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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(COMM.) 365/2018 & I.A. Nos.11322-23/2018**

Date of Decision : 18th December, 2018

COASTER SHOE COMPANY PVT. LTD Petitioner
Through Mr.Darpan Wadhwa, Sr. Adv.
with Mr.Abhishek Mishra and
Ms.Caveri Birbal, Advs.

versus

MRS. HARPREET KAUR Respondent
Through Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Aman Nandrajog,
Ms.Shreya Nair and Mr.Arjun
Nanda, Advs.

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 13.04.2018 passed by the Sole Arbitrator adjudicating the disputes between the parties.
2. The respondent had filed a Civil Suit, being CS(OS) 3138/2014, titled as *Smt. Harpreet Kaur v. Coaster Shoes Pvt. Ltd.*, before this Court praying for eviction and mesne profit against the petitioner. The petitioner, in turn, filed an application under Section 8 of the Act

seeking reference of the disputes to Arbitration relying upon Clause 16 of the Lease Deed dated 01.04.2012 executed between the parties.

3. This Court by its order dated 08.12.2014 passed in the above suit referred the parties to the Arbitration and appointed the Sole Arbitrator who has passed the Impugned Award.

4. The Arbitrator in the Impugned Award has passed the following directions against the petitioner and in favour of the respondent:

“55. As a result of the above discussion and the findings rendered on various issues, the Tribunal partly allows the claim of the claimant and passes the award in her favour and against the Respondent in the following terms:-

A. The Respondent is held liable to ejectment and claimant is entitled to recover the possession of the suit property No.A-39, Naraina Industrial Area, Phase-1, New Delhi. The Respondent is granted time uptill 31.05.2018 to vacate the handover the peaceful possession of the suit property to the claimant failing which the claimant shall be entitled to recover the possession of the property in accordance with law.

B. The claim of the claimant for mesne profits is partly allowed and the claimant is held entitled to recover mesne profits from the Respondent for unauthorized use and occupation of the suit property @ Rs.7,60,000/- per month w.e.f. 01.09.2014 along with interest @ 9% per annum till such time the Respondent handover the vacant and peaceful possession of the suit property to the claimant.

C. The claimant is also entitled to recover proportionate cost of these proceedings from the Respondent.

D. The counter claims of the Respondent are rejected.”

5. Learned senior counsel for the petitioner submits that once the respondent had claimed before the Sole Arbitrator that she is not relying on the terms of the Lease Deed and her case was of an oral tenancy, the arbitration proceedings were not maintainable as there could not have been an Arbitration Agreement contained in an oral lease.

6. Learned senior counsel for the petitioner has placed reliance on the Judgment of *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Company Pvt. Ltd.*, (2011) 14 SCC 66 to submit that though Supreme Court held that in case of an unregistered Lease Deed the Arbitration Agreement can still subsist being a severable agreement, such arbitration would virtually be a non-starter as the terms of the Lease Deed itself cannot be relied on to claim or enforce any right under or in respect of such lease. He further submits that in the present case, even if it is held that Clause 16 of the Lease Deed dated 01.04.2012 exists as a separate Arbitration Agreement, once the basis of the Agreement, that is, the Lease Deed itself is given up by the respondent, the Arbitration Agreement can be of no avail and the Arbitrator cannot determine the disputes in vacuum.

7. Learned senior counsel for the petitioner has further relied upon the Judgments in *Ravinder Nath and Ors. v. Best Entertainment (P) Ltd.*, MANU/DE/2694/2011; *National Textile Corporation Ltd. and Ors. v. Ashval Vadera*, MANU/DE/1570/2008; *Reliance Infratel Ltd. v. Bal Kishan Gupta*, MANU/DE/2904/2012 and *Himangni*

Enterprises v. Kamaljeet Singh Ahluwalia, MANU/DE/3468/2016 to contend that this Court has taken a consistent view that when the tenant is holding over after the expiry of the Lease Deed, disputes relating to such period cannot be referred to arbitration.

8. On the other hand, learned senior counsel for the respondent submits that the petitioner having itself filed an application under Section 8 of the Act to seek reference of the disputes to arbitration, is now estopped from challenging the maintainability of such arbitration proceedings. He submits that in any case, the petitioner having asserted existence of the Arbitration Agreement and the respondent having acceded to this assertion, the Arbitration Agreement in terms of Section 7 of the Act would come into being.

9. I have considered the submissions made by the learned senior counsels for the parties. In the present case, admittedly, the Arbitration Agreement is contained in Clause 16 of the Lease Deed dated 01.04.2012. The same was an unstamped and unregistered document. The petitioner filed its objection on the maintainability of the arbitral proceedings relying upon *SMS Tea Estates Pvt. Ltd.*(supra) on the ground that in absence of the document being properly stamped and registered, the arbitration proceedings are not maintainable. On such objection, the document was impounded by the Arbitrator and forwarded to the Collector of Stamps for taking necessary action in accordance with the provisions of Indian Stamp Act, 1899. The amount of stamp duty and penalty thereon ascertained by the Stamp Collector was duly paid by the respondent. The only

objection thereafter remaining was whether the document being unregistered can be relied upon for the purposes of existence of the Arbitration Agreement between the parties. In *SMS Tea Estates Pvt. Ltd.* (supra), the Supreme Court has answered the issue of Arbitration Agreement being contained in a document which is unregistered but is compulsory registerable and which is not duly stamped in following words:

“22. We may therefore sum up the procedure to be adopted where the arbitration clause is contained in a document which is not registered (but compulsorily registerable) and which is not duly stamped:

22.1. The court should, before admitting any document into evidence or acting upon such document, examine whether the instrument/document is duly stamped and whether it is an instrument which is compulsorily registerable.

