

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION PETITION NO.452 OF 2019
ALONG WITH
NOTICE OF MOTION NO.911 OF 2019**

1. A. S. Patel Trust
having its office at 21, Lakozy Mansion,
Chowpaty Sea Face,
Mumbai – 400 007, Maharashtra.
 2. Mr. Asgar S. Patel
Trustee of A. S. Patel Trust,
Residing at Betsy Apartment,
Bandra (West), Mumbai – 400 050.
 3. Smt. Yasmin A. Patel
Trustee of A. S. Patel Trust,
Residing at Betsy Apartment,
Bandra (West), Mumbai – 400 050.
- ... Applicants/
Petitioners

Versus

Wall Street Finance Limited
a Company registered under the provisions
of Companies Act, 1956, having its
Registered office at Spice Towers, Phase II,
CTS R-10, Anand Nagar, New Link Road,
Jogeshwari (West), Mumbai

And

Office No. 113-122, 1st Floor,
A-Wing, Chintamani Plaza,
Chakala, Andheri – Kurla Road,
Andheri (East), Mumbai 400 099.

...Respondent

.....

Mr. Vikram Nankani, Senior Advocate a/w Mr. Chidanand Kapil And
Ms. Shilpa Kapil for the Petitioner.
Ms. Ayesha Damania a/w Mr. Sainand Chaugule for the Respondent.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 8 JULY 2019

PRONOUNCED ON : 23 JULY 2019

JUDGMENT :

. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short “Arbitration Act”), the Petitioners have impugned the arbitral award dated 12 October 2018 passed by the sole Arbitrator, directing the Petitioners to jointly/severally pay to the Respondent a sum of Rs.1,67,72,446 with interest thereon at the rate of 9 per cent per annum from the date of the award till payment/realization.

2. The facts leading to file this commercial arbitration petition are as under :

3. The Respondent was the original claimant, whereas the Petitioners herein were the original Respondents in the arbitral proceedings. Petitioner No.1 is the owner of the premises admeasuring 2000 sq.ft. at 301-302, 3rd Floor, Natasha, 52, Hill Road, Bandra (West), Mumbai-400 050 (herein after referred to as “the said premises”). Petitioner Nos.2 and 3 are the trustees of Petitioner No.1.

4. It was the case of the Respondent that it was involved in the financial transactions with the Petitioners since a long time and during such transactions, Respondent had deposited the amounts to

the tune of Rs.3,00,00,000 sometime in the year 2005 vide various cheques. The said amount of Rs.3,00,00,000 remained deposited with Petitioner No.1 trust for a considerable period of time. It is the case of the Respondent that after a period of time, the Petitioners refunded the amount of Rs.75,00,000 in the year 2007 out of the said deposit of Rs.3,00,00,000 to the Respondent. The Petitioners had retained Rs.2,25,00,000 as refundable security deposit. Sometime in the year 2008, the Respondent proposed to take the said premises on leave and licence basis from Petitioner No.1 trust for the purpose of using the said premises for the period of thirty six months commencing from 1 April 2008. Prior to the date of execution of the said leave and licence agreement dated 1 April 2008, the Petitioners and Respondent had earlier entered into a similar leave and licence agreement dated 1 April 2004 for a period of thirty six months which ended on 31 March 2007 in respect of the said premises.

5. In Clause-2 of the leave and licence agreement dated 7 June 2008, it was provided that the Respondent-licensee shall continue to deposit with Petitioner No.1-licensor an amount of Rs.2,25,00,000 towards interest free refundable security deposit for the due performance of the terms of the said agreement. Clause-3 of the said agreement provided that the licensee shall pay monthly license fees of Rs.3,75,000/- to the licensor during the term of the said agreement in advance within the first five days of each calendar month. The monthly licensee fees payable to the licensor shall be enhanced by 5 per cent after lapse of every twelve months during the term of the said agreement.

6. Clause-5 of the said agreement provided that the licensee shall occupy the said premises and shall at the end of expiry of premises of the agreement shall hand over peaceful and vacant possession of the said premises or the earlier determination of the said agreement. In Clause-14 of the said agreement, it was provided that the licensor shall refund the security deposit to the licensee on the expiry of the said agreement against the licensee handing over the peaceful and vacant possession of the said premises. Clause-15 provided that the agreement can be terminated by the licensor without assigning any reason by issuing three months advance notice. At the end of the three months from the date of issuance of the notice, the agreement shall stand automatically terminated and any dues shall be adjusted against the security deposit.

