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

Date of decision: 26th November, 2018

+ **O.M.P. 676/2008**

DEPARTMENT OF TELECOMMUNICATIONS AND TWO
OTHERS Petitioners

Through: Mr. Suryakant Singla with
Ms. Rimjhim Naudiyal, Adv.
(M-9810075888).

versus

SHRI RAVI N. SAHNI Respondent

Through: Mr. Mishal Vij, Adv.
(M-8800386667).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present Section 34 petition arises out of Award dated 12th September, 2008 passed by the learned sole Arbitrator. The Petitioners/DOT had taken on rent, premises bearing no.114, First Floor, Bajaj House, Nehru Place, New Delhi. The initial lease was entered into on 6th October, 1980. Admittedly, the DOT was in possession of this property till 29th April, 2005. Disputes arose, in view of the termination of the lease by the Respondent on 16th July, 2001. Post the termination of lease, suit was filed by the Respondent seeking possession and mesne profits. In view of the Arbitration Clause contained in the lease deed, the disputes were referred to arbitration vide order dated 28th January, 2003.

2. During the pendency of the arbitration proceedings two letters were executed between the parties, which read as under:-

Letter Dated 6th April, 2005

*“No 81-9/2004-GM/Nehru Place Bldg/114
Date 06-04-2005*

It has been decided that, the flat No. - 114, 1st floor, Bajaj House, 97 Nehru Place, will be vacated by Telegraph Office Nehru Place and the same will be handed over to Shri Ravi N. Sahni C/o Sahni International, 51 Paschim Marg, Vasant Vihar, New Delhi - 57 by 30-04-05 under the following terms and condition :-

- That Shri Ravi N. Sahni will allow to pass the water pipes through his premises to Telegraph Office.*
- That he will also allow the exit of waste-water of Telegraph Office through the existing hole in his premises through pipes.*

Agreed

<i>Sd/-</i>	<i>Sd/-</i>
<i>Shri Ravi N. Sahni</i>	<i>(R.P.GOND)</i>
<i>C/o. Sahni International</i>	<i>Chief Supdt.</i>
<i>51, Paschim Marg, Vasant Vihar</i>	<i>CTO, New Delhi</i>
<i>New Delhi-57”</i>	

Letter dated 29th April, 2005

*“No.81-9/2004/GM/Nehru place Bldg.
Dated :- 29.04.2005*

Sub.: - Handing over the premises flat No.114, 1st Floor, Bajaj House, 97, Nehru Place, New Delhi.

As per agreement made on dated 06-04-2005 vide

letter No.81-9/2004-GM/Nehru Place Bldg/114 the premises (Area 116.80 sq. fts.) flat No.114, 1st Floor, Bajaj House, 97, Nehru Place, New Delhi is handed over to Shri Ravi N. Sahni, C/o Sahni International, 51 Paschim Marg, Vasant Vihar, New Delhi today dt 29.04.2005.

In turn Shri Ravi N. Sahni will withdraw his case No. PCE (ARB) /GS/NC/20/989 with no cost immediately.

Agreed and taken over

*Sd/-
Shri Ravi N. Sahni
C/o Sahni International
51, Paschim Marg
Vasant Vihar
New Delhi.”*

*Sd/-
R.P.GOND
Chief Superintendent
Central Telegraph Office
New Delhi.*

3. In the impugned Award, the learned Arbitrator holds that the possession has already been handed over to the Respondent on 29th April, 2005 and hence the claims relating to possession stood settled. Insofar as claims 2 and 3 for mesne profits and damages are concerned, the learned Arbitrator applies an increasing rate of rent with effect from 3rd October, 1983 till 29th April, 2005 and awarded damages as under:-

“Accordingly, the Claimant is allowed increase of rent w.e.f. 03.10.1983 and the additional rent has been assessed as tabulated below.

	Rent (in Rs.)				Interest	
	Paid per month	Payable per month	Due per month	Amount due for the Period	Period	Amount (in Rs.)
3.10.1980 to 2.10.83						
3.10.1980 to 2.10.83	2,084.00	2,984.00	0.00	NIL	NIL	NIL
3.10.1983 to 2.10.86	2,084.00	2,397.00	313.00	11,268.00	3.10.1986 to 12.09.2008	22,250
3.10.1986 to 2.10.89	2,084.00	2,756.00	672.00	24,192.00	3.10.1989 to 12.09.2008	41,238
3.10.1989	2,084.00	3,170.00	1,086.00	39,096.00	3.10.1992 to	66,643