22.2. If the document is found to be not duly stamped, Section 35 of the Stamp Act bars the said document being acted upon. Consequently, even the arbitration clause therein cannot be acted upon. The court should then proceed to impound the document under Section 33 of the Stamp Act and follow the procedure under Sections 35 and 38 of the Stamp Act.

22.3. If the document is found to be duly stamped, or if the deficit stamp duty and penalty is paid, either before the court or before the Collector (as contemplated in Section 35 or 40 Section of the Stamp Act), and the defect with reference to deficit stamp is cured, the court may treat the document as duly stamped.

22.4. Once the document is found to be duly stamped, the court shall proceed to consider whether the document is compulsorily registerable. If the document

is found to be not compulsorily registerable, the court can act upon the arbitration agreement, without any impediment.

22.5. If the document is not registered, but is compulsorily registerable, having regard to Section 16(1)(a) of the Act, the court can delink the arbitration agreement from the main document, as an agreement independent of the other terms of the document, even if the document itself cannot in any way affect the property or cannot be received as evidence of any transaction affecting such property. The only exception is where the respondent in the application demonstrates that the arbitration agreement is also void and unenforceable, as pointed out in para 15 above. If the respondent raises any objection that the arbitration agreement was invalid, the court will consider the said objection before proceeding to appoint an arbitrator.

22.6. Where the document is compulsorily registerable, but is not registered, but the arbitration agreement is valid and separable, what is required to be borne in mind is that the arbitrator appointed in such a matter cannot rely upon the unregistered instrument except for two purposes, that is (a) as evidence of contract in a claim for specific performance, and (b) as evidence of any collateral transaction which does not require registration.”

10. A reading of the above would clearly show that even where the document is compulsorily registerable but is not registered, the Arbitration Agreement is valid and separable. Of course, the Supreme Court further cautioned that as the other terms of the Lease Deed cannot be looked into in absence of registration, the arbitration may

virtually be non-starter. However, in my opinion if the disputes between the parties can be answered by looking at the collateral terms of the Lease Deed, the arbitration cannot be said to be a non-starter. In the present case, collateral term of the Lease Deed was the relationship between the parties, that is, fact of being a lessor and lessee. This being a collateral term can be looked into in absence of the registration of the document of lease. (*Laj Bedi v. Parasrampurias Synthetics Ltd.*, 1995 (2) RCR 560; *Modern Food Industries (India) Ltd. v. I.K. Malik*, 2002 (98) DLT 593).

11. As far as the Judgment of *Ravinder Nath and Ors.*(supra); *National Textile Corporation Ltd. and Ors.*(supra); *Reliance Infratel Ltd.*(supra) and *Himangni Enterprises* (supra), they all dealt with the situation where the Arbitration Agreement sought to be relied upon by the parties was contained in a Lease Deed which had long back expired by efflux of time or determined by notice. The tenant was occupying the tenanted premises in capacity of the tenant holding that under Section 116 of the Transfer of Property Act, 1882 or in terms of new oral lease. In that situation, this Court has held that the Arbitration Agreement which was contained in the original Lease Deed can be applied only for the disputes that are related to that Lease Deed and not for the disputes that arose in the new capacity of the tenant holding over the property or under oral lease. These Judgments, therefore, again are of no relevance to the facts of the present case.

12. It is further to be noted that in *SMS Tea Estates* (supra), the lessee was relying upon the term/period of the lease stipulated in the unregistered lease deed. It was in that peculiar circumstance that the Supreme Court held that as no such reliance could be placed by the lessee, this not being a collateral term, the arbitration would be a non-starter.

13. As far as the submission of the learned senior counsel for the petitioner that the respondent had itself given up its case on the basis of the Lease Deed is concerned, reference may be drawn to the statement of the respondent's advocate recorded by the Arbitrator on 04.03.2016 which is reproduced hereinbelow:

“Q.1 By the Tribunal: What is the basis of the present claim i.e. whether it is the unregistered and unstamped (now stamped) document dated 1.4.2012 and/or the notice dated 18.7.2014 or any other material, circumstance or provision of law?”

Ans. The case of the Claimant as being now placed in the Arbitration is that notice dated 18.7.2014 was issued which was received by the Respondents, alternatively on filing the Suit and receiving the summons by the Respondent, itself is a notice for eviction as per law. The Claimant is not relying on any term of the lease deed 1.4.2012 except clause 16 relating to arbitration agreement.

Q.2 Does the Claimant claims the creation of tenancy by way of an oral lease or through any document and if so please state the particulars of the document?”

Ans. Though the possession of the premises in question was given under unregistered lease deed but since same being unregistered the Claimant is now relying

upon as oral lease but the terms of the unregistered lease deed be read for collateral purpose.”

14. The above answers cannot be said to mean that the respondent has also given up or renounced the Arbitration Agreement between the parties.

15. In the Impugned Award dated 13.04.2018 the Arbitrator has discussed this issue in detail and had held as under:

“14. One of the main objections, in regard to the very maintainability of the present claim is that the lease deed dated 01.04.2012 being an unregistered and unstamped instrument could-not and has not created a valid lease more particularly for a period of exceeding one year and the premises having been let for industrial/ manufacturing purposes, the lease deed in question is in complete derogation of the provisions contained in Section 106 & 107 of the Transfer of Property Act, 1882. Additionally, it is pleaded that the lease deed is a sham transaction, having been brought into existence for certain ancillary purpose and the claimant was not the real owner of the property in question, the same having been purchased by Sh. Darshan Singh, father of Mr. Charanjeet Singh, Director of the Respondent Company in her name, as the family of Darshan Singh and Baldev Singh, husband of the claimant were having joint businesses under various names and styles. With the above pleas, it is necessary to find out Whether the lease deed dated 01.04.2012 executed between the parties (execution: not denied by the Respondent and copy of which is filed as Ex.CW-1/4) and which has neither been stamped nor registered as per the requirement of the Indian Stamp Act and Registration Act, can be said to have