7. The said agreement was registered on 7 June 2008 with the Sub-Registrar of Assurance. It is the case of the Respondent that license fees for the month of May 2008 till October 2009 remained to be paid at the time when the Respondent handed over peaceful and vacant possession of the licensed premises to the Petitioners on 14 December 2009. The Respondent requested the Petitioners to refund the security deposit after deducting license fees for the month of May 2008 till October 2009 as contemplated in terms of the said agreement. It was the case of the Respondent that in view of the cordial relations between the parties, it was orally agreed between the parties to deduct the monthly license fee from the refundable security deposit amount lying with the Petitioners. The Respondent was deducting tax at source from time to time from the agreed license fees payable to the Petitioners and were issuing TDS

certificate on all such payments. It is the case of the Respondent that the Petitioners accepted such TDS certificates without any demur or protest.

8. It is the case of the Respondent that after completion of one and half years, from the date of the said agreement, the Respondent was not in need of the said premises anymore and accordingly informed the Petitioners about the same. The Respondent handed over peaceful and vacant possession of the said premises to the Petitioners on 14 December 2009. It is the case of the Respondent that the Petitioners accepted the said request of the Respondent unconditionally. On 14 December 2009, the Respondent accordingly vacated the said premises and handed over peaceful and vacant possession of the said premises thereof to the Petitioners in good condition and along with furnitures and fixtures. It is the case of the Respondent that the Petitioners accepted the possession of the said premises on 14 December 2009 without any demur. The Respondent vide its letter dated 16 December 2009 to the Petitioners recorded the factum of handing over peaceful and vacant possession of the said premises to the Petitioners. The Respondent never objected or raised any dispute with respect to vacating the said premises nor did they raise any dispute about any rent if allegedly due and payable by the Respondent to the Petitioners even after letter dated 16 December 2009.

9. It is the case of the Respondent that after handing over the peaceful and vacant possession of the said premises on 14 December 2009, the Respondent made payment of Rs.3,37,500 after deducting

Rs.37,500 as TDS to the Petitioners by cheque dated 4 December 2009 towards license fees for the month of November 2009. The Respondent also made payment of sum of Rs.1,81,452, after deducting Rs.18,145 as TDS to the Petitioner by cheque dated 9 December 2009 towards license fees for fifteen days for the month of December 2009. The Petitioners encashed both those cheques issued by the Respondent. It is further the case of the Respondent that license fees for the period from May 2008 to October 2009 remained unpaid which comes to Rs.57,27,554, calculated at the rate of Rs.3,75,000 per month less TDS of Rs.10,22,446. It is the case of the Respondent that Respondent made further request to the Petitioners to deduct and adjust to unpaid license fees out of Rs.2,25,00,000 along with the Petitioners and to refund balance amount of interest free security deposit of Rs.1,67,72,446 due to the Respondent. The Respondent also handed over TDS certificates to the Petitioners in lieu of unpaid rent. The Petitioners have taken credit of the unpaid rent from the refundable security deposit.

10. It is the case of the Respondent that though the Respondent had called upon the Petitioners to pay the balance amount of refundable security deposit from time to time, the Petitioners kept on postponing the payment of said amount on one or other pretext and failed and neglected to pay the said rent. The Respondent vide an e-mail dated 11 June 2010 called upon the Petitioners to refund the said amount. The Respondent also made relevant entries in its books of accounts accounting for the deposit made towards the said premises. On 13 April 2011, the Respondent issued a legal notice to the Petitioners and once again called upon the Petitioners to make

the payment of Rs.1,67,72,446. There was neither any response to the said legal notice issued by the Respondent nor any payment was made by the Petitioners in response thereto.

11. Sometime in the year 2011, the Petitioners filed a Summary Suit No.3124 of 2011 against the Petitioners for recovery of the balance refundable security deposit with interest. It is the case of the Respondent that for the first time in response to the Summons for Judgment filed by the Respondent, the Petitioners disputed their liability to the Respondent without any basis.

12. By consent of parties, by an order dated 9 January 2013, passed by this Court in the Summons for Judgment, this Court referred all disputes in the Summary Suit to the sole arbitration of Mr. Rajeev Kumar, Senior Advocate. All contentions of the parties were kept open. The Summary Suit as well as Summons for Judgment came to be disposed of by the said order. The Respondent thereafter filed statement of claim on 12 February 2013 before the learned Arbitrator *inter alia* praying for the sum of Rs.1,67,72,446 against the Petitioners jointly and severally to pay the said amount along with interest at the rate of 18 per cent per annum or such other rate on the undisputed debt amount and for costs.

