

\$-9

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 1st August, 2018

+ **O.M.P.(COMM.) 292/2018**

AHMAD MIAN

..... Petitioner

Through Mr.Kshitij Sharda, Adv.

versus

BHASIN INFOTECH & INFRASTRUCTURE PVT. LTD.
(THROUGH ITS DIRECTORS)

..... Respondent

Through Mr.Vinayak Kapur and
Mr.Lokesh Bhola, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

I.A. No.9003/2018 (Delay)

1. This is an application seeking condonation of delay in filing of the petition.
2. Learned counsel for the petitioner submits that the Award which is in favour of the petitioner, has by a clerical mistake, in the final relief mentioned, shop number as 104, Lower Ground Floor in shopping mall known as 'Grand Venezia' situated at Plot No. SH-3, Site-IV, Industrial Area, Surajpur, Greater NOIDA, Uttar Pradesh instead and in place of Shop No. 73, Lower Ground Floor in the same

shopping mall on the same floor. He submits that this mistake in the Award remained unnoticed and in fact, the petitioner filed an application seeking execution of the said Award before the Court of District Judge, Gautambudh Nagar, Noida, Uttar Pradesh. It is only after the filing of the Execution Petition that the petitioner realized the mistake, however, as by that time the period for making the application under Section 33 of the Arbitration and Conciliation Act, 1996 (hereafter referred as to the 'Act') had expired, the filing of the present petition was necessitated. He submits that due to this *bonafide* error there is a delay of 29 days in filing of the present petition.

3. Learned counsel for the respondent does not deny that the respondent itself had indeed changed the allotment of the petitioner from Shop No.104 to Shop No.73.

4. In view of the above, I find merit in the present application. The delay in filing of the present petition is condoned and the application stands allowed.

O.M.P. (COMM) 292/2018

1. The present petition under Section 34 of the Act has been filed challenging the Award dated 27.01.2018 to the limited extent that under relief no.6 the Arbitrator has, due to an inadvertent error directed the respondent to hand over the vacant, physical and peaceful possession of the Shop No.104 in the abovementioned Mall instead of and in place of Shop No.73 in the said Mall.

2. Learned counsel for the petitioner draws my reference to the petition filed by the respondent under Section 34 of the Act

challenging the same Award being OMP(COMM) 182/2018, wherein the respondent in paragraph 17 admitted that with the mutual agreement, the allotment of the unit/shop in favour of the petitioner was changed from unit/shop no.104 to unit/shop no.73 in the abovementioned Mall. Paragraph 17 is reproduced herein below:

“17. Further, it is submitted that due to revision of floor plan and due to change in architectural drawings, the Parties mutually agreed for change in Allotment of the Initial Unit and the same was duly changed from Unit No.104 to Unit No.73 admeasuring 705.09 square feet at the Lower Ground Floor of the said Project (hereinafter referred to as “the said Unit”). Further, except the change of the Unit number from 104 to 73, there was no change in the terms and conditions of the said Allotment Letter executed between the Parties i.e. all the terms and conditions as mentioned in the said Allotment Letter remain unchanged and were applicable on the said Unit.”

3. Learned counsel for the respondent does not deny the above position. He however submits that the proper remedy of the petitioner would have been in filing an application under Section 33 of the Act and not by way of challenging the Award under Section 34 of the Act.

4. On the other hand, learned counsel for the petitioner relying upon the following judgments submits that, where the Award suffers from the error apparent on the face of the record, the said correction can be made, if it does not require any modification to be made by giving reasons for the same:

1. ***Chennai-Ennore Port Road Co. Ltd. v. RDS Project Ltd.***, 2016(2) Arb. LR 155 (Delhi) (DB);
2. ***B.R. Arora & Associates (P) Ltd. v. Airport Authority of India***, 2015 III AD (Delhi) 375;
3. ***Reliance Industries Ltd. v. Madan Store Pvt. Ltd.***, 2008 V AD (Delhi) 36.

5. The learned counsel for the petitioner submits that in the present case, the petitioner is not challenging any of the findings of the Arbitral Tribunal but is only seeking a correction of an inadvertent error that has made in the operative portion of the Award.

6. In my opinion, Section 33 of the Act provides an additional remedy in favour of the petitioner to seek correction of any typographical error that may have crept in the Award. As in the present case, it is not denied by the respondent that the respondent itself had changed the allotment in favour of the petitioner from shop no.104 to shop no.73, merely because the petitioner, due to oversight not noticing the said mistake in the Award and, therefore, not filing an application under Section 33 of the Act before the Arbitrator, cannot be made to suffer for such typographical error.

7. In view of the above, the petition is allowed holding that the operative portion of the Impugned Award shall stand modified and the petitioner is held entitled to get clear title of Shop No. 73, Lower Ground Floor in shopping mall known as 'Grand Venezia' situated at Plot No. SH-3, Site-IV, Industrial Area, Surajpur, Greater NOIDA, Uttar Pradesh along with vacant, physical and peaceful possession

thereof from the respondent. Other conditions / directions mentioned in the Award shall remain unaltered.

8. The petition is allowed in the above terms, with no order as to cost.

Dasti.

NAVIN CHAWLA, J

AUGUST 01, 2018/Arya