created any valid lease in favour of the respondent company. Section 107 of the Transfer of Property Act, provides that a lease of immoveable property from year to year, or from any term exceeding one year or reserving yearly rent, can be made only by a registered instrument Section 106 of the said Act, provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of the lesser or lessee, by six months notice. As noted above, the lease deed dated 01.04.2012 (Ex.CW-1/4) being admitted an unregistered and unstamped document (the original having been stamped by paying the stamp duty and penalty etc. during the tenancy of these proceedings) can be said to be in conformity with the provisions of Section 107 of the Transfer of Property Act The answer is a plain "NO". It, however, does not mean that the said document cannot be looked into for any purpose at all. It is well settled that even an unregistered, but stamped lease deed can be looked into for certain collateral purposes. This seems to be the precise reason that the-claimant being well aware of this lacuna in the lease deed had herself thought it not necessary or proper and took inconsistent pleas at various- stages of the proceedings and even earlier thereto i.e, in the notice dated 18.07.2014 (Ex.CW-1/6), Para 3 of which reads as under:-

“3) That though the terms of lease were reduced in writing In the form of Lease Deed executed on 01st April, 2012, mentioning the lease period as three years but since neither the said document was drawn on the stamp papers of requisite value nor was got registered as required under law, the said document is not legal, valid, binding or admissible and is of no consequence and the fact remains that from 1st April, 2012 you are continuing to be a month to month tenant in

respect of the said premises. This is also to point out here that the original of die said document was retained by you and only the photocopy thereof was retained by my client ”

In the plaint of the suit filed by the claimant in the High Court of Delhi, the claimant maintained the said stand, but in the statement of claim filed before this Tribunal, the claimant has extensively referred to certain terms and conditions of the lease deed dated 01.04.2012 in support of its claim for eviction of the respondent and award of arrears of rent and mesne profits. To cut short this controversy, the Tribunal desired the parties to clear their stand in that behalf and put certain questions to the parties/counsel on 04.03.2016 as under:-

“Q1. "By Tribunal": what is the basis of the present claim i.e., whether it is unregistered and unstamped (now stamped) document dated 01.04.2012' and/or the notice dated 18.07.2014 or any other material, circumstance or provision of law?

Ans. The case of the claimant as being "now" placed in Arbitration is that notice dated 18.07.2014 was issued which was received by the respondent, alternatively on filing of the suit and receiving the summons by respondent itself is a notice for eviction as per law. The claimant is not relying on any other term of lease deed dated 01.04.2012 except clause 16 relating to arbitration agreement.

Q2. Does the claimant claim the creation of tenancy by way of an oral lease or through any document and if so please state the particulars of the document?

Ans. Though the possession of the premises in question was given under unregistered lease deed but since same being unregistered the claimant is "now" relying upon an oral lease but the terms of the unregistered lease deed be read for collateral purposes." Likewise the Tribunal had recorded the statement of Mr. Charanjeet Singh, Director of the Respondent company as to elucidate his stand about the creation of lease, rest any conclusion continue in that behalf. The Respondent even disowned the claimant as the owner and landlady of the premises.

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18. The Tribunal has noted the rival contentions and having regard to the peculiarity of the facts and circumstances of the present case as noted above and the Respondent's own stand in the statement of defence that a tenancy was created in its favour by means of the lease deed dated 01.04.2012 and that it continued to be in possession of the property as a tenant, not uptill 31.03.2015, only but even thereafter, pursuant to a settlement made between the parties sometimes in August/ September 2012 and that it has made a counter claim also in that behalf, there should be no escape from the conclusion that an oral month to month lease has been created within the meaning of Section 106 of the Transfer of Property Act. However, the question as to whether such a monthly lease required to be terminated by giving 15 days notice or six months notice, remains to be considered under the next head."

16. In view of the above, the statement of the respondent can only be to the effect that the Lease Deed dated 01.04.2012, being an unregistered document though compulsorily registerable, cannot be

looked into but for collateral terms of the same. The relationship between the parties and Arbitration Agreement being collateral terms could certainly have been looked into by the Arbitrator and be binding on the parties and therefore, it cannot be said that the Arbitrator lacks jurisdiction to entertain the dispute between the parties.

17. Learned senior counsel for the petitioner further submits that in case the Arbitration Agreement is to be considered as a separate Agreement, the terms thereof being wide in nature, the disputes raised by the petitioner relying upon the purported family settlement, also had to be considered by the Arbitrator. The Arbitrator by not considering the said defence has therefore failed to discharge his duties and Award is liable to be set aside.

18. I have considered the submission made by the learned senior counsel for the petitioner, however, again find no merit in the same. In the Statement of Defence before the Arbitrator, the petitioner had made the following submissions relying upon the purported family settlement:

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a) That Mr. Darshan Singh, father of Mr. Charanjeet Singh, Director of the Respondent Company, and husband of Claimant, Mr. Baldev Singh are real brothers. Charanjeet Singh is the nephew of the Claimant, who is Aunt (Chachi). The present matter is merely stemming from an ongoing family dispute.

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c) Mr. Darshan Singh has promoted another business under the name and style of Madaan Polymers, as a Sole Proprietorship concern, which was doing the business of manufacturing and trading of PVC Compounds. Later on in the year 1996, he changed the structure of firm to partnership firm. With the prosperity of business Mr. Darshan Singh out of love and affection towards his younger brother Mr. Baldev Singh brought him into the business. He dissolved earlier partnership and set out new partnership with Mrs. Harpreet Kaur, Claimant herein a partner in the firm in 1997 though there was no financial contribution made by her.....

(d) Thereafter, the business of manufacturing of shoes was developed under the name and style of Coaster Shoes with Mr. Charanjeet Singh as sole proprietor.

