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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. 740/2012**

Date of Decision : 3rd December, 2018

ADRIN PAL DHEER Petitioner
Through: Mr.A.K.Sharma, Adv.

versus

NORTHERN RAILWAY Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 30.04.2012 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Agreement dated 21.08.2002 executed between the parties whereunder the respondent had granted a licence to the petitioner for the bus/truck/tempo stand parking at the Ajmeri Gate side, New Delhi Railway Station.

2. In the Agreement, the area of the parking plot was mentioned as 3985 sq. mtr.

3. It is the case of the petitioner that upon measurement of the plot, it was found that there was a shortage of the area actually handed over to the petitioner, which was less by 453 sq. mtr. The petitioner immediately protested against the same and called upon the respondent for a proportionate deduction in the Licence Fee. The respondent, however, did not take appropriate action in this regard leading to a dispute between the parties.

4. The respondent in its reply to the Statement of Claim submitted that on the complaint of the petitioner, the Railway officials had conducted an inspection on 02.05.2003 and the complaint of the petitioner regarding lesser area being handed over was found unjustified.

5. The Arbitrator in the Impugned Award has observed that the inspection report dated 02.05.2003 has not been brought on record, however, at the same time, the onus of substantiating allegation of lesser area being handed over to the petitioner was on the petitioner and though some letters have been written by the petitioner complaining about the shortage of the area, in absence of any joint measurement at the time of taking over or other measurements having been done from an independent authority, the claim of the petitioner cannot be sustained.

6. Counsel for the petitioner submits that the Arbitrator has erred in law and on facts in not appreciating that the letters written by the petitioner had remained uncontested by the

respondent. He places reliance on a document dated 17.10.2005 issued by the respondent clearly acknowledging that the area of the parking was 3532 sq. mtr. He further submits that the document was an admission of fact that only 3532 sq. mtr. had been handed over to the petitioner as against 3985 sq. mtr. as mentioned in the licence Agreement.

7. I have considered the submission of the petitioner and find merit in the same. In the Impugned Award, there is no discussion by the Arbitrator on this document. The document *prima facie* contains an admission on part of the respondent that the area of the plot handed over to the petitioner was only 3532 sq. mtr. This was a vital piece of evidence to be considered by the Arbitrator. Having not considered the same, the Award cannot be sustained and is liable to be set aside as far as rejection of Claim no.1 of the petitioner is concerned. However, this *ipso facto* does not lead to Claim no.1 being allowed in favour of the petitioner at this stage. The fact of this document as also the effect of the same on the claim of the petitioner would have to be considered by the Arbitrator. In this view, while setting aside the Award of the Arbitrator on Claim no.1, it is left open to the petitioner to agitate the said claim in form of an appropriate proceeding against the respondent.

8. Claim no.2 was for interest on the amount, if any awarded in favour of the petitioner under Claim no.1. As the

rejection of Claim no.1 by the Arbitrator has been set aside, the question of interest on any amount awarded in favour of the petitioner under Claim no.1 will have to be considered by the Arbitrator in such other proceedings.

9. Counsel for the petitioner has further challenged the Award in so far as it rejects Claim nos.4, 6 and 8, which were for interest on the amounts awarded in favour of the petitioner under Claim nos.3,5 and 7, respectively. He submits that the Arbitrator has refused to award interest only on the ground that the petitioner had not demanded the same from the respondent. This cannot be a ground for rejecting *pendente lite* and future interest.

10. I find merit in the submission of the counsel for the petitioner. Though award of interest is a matter of discretion of the Arbitrator, such discretion must be exercised for a valid and genuine reason. In the present case, the Arbitrator has not given any reason for rejecting the claim of the petitioner for interest for the *pendente lite* and post-Award period. The petitioner would therefore, be entitled to raise such claim in an appropriate proceeding.

11. Counsel for the petitioner has further challenged the rejection of Claim no.9 by the Arbitrator. In Claim no.9, the petitioner had claimed proportionate deduction of the licence fee for the closure of the parking facility on 14th and 15th August and 25th and 26th January. The Arbitrator has rejected

the claim on the ground that these days were well within the notice of the claimant/petitioner at the time of taking over of the tender and that the sites were closed as per orders of the State Government for security reasons.

12. Counsel for the petitioner submits that in the licence Agreement, there was no stipulation warning the petitioner regarding closure of the parking facility on these dates. Further, the communication asking the petitioner to close the parking facility on these dates, did not make any mention of any order being passed by the State Government in this regard. In fact, these letters did not state any reason for asking the petitioner to close the parking facility on these dates.

13. I have considered the submissions made by the counsel for the petitioner. The licence Agreement does not provide for any stipulation directing the petitioner not to use the parking facility on the above dates. The orders by which the respondent had directed the petitioner to close the parking facility on the above dates also do not mention about any order being passed by the State Government in that regard. In view of the same, the reasons given by the Arbitrator are patently incorrect.

14. The question would however, be again one of relief to be given to the petitioner. As the Arbitrator has rejected the claim on a preliminary basis without going into the quantification of the same, it is deemed appropriate to leave it open to the

petitioner to agitate this claim in form of appropriate proceedings.

15. Claim no.10 was a claim of interest on the amount, if any, awarded in favour of the petitioner under Claim no.9. This again would have to be considered in an appropriate proceeding along with Claim no.9.

16. In view of the above, the Award in so far as it rejects Claim nos.1,2,4,6,8 to 10 is set aside, leaving it open to the petitioner to agitate such claims in appropriate proceedings.

There shall be no order as to costs.

NAVIN CHAWLA, J

DECEMBER 03, 2018
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