13. The Petitioners thereafter filed written statement on 8 March 2013 raising various issues. The Petitioner raised an issue of jurisdiction to entertain and try the dispute on the ground that under the provisions of Section 41 of the Presidency Small Cause Courts Act, 1882 ("PSCC Act"), the exclusive jurisdiction to entertain and

try disputes between licensor and licensee was conferred on the Court of Small Causes. The Petitioners also filed an application under Section 16(2) of the Arbitration and Conciliation Act, 1996 on 15 February 2013 *inter alia* praying for dismissal of the statement of claim on the ground that the learned Arbitrator did not have jurisdiction to try and dispose of any issue that fell within the exclusive domain of the Small Causes Court. This issue was raised in the written statement also filed by the petitioner.

14. By an order dated 19 September 2013, the learned Arbitrator rejected the said application under Section 16(2) of the Arbitration and Conciliation Act, 1996 and held that he had jurisdiction to decide the disputes referred to him. The learned Arbitrator thereafter formulated points for determination on 16 December 2013. Both parties led oral as well as documentary evidence before the learned Arbitrator. The learned Arbitrator made an award dated 12 October 2018, directing the Petitioners jointly/severally to pay to the Respondent a sum of Rs.1,67,72,446 with interest thereon at the rate of 9 per cent per annum from the date of the award till payment/realization. Being aggrieved by the said arbitral award dated 12 October 2018, the Petitioners filed this commercial arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996.

15. Mr. Vikram Nankani, learned Senior Counsel for the Petitioners invited my attention to Clauses-2, 3, 5, 14 and 15 of the leave and license agreement dated 7 June 2008 and submits that the Respondent had not deposited any refundable security deposit mentioned in Clause-2 of the said leave and license agreement at any

point of time with the Petitioners. The Petitioners and the Respondent had various financial transactions in past. It is submitted that under Clause-3 of the leave and license agreement, the Respondent-licensee was liable to pay to the Petitioners monthly licensee fees of Rs.3,75,000/- per month enhanced by 5 per cent after lapse of every twelve months during the term of the said leave and license agreement. He submits that the Petitioners were entitled to recover the enhanced amount of license fees from the Respondent after lapse of every twelve months during the term of the said agreement. The issue relating to recovery of enhanced license fees could not have been decided by learned arbitrator and could only be decided by Court of Small Causes, Mumbai, under Section 41 of PSCC Act. He submits that whilst appointing the learned Arbitrator by this Court on 9 January 2013 in Summary Suit No.3124 of 2011, it was made clear that all contentions of the parties were kept open. He submits that the Petitioners had thus filed application dated 15 February 2013 under Section 16(2) of the Arbitration and Conciliation Act, 1996 raising issue of jurisdiction of the learned Arbitrator by relying on Section 41 of PSCC Act.

16. It is submitted by learned Senior Counsel that though the agreement dated 1 April 2008 was for a period of thirty six months commencing from 1 March 2008 till 31 March 2011, the Respondent handed over peaceful and vacant possession of the said premises to the petitioners in the second week of December 2009. It is submitted that there was material inconsistency in the pleadings filed by the Respondent in Summary Suit No.3124 of 2011 and statement of claim filed before the learned Arbitrator.

17. Learned Senior Counsel submits that the impugned decision of the learned Arbitrator dated 17 September 2013 rejecting the plea of jurisdiction raised by the Petitioners under Section 16(2) of the Arbitration and Conciliation Act, 1996 is contrary to the provisions of Section 41 of PSCC Act. The learned Arbitrator had no jurisdiction to entertain the disputes between the licensor and licensee, which jurisdiction exclusively is conferred on the Court of Small Causes under Section 41 of PSCC Act. He submits that since the Respondents had not paid rent for the entire period under the said leave and license agreement, the issue of non-payment of rent squarely fell within the exclusive jurisdiction of the Court of Small Causes. It is submitted by learned Counsel that various judgments referred to and relied upon by the learned Arbitrator in the impugned award were relating to the refund of the security deposit simplicitor. There was no issue of payment of license fees recoverable by the licensor from the licensee or issue regarding entitlement of the Petitioners to recover enhance rate of license fees after expiry of twelve months. He submits that none of these judgments referred by the learned Arbitrator were applicable to the facts of this case.