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f) The property in question was purchased for the purpose of establishing manufacturing unit for Coaster shoes. The property was continued to be used by Coaster Shoes as a proprietorship concern of Mr. Charanjeet Singh. Thereafter Respondent Company was promoted as Coaster Shoe Co. Pvt. Ltd. with Mr. Charanjeet Singh and his wife as Directors of the Company which continued to use the said property for manufacturing of shoes.

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i) On 1st April, 2012, fresh lease agreement was executed between parties and intention was to continue the use of property by Coaster Shoe Co. Pvt. Ltd. for very long period which can also take care of deployment of funds by Coaster Shoes Pvt. ltd. and Mr. Darshan Singh in buying the land and erection of building thereon. Said agreement was executed by Claimant as proprietor of Madaan Polymers. Due to

*said understanding Respondent got renewal of licenses for running the factory in the property which is valid up to 2018. Copy of renewal of license for running factory unit is filed as **DOCUMENT R-9.***

19. The petitioner, however, in the Statement of Defence went on further to make the following assertion:

“m) However, it is also concealed by the Claimant from the Ld. Tribunal that subsequent to the alleged notice, Claimant and Respondent entered into a negotiation with regard to various disputes and subsequently Claimant agreed to continue the tenancy at the rate of Rs. 1,00,000/- per month. In terms thereof, a further oral tenancy for the manufacturing purpose came into being with effect from 01.07.2014 which is still valid and subsisting. However, Respondent rely upon the initial understanding of parties to continue the use of property for manufacturing unit as Respondent has also, invested their hard-earned money in the property. Therefore, Claimant is neither entitled to terminate the property or claim any means profit from Respondent.”

20. A reading of the above would show that the petitioner was not denying his status as a tenant in the property. The tenancy being oral/through unregistered document, could only have been a month to month tenancy. Further, the petitioner had made the following prayer in his Statement of Defence before the Arbitrator:

“a) Dismiss the petition filed by the Claimant, with cost in favour of the Respondent and,

b) Declare that the tenancy is still subsisting and continued.

c) Declare that the notice dated 18.07.2014 is illegal and void ab-initio.”

21. Prayer (b) sought a declaration that the tenancy is still subsisting and continuing based on the assertion made in the paragraph (m) reproduced hereinabove, which was with respect to the creation of a fresh lease on payment of additional rent post termination of the lease. The Arbitrator, therefore, in the order dated 28.12.2016 held that the said issue of family settlement/understanding was irrelevant to the dispute between the parties and disallowed the petitioner to lead evidence on the same. Paragraphs 4 and 5 of the said order are quoted hereinbelow:

“4. Now coming to the next question with regard to the relevance and admissibility of certain part of evidence sought to be led by the Respondent through the witnesses RW-1 to RW-5 is concerned the Tribunal at the outset must observe that the parties are within their right to prove their respective cases by leading such evidence as they might consider necessary for deciding the controversy i.e. the disputed questions which have arisen from the pleadings of the parties and which are considered by the Court or Tribunal as germane for deciding the real controversy between the parties. In other words, no party can lead evidence to prove certain aspects which are not germane and relevant to the issues which arise for deciding the lis between the parties. Any attempt made by a party to lead evidence on aspects which are not germane and relevant to decide the real controversy between the parties has to be curbed. In the present case the controversy before the

Tribunal is primarily, one relating to the eviction of the Respondent from the suit premises i.e. A-39, Naraina Industrial Area, Phase-I, New Delhi on the termination of the tenancy created by a Lease Deed dated 01.04.2012 and claimed to have been terminated by means of a quit notice dated 18.07.2014 and award of mesne profits, if the Tribunal finds that the tenancy has infact been duly terminated in accordance with law. As against this the Respondent's pleas inter-alia are that the tenancy being for industrial purposes could not be terminated by a 15 days notice and could be terminated only by serving 6 months notice as provided by the Transfer of Property Act. The other plea taken by the Respondent is that even after serving the said quit notice by a mutual agreement, the Claimant had agreed to extend the Lease for a further period on enhancement of rent from Rs.70,000/- to Rs. 1,00,000/- per month w.e.f. July, 2014 and that was effectuated by the Claimant having accepted a payment of Rs. 10,80,000/- (Rs. 12,00,000/- - Rs. 1,20,000/- as TDS) sometimes in Sep. 2014. That apart the Respondent has pleaded certain facts and circumstances in order to show that the arrangement of Lease between the Claimant and Respondent company was a sort of family arrangement/ device as Mr. Darshan Singh, father of Mr. Charanjeet Singh, Director had been in the helm of entire family business which were being run under different names and styles with the husband of the Claimant. Attempt was there even to show that this was not for the first time that a Lease Deed dated 01.04.2012 was executed by the Claimant but prior to that also such Lease Deeds were executed only as a device, to the family arrangement referred to above.

5. Ld. Counsel for the parties have filed synopsis of their submissions on the question as to whether the Respondent in the above stated situation is within its right to lead evidence in regard to the aforesaid alleged family arrangement besides the evidence on the issues

and controversy about the valid termination of the tenancy of the Respondent and the extension of the Lease by mutual arrangement on enhancement of rent w.e.f. July, 2014. A number of authorities have cited by the Ld. Counsel for Respondent in support of her contention that the Respondent is well within its right to lead evidence on the issue relating to the family arrangement between the Claimant, her husband and Mr. Darshan Singh, father of Mr. Charanjeet Singh, one of the Director of the Respondent company. On the other hand, Mr. Khorana, Ld. Counsel for the Claimant has contended that the Respondent is not entitled to lead any evidence in that behalf more particularly so when there is no issue cast by the Tribunal in that behalf and the said evidence is neither germane nor relevant to decide the real controversy between the parties. The Tribunal has considered the respective contentions and is of the view that parties can be permitted to lead evidence which is directly relevant and germane to the issues which arise in a case in order to decide the real controversy between the parties. Allowing a party to lead evidence on an issue which does not arise for deciding the real controversy between the parties and answering the claim or counter claim made before the Tribunal, will amount to enlarging the scope of the lis which is not permissible in law. It is true that the Respondent has made certain assertions and allegations in regard to the family arrangement between the above named persons as also with a view to show that the Claimant is not the real owner and the property was not purchased by her from her own funds but the Respondent has not claimed any relief in that behalf i.e. either claiming the suit property to be the property of the Respondent or any of its Director or some third party. If the Respondent on a narration of the above pleas in regard to the family arrangement found it advisable, it could have made a counter claim for declaration that the Claimant was neither owner nor