to 2.10.92					12.09.2008	
3.10.1992 to 2.10.95	2,084.00	3,645.00	1,561.00	56,196.00	3.10.1995 to 12.09.2008	80,619
3.10.1995 to 2.10.98	2,084.00	4,192.00	2,108.00	75,888.00	3.10.1998 to 12.09.2008	88,379
3.10.1998 to 2.10.2001	2,084.00	4,820.00	2,736.00	98,496.00	3.10.2001 to 12.09.2008	88,115
3.10.2001 to 2.10.2004	2,084.00	5,543.00	3,459.00	124,524.00	03.10.2004 to 12.09.2008	77,778
3.10.2004 to 2.04.2005	2,084.00	6,375.00	4,291.00	25,746.00	03.04.2005 to 12.09.2008	9,245
3.04.2005 to 29.04.2005		6,375.00	6,375.00	5,526.00	30.04.2005 to 12.09.2008	1,711
			Total	Rs.460,932/- -		Rs.474,656/-

Award: *I hold that the claim no 2 and 3 as partially justified and the respondent shall release and pay Rs.4,60,932/- on account of these claim to the claimant."*

4. The learned Arbitrator also awarded simple interest at the rate of 9% per annum in the following terms:-

"The Claimant is therefore allowed simple interest on the awarded amount for Claim No.2 & 3 above @ 9.00% P.A. w.e.f. the period indicated as below till the date of Award. This amount as per table above works out to be Rs.4,74,656/-. The respondent shall make the payment against the award within 90 days of its receipt. In case the respondent fails to pay the Awarded sums within 90 days of its receipt, the Respondent shall be liable to pay simple interest @ 11.00% P.A. on the awarded amount including the interest up to the date of Award as indicated above ie Rs.9,35,588/-, from the date of award till the date of its payment."

5. Costs of arbitration as Rs.25,000/- was also awarded.
6. The submission of Mr. Suryakant Singla, Ld. Counsel appearing for the Petitioners is that the witness who appeared on behalf of the

Petitioner/DOT had specifically averred that the entire claims of the Respondent stood satisfied in view of the letter dated 29th April, 2005. It is his submission that the claim of damages could not have been awarded as the execution of letter dated 29th April, 2005 is not disputed. The objection of Mr. Singla is that the Arbitrator failed even to consider the purport and meaning of the said letter while giving the award of damages under claims 2 and 3.

7. On the other hand, learned counsel for the Respondent submits that the letter dated 29th April, 2005 ought to be construed only in terms of the earlier letter i.e. 6th April, 2005. There was no agreement between the parties for withdrawing of the claims in the arbitration proceedings.

8. The Court has heard the counsels for the parties.

9. A perusal of the Award shows that while the learned Arbitrator considers the letter dated 29th April, 2005 in relation to the relief of possession, the same finds no mention whatsoever in respect of claims 2 and 3. A perusal of the affidavit-in-evidence filed by the Respondent shows that the Respondent does not dispute the execution of the letter dated 29th April, 2005. Paragraphs 11 and 12 of the Respondent's affidavit-in-evidence are relevant and are set out below:-

"11. That in terms of agreement arrived at vide letter dated 06.04.2005, the respondent vacated the property in question on 20.04.2005 and got a letter dated 29.04.2005 (which was already prepared by the respondent) signed from the deponent/claimant in good faith acknowledging receipt of possession in terms of agreement dated 06.04.2005. A copy of the letter dated 29.04.2005 is Ex. C-1/11. A perusal of the said letter would reveal beyond doubt that the possession of the property in question has been handed over by the

respondent to the deponent/claimant in terms of agreement vide letter dated 06.04.2005.

12. That as already submitted, the only term and condition agreed for vacation of the property in question was with regard to pipelines and waster water pipelines passing through the premises of the deponent/claimant. The deponent/claimant never agreed to give up his other claims or withdraw the claim petition at any stage. A perusal of the terms of agreement vide letter dated 06.04.2005 would reveal beyond doubt that what was agreed between the parties, was the issue with regard to vacation of the property in question taking care of prayer (A) of the claim petition. It was represented to the deponent/claimant at the time of agreement dated 06.04.2005 that the respondent is running into losses on account of introduction of highly advanced communication techniques and continuing in possession would only be leading to further recurring losses by the respondent inasmuch as the telegraph office being run by the respondent in the property in question was not giving reasonable profits/returns. It was also represented that early vacation of the property in question would check the recurring costs in continuing the said telegraph office in the property in question.”

