be considered as a month to month tenancy liable to be determined in accordance with the provisions of Section 106 of the Transfer of Property Act requiring only 15 days notice;
- (ii) By the said notice, the tenancy of the appellant was terminated with effect from 31st January, 1998;
- (iii) The further notice demand was made that in case vacant possession was not handed over by the appellant on 1st February, 1998 with arrears of rent, the respondent would be entitled to arrears of damages at the rate of ₹3,33,000/- per month till such time the appellant delivered possession.

13. The appellant obviously did not agree to the notice demand resulting in the respondent initiating Civil Suit No.287/1998 before this court for arrears and future *mesne profits*.

14. In this suit, the appellant filed an application being IA No. 7269/1998 pointing out that there was an arbitration agreement between the parties.

15. During the pendency of the suit, one important event intervened. We are informed that as on 31st March, 2003, the appellant returned the possession of the property to the respondent.

16. By an order dated 24th February, 2004, the learned Single Judge referred the dispute regarding *mesne profits* and damages to the arbitrator noting that the possession had been handed back to the landlord on 31st March, 2003.

17. It appears that after consideration of the entire matter of the Award dated 9th August, 2008, the arbitrator returned the following findings :

(i) that the lease deed was an unregistered document and, therefore, by application of the principles laid down by the Supreme Court in *AIR 1988 SC 1470 Burmah Shell Distributing now known as Bharat Petroleum Corporation Ltd. v. Khaja Midhat Noor & Ors.* the lease between the parties was deemed to be a month to month tenancy in view of Section 107 of the Transfer of Property Act.

(ii) The notice dated 11th December, 1997 was a valid notice of termination of tenancy and as such the tenancy came to an end on 31st March, 1998.

(iii) The respondent was entitled to damages/*mesne profits* from the appellant with effect from 1st February, 1998 to 31st March, 2003 when the appellant actually vacated the property.

(iv) That in view of the respondent's letter dated 10th June, 1997, rent of the tenanted premises was assessed at ₹29 per sq. ft. per month.

18. The Arbitral Tribunal noted the order dated 16th August, 2000 passed by the learned Single Judge on IA No.1362/1998 in Suit No.287/1998 filed by the respondent wherein the court had directed as follows :

“without prejudice to rights and contentions of the parties, the defendant shall pay the entire arrears of rent due from 1st June, 1997 @ Rs.77,085/- per month within four weeks and will continue to pay the future rent/damages for use and occupation of the premises by the 7th day of each subsequent month”. The Court also directed the adjustment of amounts so paid against the claim for arrears of rent/damages. Therefore, the acceptance of amount of rent/damages by the Respondent from MTNL after 31st May, 1997 was pursuant to the aforementioned order of the High Court dated 16th August, 2000.”

19. The Arbitral Tribunal also held that the respondent would be entitled to simple interest at the rate of 8% per annum from the period of March, 1998 to 31st March, 2003 and imposed costs of ₹1.50 lakhs upon the appellant. It was further directed that in case the awarded sum was not paid within two months of the award, the

respondent would be entitled to simple interest at the rate of 12% per annum from the date of the award till date of payment.

20. These findings of the Arbitral Tribunal have been considered at length by the learned Single Judge while considering the appellant's objection under Section 34 of the Arbitration & Conciliation Act, 1996 being OMP No. 37/2008 culminating in the impugned order dated 2nd March, 2017.

21. Placing reliance on the pronouncement of the Supreme Court in **(2015) 14 SCC 21 NHAI v. ITD Cementation India Ltd.**, the learned Single Judge laid down the principles of law regarding scope of interference by the court in objections to the Arbitral Award under Section 34 of the Arbitration & Conciliation Act. The Supreme Court of India has laid down the applicable principles thus :

“25. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair-minded or reasonable person could do.”

Our consideration has to abide by these very principles.

22. It is, therefore, well settled that in proceedings under Section 34 of the Arbitration Act, the court cannot re-appreciate the evidence and arrive at a different conclusion merely because it was

possible to do so. The learned Single Judge has also noted the important procedural principle that neither the Code of Civil Procedure nor the Indian Evidence Act, 1972 strictly applies.

After a detailed consideration, the learned Single Judge arrived at a conclusion that no ground was made out for interference by the court under Section 34 of the Arbitration Act.

23. Before us, Mr. Kirti Uppal, learned Senior Counsel would contend that the Arbitral Tribunal had gravely erred in awarding *mesne* profits at the rate of ₹39 per sq. ft. and that there was no basis or justification for the same.

24. We find that the Arbitral Tribunal has carefully noted the evidence on record and arrived at a conclusion that the established facts disclosed that the Income Tax Department had actually rented out a different portion of the same building at the monthly rental of ₹39 per sq. ft. per month for the same period.

25. It is also noteworthy that the landlord had claimed damages/*mesne* profits at the rate of ₹66 per sq. ft. per month. This prayer was rejected and after a careful evaluation, the learned Arbitrator has awarded damages/*msene* profits only at the rate of ₹39 per sq. ft. per month.

26. The findings of the Arbitral Tribunal were based on documentary evidence in the nature of the lease deed executed by the Income Tax Department.

27. These findings and award of the Arbitral Tribunal could not be challenged on any legally tenable grounds before the learned Single Judge.

28. Nothing has been placed before us which would enable us to take a view different from the learned Single Judge as well. The challenge by the appellant to the Award and to the order of the learned Single Judge upholding the same in our view is completely misconceived.

This appeal is, therefore, without any legal merit and is hereby dismissed.

CM No. 26916/2017 (stay)

29. In view of the orders passed in the appeal, no further orders are called for in this application and the same is disposed of.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 31, 2017/kr