landlady and in fact it was the Respondent or a third person who was the real owner and landlord of the suit premises. In that situation the Respondent would have been well within its right to lead any quantum of evidence which it thought necessary to establish its case in that behalf. In the Statement of Defence, the only counter claim made by the Respondent is that its tenancy has not been terminated by a legal and valid notice in accordance with law and consequently the Respondent continuous to be a lawful tenant of the Claimant qua the suit property. It is also not the case of the Respondent that the Respondent is either a Licensee or is the permissive possession of the suit premises and therefore entitled to continue its possession in that status and not as a tenant of the Claimant. No doubt the Respondent has cross examined the Claimant CW-1 in regard to the family arrangement but that by itself will not give a right to the Respondent to lead evidence through several witnesses in order to show that the Claimant is only a benami holder of the suit property i.e. A-39, Naraina Industrial Area, Phase-I, New Delhi that the tenancy created vide Lease Deed dated 01.04.2012 is a sham and ineffective document. Off-course the plea as to the admissibility of the document and its effect on the ground of its non-registration would be available to the Respondent as already observed. Permitting the Respondent to lead the evidence on matter which is neither germane nor relevant for deciding the real controversy between the parties is likely to prejudice the stand of the other side and may result into miscarriage of justice. The Tribunal, therefore, would reject that part of the evidence which is not germane and relevant to decide the issues and real controversy which has arisen in the present case. Consequently, the Tribunal directs that the affidavits of witnesses namely RW-1, Ashok Saggad, RW- 2 Ashok Walia and RW-3 Surender Singh shall be taken off the record and therefore there is no question of cross-examination of said witnesses. So far

as the evidence of Sh. Subhash Thukral, RW-4 is concerned that part of the deposition which is aimed to prove the alleged family arrangement between Sh. Darshan Singh, father of Sh. Charanjeet Singh, one of the Director of the Respondent Company, Sh. Baldev Singh etc. shall also be not considered by the Tribunal and only that part which is relevant on the question of the tenancy of the Respondent Company termination of the tenancy and its extension by the alleged mutual arrangement entered between the parties after service of the quit notice etc. shall only be considered and cross-examination shall also be restricted to that aspect only. Same will also apply to the testimony of Mr. Charanjeet Singh. The question is answered accordingly. The observations made hereinabove in this Order are without prejudice to the pleas and contentions of the parties and will not tantamount expression of opinion on the merits of the case.”

22. A reading of the Statement of Defence of the petitioner would clearly show that though the petitioner had made assertions regarding the family settlement/arrangement, he has not denied his status as a tenant in the property. Only question before the Arbitral Tribunal, therefore was whether such tenancy was validly terminated by the respondent. The Arbitrator rightly found the plea of so-called family arrangement was therefore, not relevant to the proceedings and rightly refused permission to the petitioner to lead evidence on the same. I do not find the approach of the Arbitrator to be incorrect in any manner or resulting in denial of the principles of natural justice to the petitioner.

23. It is further asserted by the learned senior counsel for the petitioner that the petitioner in its Statement of Defence had raised a

plea of waiver of the notice of termination of the lease issued by the respondent. He submits that by way of a fresh lease/understanding being arrived at between the parties the petitioner was allowed to continue as a tenant at a monthly rent of Rs.1 lac. The petitioner had given a cheque of a sum of Rs.10.80 lacs to the respondent in terms of this settlement arrived at. The respondent deposited the said cheque in her bank account, however, thereafter refused to abide by the terms of this settlement/fresh lease and created a sham defence that the said cheque was deposited in her bank account by the petitioner unilaterally and without any authorization. He submits that the primary question before the Arbitrator, therefore, was as to who had deposited the said cheque in the bank account of the respondent; with the petitioner asserting that it was the respondent or her authorised representative, while the respondent asserting that it was the petitioner. The Arbitrator, however, midway through recording of the evidence, while deciding petitioner's application under Section 26 of the Act, recorded the statement of counsel for the respondent that respondent was withdrawing her allegation that the initials appearing on the deposit slip for the cheque resemble signatures/initials of petitioner's Director and thereafter proceeded to dismiss petitioner's application for expert evidence. The Arbitrator denied an opportunity to the petitioner to lead evidence in support of its case that the respondent, by depositing the said cheque, had waived her notice of termination.

24. I have considered the submissions made by the learned senior counsel by the petitioner, however, find no merit in the same.

25. A bare perusal of the deposit slip produced before the Arbitrator would show that there was a mere initial and not a full signature of the depositor on that slip. It therefore would have been impossible for any person to assert as to who the initial belongs to. The petitioner in his application gave names of three persons whom the initials may belong to. The Arbitrator in his order dated 22.04.2017 has refused to allow the petitioner to lead evidence of the handwriting expert holding as under:

“The Tribunal has heard the learned counsel for the Respondent/Applicant as also for the Claimant. The Tribunal at the outset would like to observe that it appears to the Tribunal that the present application has been filed with an intention to create evidence not only for the purpose of the adjudication of the controversy in the present arbitral proceedings but also with a view to create evidence for another proceedings viz. the criminal proceedings initiated by the Claimant against the Respondent on the allegation that the Director of the Respondent S. Charanjeet Singh had deposited the cheque of Rs 10,80,000/- in her account, in SBI Naraina Vihar, Naraina on 20.09.2014 by means of a deposit slip of even date (Ex.CW-3/2) with malafide or fraudulent intention and without her knowledge and permission which factum she learnt some times in January, 2015. This Tribunal would like to observe that such a course is not legally permissible as the Court/Competent Authority seized of the said complaint/allegations has to decide the question independently based on the evidence and material which may be produced by the parties before

the said Court/Authorities. Neither that Court/Authorities can rely and act upon the evidence produced here in these proceedings least this Tribunal would look into the said evidence except for the purpose of admissions and contradictions. This being the legal position, the Tribunal will proceed to answer the application.