10. The witness appearing on behalf of DOT categorically averred in his evidence that the relief in the arbitral proceedings stands satisfied. Paragraphs 3 and 4 of his affidavit are relevant and are set out here-in-below:-

“3. I say that the claim of the respondent does not survive any further in view of the specific agreement having been arrived at in this behalf on 29.4.2005. I submit that no amount is due and/or payable by the

respondents to the claimant on any account whatsoever and the whole of the relief as claimed stands satisfied as the claimant had voluntarily, without any force, coercion or fraud agreed to withdraw the arbitration proceedings pending before this Hon'ble Tribunal, on receipt of the possession of the premises demised.

4. I say that the claimant had sought two reliefs in these proceedings. He has sought possession of Flat No.114, Bajaj House, 97, Nehru Place, New Delhi. Besides he had sought damages/mesne profits for use and occupation of these premises after the alleged termination of the tenancy. I say that the possession has already been handed over to the claimant on 29.04.2005. Relief in this behalf stands satisfied. With regard to the relief of damages/mesne profits I submit that on handing over of the possession, whole of the claim of the claimant stood satisfied as he had unequivocally agreed to withdraw these proceedings immediately on receipt of the possession on 29.04.2005. Letter Ex.C-1/11 may kindly be perused for its true purport and meaning. The letter Ex.C-1/11 was prepared in consultation with the claimant after he had agreed to withdraw these proceedings. The claimant signed the Letter Ex. C-1/11 after reading and fully understanding the contents of this letter After having accepted the possession and agreed to withdraw the Arbitration case, as his claim stood fully satisfied, it does not lie in the mouth of the claimant now to say that he had never agreed to withdraw his claim petition. I submit that the claimant cannot now lead any oral evidence to contradict the contents of letter dated 29.4.2005 execution whereof has been admitted. The contention that he had never agreed to withdraw the claim petition is absolutely misconceived, false and is denied. The claimant after receiving the possession of the premises demised has turned dishonest and is pursuing these proceedings in utter

violation of the agreement that he would withdraw these proceedings immediately. I submit that the whole of the claim as laid stands fully satisfied and now no cause of action survives in favour of the claimant.”

11. A perusal of the above two extracts from the affidavits filed by the witnesses shows that this issue was a contested issue between the parties and hence the Arbitrator ought to have adjudicated the said issues as to whether the Respondent had to withdraw the claims in the arbitration as well.

12. A perusal of letter dated 6th April, 2005 is clear that there is no mention of withdrawal of claims in this letter. However, at the time when possession was handed over on 29th April, 2005, the Respondent clearly agreed that he would withdraw his case in the arbitration. The relevant portion of the said letter reads as under:-

“As per agreement made on dated 06-04-2005 vide letter No.81-9/2004-GM/Nehru Place Bldg/114 the premises (Area 116.80 sq. fts.) flat No.114, 1st Floor, Bajaj House, 97, Nehru Place, New Delhi is handed over to Shri Ravi N. Sahni, C/o Sahni International, 51 Paschim Marg, Vasant Vihar, New Delhi today dt 29.04.2005.

In turn Shri Ravi N. Sahni will withdraw his case No.PCE PCE (ARB) /GS/NC/20/989 with no cost immediately.”

13. This portion of the letter dated 29th April, 2005 appears to have been completely ignored by the Arbitrator while awarding damages/mesne profits. The Arbitrator’s award would have been right in law in the absence of such a letter inasmuch as since the DOT was in possession of the property till 29th April, 2005, they ought to pay the lease amount/damages for the said

period. However, the question is as to whether there was, in fact, any *lis* in the arbitration after the execution of letter dated 29th April, 2005. The Respondent had clearly and categorically agreed under his signature that he would withdraw his case No. PCE (ARB/) GS/NC/20/989 before the Arbitrator, immediately, with no costs. This is a settlement entered into between the parties which could not have been ignored by the Arbitrator, thereby leading to award of damages. Once a dispute between the parties stands settled, there is no arbitral dispute to be adjudicated. The only exceptions would have been if the Respondent had argued that there was any fraud, coercion or duress in the execution of the letter dated 29th April, 2005.

14. The affidavit of Respondent does not raise any plea in respect of the said letter and in fact admits that the Respondent signed the said letter “in good faith acknowledging receipt of possession” thus the letter dated 29th April, 2005 being an admitted document duly signed by the Respondent, the disputes between the parties stood settled. There was no arbitral dispute for being adjudicated. Hence there was no question of the Arbitrator’s awarding damages or mesne profits or costs. Accordingly, the impugned Award is set aside with no orders to costs.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 26, 2018/ak