Mr. Shiv Khorana, Advocate for the Claimant has during the course of argument submitted that the Claimant would be well advised to withdraw her statement made in the affidavit to the effect that the initials appearing on the deposit slip (Ex.CW-3/2) resembles with the signatures/initials of S. Charanjeet Singh, if it satisfies the Respondent and will not press this aspect during the course his submissions on merit. He even went to state that no plea would be raised to the effect that the deposit slip (Ex.CW-3/2) bears the initials of S. Charanjeet Singh. The Claimant is prepared to file an affidavit to that effect if so directed by the Tribunal. As against this, counsel for the Respondent submits that even then the position would not be clarified as the case of the Respondent is that the cheque for Rs.10,80,000/- was in fact handed over to S. Baldev Singh through Mr Subhash Thukral, pursuant to a settlement reached between the parties for extension of tenancy for a period up to the life of the licence obtained by the Respondent, on increase of rent to Rs.1,00,000/- per month and as per the agreement a sum of Rs 10,80,000/- was paid to the Claimant towards the rent for one year after deduction of TDS of Rs 1,20,000/-. That in view of the said stand of the Respondent, the Respondent wants to establish on record that the deposit of cheque was in fact made by any of the agents/employee or relative or associate of the Claimant namely S. Baldev Singh, her husband, Mr.G.S. Arora and Mr Rakesh Kalra being the employee of the Claimant. The Tribunal cannot and would not debar the Respondent or for that reason any of the parties to the proceedings to lead such evidence

as they think proper in order to prove their case or disprove the case of the other side but regard must always be had to the important aspect viz. whether the evidence sought to be produced by a party is relevant and can be procured in normal course or it is with a view to make fishing inquiry in order to seek the evidence which actually the party wants to produce. In the case in hand, it appears to the Tribunal that by seeking the comparison of the initials appearing on the deposit slip (Ex.CW-3/2) with the signatures of S. Baldev Singh, Mr G.S. Arora and Mr Rakesh Kalra the Respondent is trying to do that which in the opinion of the Tribunal is not a legally permissible course. The Respondent even after comparison of the initials appearing on the deposit slip with the admitted/specimen signatures appearing on the attendance sheet could not itself make sure if the same compares well with one of the above named three persons. Thanks God, Respondent has given names of only three persons for comparison of their signatures/initials and they could perhaps give the name of all employees and/or acquaintances of the Claimant for that purpose. Can the Tribunal agree to the request of the Respondent in such a situation, more particularly, when the Claimant herself is prepared to withdraw her plea in regard to the deposit slip having been signed by S. Charanjeet Singh, Director of Respondent. In any case the Respondent can always point out to the Tribunal, the similarities in the initials appearing on the deposit slip with that appearing in the signatures/initials of any of the above named three persons and the Tribunal would be well prepared and rather duty bound to see for itself as to whether the initials appearing on the deposit slip resembles to any of the signatures so pointed out and can form an opinion on the question. Had the Claimant produced any expert evidence in order to show that the initials appearing on the deposit slip were that of S. Charanjeet Singh, the Respondent

would have been well within its rights to produce contra evidence to the said evidence. For these reasons, the Tribunal finds that the prayer of the Respondent cannot be granted, more particularly so, when the Claimant side is not pressing this aspect and is prepared to file an affidavit withdrawing the said averment made in her affidavit. The application is disposed of accordingly with the above observations. The Claimant shall file her affidavit and undertaking to the above effect which will be for the purpose of the present proceedings only and will have no bearing on other ancillary proceedings of which the other authorities are seized.”

26. The Arbitrator further in the Impugned Award has given reasons for disbelieving the stand of the petitioner on the issue of creation of new tenancy or waiver of the notice of termination by the respondent. The same are reproduced hereinbelow:

“26. The onus to establish the factum about the parties having entered into an oral understanding after the issuance of notice dated 18.07.2014 and that pursuant to the said understanding the claimant had agreed to continue the lease of the Respondent w.e.f. July, 2014 upto the period of license of the factory at enhanced rent of Rs.1,00,000/- per month and that pursuant to the said understanding the Respondent had paid a sum of Rs.10,80,000/- (after deduction of TDS) to the claimant towards the rent for the period from July 2014 to June 2015, lay heavily on the Respondent. In order to discharge the said onus, the Respondent besides relying upon the testimony of RW-5 Charnajeet Singh, Director of the Respondent company, has examined RW-4 Sh. Subhash Thukral who was stated to be instrumental in bringing about the alleged understanding/ settlement between the parties on the above noted terms. The Tribunal notes that so far as the deposit of a sum of Rs.10,80,000/- in the bank

account of the claimant, which she was maintaining at State Bank of India, Naraina branch, there is ample evidence brought on record that such an amount was in fact deposited in the said bank account of the claimant on 21.09.2014. The controversy, however is as to who i.e. whether the claimant or any of her authorized agent had deposited the cheque of the said amount in the account of the claimant or it was deposited by or someone acting on behalf of the Respondent as is pleaded by the claimant. The claimant in order to establish her case that the aforesaid amount was unauthorizedly deposited in her account without her knowledge has made a deposition to that effect in her affidavit thereby stating that she had no knowledge about deposit of such amount in her bank account until 17.01.2015, when she visited the bank in order to deposit a certain Govt. refund voucher and it was only at that time, she acquired knowledge about the unauthorized deposit of Rs.10,80,000/- in her account sometimes in September, 2014. Immediately, she made complains to the bank as well as to the local police station about this unauthorized deposit of cheque in her account. To support this she has examined the bank manager C.W.-3 Mr. Nand Lal Matholia, Chief Manager, SBI Naraina Branch and a police official of Naraina Police Station as CW-4. The witnesses were subjected to lengthy cross examination on behalf of the Respondent in order to discredit the version of the claimant about her visit to the bank on 17.01.2014, and thereafter, she having made a representation/complaint dated 20.01.2015 (Ex. CW-3/4) and the amount having been deposited vide deposit slip Ex. CW-3/2. It is important to notice that the deposit slip on depositing the cheque of Rs.10,80,000/- does not bear either the name or full signature of the depositor at the relevant place meant for signing the depositor's signatures, but it bears some kind of initial of some person. Although initially the

case of the claimant was that the said initials appearing on the deposit slip matched with the signature of Charanjeet Singh, Director of the Respondent company, but later she disclaimed knowledge about the signature being that of Mr. Charanjeet Singh. The fact remains that despite best efforts made and ample evidence led on record, it has not been established as to who is the author of the said initial appearing on the deposit slip Ex. CW-3/2. The officer of the bank could however prove that the amount of Rs.10,80,000/- deposited vide deposit slip Ex. CW-3/2 was not withdrawn by the claimant and continued to remain in her bank account. Faced with the above situation the Tribunal required the bank manager to clarify if it was possible for a person not privy to the bank account to deposit an amount in the account of an account holder without his/her permission or knowledge and the bank officer clarified that it was possible to do so. On the face of this position the factum of deposit of the cheque of Rs.10,80,000/- being not in dispute, the larger question is as to whether the said cheque was deposited in the account of the claimant under her authority or instructions or it was done by someone unauthorizedly.

27. In this regard, the case of the Respondent is that the cheque for the above sum was handed over to Mr. Baldev Singh, husband of the claimant pursuant to the understanding/settlement reached between the parties for continuation of the lease of the Respondent for a further period at an enhance rent of Rs.1,00,000/- per month. Therefore, the question which awaits decision is as to whether there has been in fact any such understanding between the parties and if so whether such an understanding was directly reached between the claimant and Charanjeet Singh or it was through some other persons viz. family members of the parties as the parties are closely related to each other or through RW-4 Mr.Subhash Thukral as is pleaded. The

Respondent at one stage has averred that such an understanding was reached through the family members of the parties, but strangely name of any such family member is not disclosed. It is not shown precisely as to on what date and time such an understanding was reached and who were the persons present at the time of discussion and settlement. Admittedly the terms of any such understanding/settlement have not been reduced into writing, and therefore, going by the respective pleas of the parties in this regard, we are left with the testimony of the parties and RW-4 Mr. Subhash Thukral.

28. So far as the testimony of RW-4 Subhash Thukral is concerned, the Tribunal is of the view that the same cannot be accepted, relied and acted upon on its face value, because from the cross examination of this witness it has been brought on record that the witness is a friend/advisor to Mr. Darshan Singh, father of Mr. Charanjeet Singh for a long time. The witness used to advise Mr. Darshan Singh and used to visit various Courts even outside Delhi in connection with the Court cases and work of Mr. Darshan Singh, even when he was in active service of Delhi Police. Not only this, the witness has even invested money in the company of Mr. Darshan Singh, father of Mr. Charanjeet Singh and had accompanied him to USA for a foreign trip. On the other hand there is nothing on record to show that this witness had any such kind of relationship either with the claimant or her husband. The Tribunal, therefore, has no hesitation to hold that this witness is a highly interested witness and it will be wholly unsafe to rely and act upon his testimony in order to establish that a settlement of the above kind was reached between the parties through this witness.

29. That apart it would be noted that the witness could not with stand the cross examination conducted by the claimant's counsel. According to the witness, he met

Baldev Singh, husband of the claimant on 20.08.2014 at the Court of Special Executive Magistrate, Dwarka, where proceedings U/s 107/150 Cr.P.C. were pending in relation to a dispute relating to the basement of property bearing No. A-30, Naraina Industrial Area, Phase-1, and at that time Baldev Singh requested the witness to get the matter relating to the property in question settled. Ld. Counsel for the claimant has pointed out that this story of the respondent and witness is falsified from the proceedings of the said date i.e. 20.08.2014 recorded in the file of the SEM (Ex.RW-4/C1), where it is so recorded that 'Respondents are not present. Application moved for personal exemption which was allowed for today only. Next date is fixed for 17.09.2014 at 200 PM.'

30. The above record of the proceedings would show that Baldev Singh was not present in the Court of SEM on that date, on which it is alleged that he requested RW-4 Subhash Thukral to get the matter settled. Ld. Counsel for the respondent has made great deal of argument in order to challenge the veracity-of the claimant's testimony by referring to her cross examination it was pointed out that the version Of the claimant about visiting the bank for getting her passbook updated and for depositing cheque of IT Refund on 16.01.2015, as also her visit to the bank on subsequent dates i.e. 20.01.2015 and she having made complaints herself is quite doubtful, and therefore, the Tribunal must presume that she had full knowledge about the deposit of the cheque;1 in her account on 17.09.2014 issued by the respondent. The Tribunal must note that the claimant is a housewife and she may not be well versed with the business and the bank Procedure and technicalities involved in such transactions and it appears to the Tribunal that it was her husband Baldev Singh or son or some other persons, who were assisting her in this task. Merely because she could not readily answer certain questions

in regard to the fine details of the transactions and dates etc., no adverse inference should be drawn against her, particularly when the other circumstances obtaining on record do not warrant such an inference.

31. Ld. Counsel for the Respondent also pointed out that the stand of the claimant on the above aspect has been vague inconsistent and contradictory, inasmuch as in the plaint of the suit filed before the Hon'ble High Court and in the claim filed before this Tribunal, the claimant had deliberately concealed the factum about the deposit of the cheque of Rs.10,80,000/- in her bank account, which must be with a mala fide intention and gave a vague reply to this factual position, when the same was brought by the Respondent in its statement of defence. There cannot be denial to this factual position, but in the opinion of the Tribunal the claimant has satisfactorily explained the reason for not doing so, as according to her she was not aware and sure about the person, who had clandestinely and mischievously deposited the said amount in her bank account. In the view of the Tribunal no adverse interference can be drawn against the claimant on this account.

32. The Tribunal has noted a host of circumstances, which would counter the plea of the Respondent in regard to any such settlement having been actually reached between the parties. The understanding /settlement between the parties is stated to have been reached orally between the husband of the claimant on her behalf who did not give any authority to do so and talk to Charanjeet Singh and RW-4 Subhash Thukral. It was not reduced into writing. It is highly improbable that going by the state of relationship i.e. the strained relationship between the parties, the claimant having served the Respondent with a quit notice and proceedings u/s 107/150 Cr.P.C. having been initiated before the competent authority, the parties would have arrived at an oral settlement to the above effect. Not

only this it has come on record that there were several other business disputes between the parties and without the settlement thereof, the parties would have agreed to settle the dispute relating to the lease of the suit property and would have extended the lease for a period upto the expiry of the factory license of the Respondent. If there had in fact been any understanding/ settlement between the parties, it is highly improbable that the claimant would still have filed a civil suit in the High Court of Delhi in early October for the ejectment of Respondent from the suit property. The filing of the suit shows that no such settlement was reached between the parties. If there had been any understanding/ settlement to continue the tenancy at an enhanced rent of Rs.1,00,000/- per month, the Respondent being a private limited company would have passed a board resolution to enhance the rent of the premises from Rs.70,000/- to Rs.1,00,000/- per month, the Respondent being a private limited company would have passed a board resolution to enhance the rent of the premises from Rs.70,000/- to Rs.1,00,000/- per month. No such resolution was passed and has been brought on record on the contrary board resolutions were passed to contest the legal action towards the end of October, 2014 even before the service of the summons of the suit on the Respondent sometimes in early November, 2014.

33. Further, even after receipt of the summons of the suit of ejectment and mesne profits, the Respondent did not respond to the claimant by any letter etc. asking her the reason for filing of the suit, once according to the Respondent the parties had reached a settlement for the extension of lease on enhanced rent. Again in the application u/s 8 of the Arbitration & Conciliation Act, 1996 filed before the Hon'ble High Court, the Respondent did not make even a whisper that there has been a settlement between the parties and pursuant thereto no dispute subsisted between the parties, which

required adjudication through the mechanism of arbitration pursuant to the Arbitration Clause 16 of the Lease Deed. On the contrary the Respondent itself prayed that the dispute between the parties be resolved through the mechanism of Arbitration. Besides, had there been any such settlement between the parties, the claimant would not have gone to the extent to lodge complaint with the bank and the police pointing out about the criminal action of some unknown person, who deposited the cheque in her account.

34. The Tribunal must also note that during the pendency of the Arbitral proceedings, the Respondent did not make any application to the Tribunal thereby tendering the rent for the next year, which had become payable w.e.f. 01.07.2015 and on the other hand, the Respondent without making payment of any enhanced rent to the claimant@ Rs.1,00,000/- per month had been deducting TDS, which does not seem to be legally permissible, the deduction of tax at source by the Respondent without actually making the payment of rent appears to be with ulterior motive to create evidence to support its case about settlement at enhanced rate.

35. Last but not the least it is to be noted that the Respondent by taking inconsistent and contradictory pleas on various aspects i.e. ownership of the claimant viz-a-viz the suit property, she being not the owner and landlady thereof and claiming her to be a "Benami" owner, property having been purchased by the father of Charnajeet Singh in her name etc. and at the same time claiming extension of the lease in its favour as also seeking a declaration that the lease continues has tried to blow hot and cold in the same breathe. Such being the conduct of the Respondent, it is almost impossible to hold that the parties had intact reached any such understanding/ settlement as alleged by the Respondent and that the claimant had agreed to extend

the lease on enhanced rent and had accepted the enhanced rent consciously, which had the effect of extension of lease beyond 01.09.2014. Likewise the Tribunal must hold that the amount of Rs.10,80,000/- deposited in the bank account of the claimant, allegedly towards rent for the period July 2014 to June 2015, was never accepted by the claimant consciously, and therefore, was of no consequence at all. Both these issues must therefore be answered accordingly and against the Respondent.”

27. The above being the matter of appreciation of evidence by the Arbitrator cannot be interfered with by this Court in exercise of its power under Section 34 of the Act. In any case, I do not find the approach of the Arbitrator to be in any manner perverse or unreasonable warranting any such interference from this Court.

28. It is lastly contended by the learned senior counsel for the petitioner that the petitioner had claimed that it had spent large sum of money of about Rs.2 crore in construction of the factory premises, the same, therefore, should have been considered by the Arbitrator while awarding the mesne profit in favour of the respondent in the Impugned Award.

29. In the Impugned Award, I do not find the said plea to have been taken before the Arbitrator. In any case, the Arbitrator having held that the lease was properly terminated and that the petitioner was an unauthorized occupant of the leased property, has considered the issue of mesne profit in detail in the Impugned Award. The nature of the construction if at all, carried out by the petitioner and the effect

thereof, therefore, could not have detained the Arbitrator in the present case.

30. I therefore, find no merit in the present petition and same is accordingly dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

DECEMBER 18, 2018/Arya