18. It is submitted by learned Senior Counsel that various findings rendered by the learned Arbitrator in the impugned award are rendered without considering the evidence on record including the cross examination by the Petitioner, the arbitral award deserves to be set aside on this ground also.

19. It is submitted by the learned Senior Counsel that neither in the order passed by the learned Arbitrator under Section 16(2) of the Arbitration and Conciliation Act, 1996 nor in the impugned award, the learned Arbitrator considered the quantum of license fees / escalation payable by the Respondent to the Petitioners. The impugned arbitral award deserves to be set aside on this ground also.

20. Ms. Aayesha Damania, learned Counsel for the Respondent, on the other hand, invited my attention to several paragraphs of the written statement filed by the petitioner before the learned Arbitrator and would submit that there was no dispute regarding payment of license fee raised by the Petitioners before the learned Arbitrator. No claim for alleged enhancement of the compensation was made by the Petitioners against the Respondent by way of counter claim or otherwise. No plea of set off was filed by the Petitioners against the Respondent before the learned Arbitrator.

21. Learned Counsel for the Respondent relies on various findings of fact rendered by the learned Arbitrator in the impugned arbitral award. The evidence of the witnesses examined by the Petitioners was not shattered in the cross examination. The Respondent had produced its books of accounts during the course of evidence before the learned Arbitrator. Though the Respondent had specifically called upon the Petitioners to produce its books of accounts, the Petitioners failed to produce any such books of accounts deliberately. The Petitioners have not disputed the amount of security deposit before the learned Arbitrator.

22. It is submitted by learned Counsel that the claim of the Respondent before the learned Arbitrator as well as in the Summary Suit filed by her client before this Court was for refund of security deposit with interest. There was no prayer relating to recovery of possession of the said premises. She submits that the learned Arbitrator referred to and relied upon the several judgments of this Court whilst rejecting the application filed by the Petitioners under Section 16(2) of the Arbitration and Conciliation Act, 1996 and has rightly held that no part of the claim made by the Respondent was relating to recovery of possession of the immovable property and thus, the learned Arbitrator had jurisdiction to entertain and try the disputes filed by the Respondent. She submits that all such judgments referred and relied upon by the learned Arbitrator were squarely applicable to the facts of this case.

23. Learned Counsel for the Respondent invited my attention to various findings of fact rendered by the learned Arbitrator after considering the oral evidence led by both parties and would submit that findings of fact rendered by the learned Arbitrator were rendered after considering the entire evidence i.e. documentary and oral evidence and thus the case of the Petitioners does not fall under any of the grounds permissible under Section 34 of the Arbitration and Conciliation Act, 1996.

24. Mr. Nankani, learned Senior Counsel for the Petitioners in rejoinder submits that the learned Arbitrator was required to consider the pleadings of the Respondent in statement of claim to arrive at the finding of jurisdiction. He submits that pleadings of the

Respondent itself would clearly indicate that the disputes between the parties could not have been decided by the learned Arbitrator, but could be decided only by the Court of Small Causes exclusively. He submits that the entire arbitral award is without jurisdiction and thus deserves to be set aside.

Reasons and Conclusion :-

25. There is no dispute that the parties had entered into a leave and license agreement in respect of the said premises on 7 June 2008. A perusal of the said agreement clearly indicates that the parties had agreed that the licensee, i.e. the Respondent herein had continued to deposit with licensor, i.e. the Petitioners an amount of Rs.2,25,00,000 towards the interest free refundable security deposit for the due performance of the terms of the agreement. The Respondent did not have any right to terminate the said leave and license agreement. Clause-14 of the said agreement clearly provided that the licensor shall refund the security deposit to the licensee on the expiry of the agreement against the licensee handing over peaceful and vacant possession of the said premises. There is no dispute that Respondent had handed over peaceful and vacant possession of the suit said premises to the Petitioners on 14 December 2009. The Petitioners have also not disputed that the Respondent thereafter made payment of compensation of Rs.3,37,500 after deducting Rs.37,500 as TDS with the Petitioners by cheque dated 4 December 2009 towards license fees for the month of November 2009 and made further payment of Rs.1,81,452, after deducting Rs.18,145 as TDS to the Petitioners by cheque dated 9

December 2009 towards license fees for fifteen days for the month of December 2009. The Petitioners have admittedly encashed both the these cheques issued by the Respondent without any demur. Under the terms of the said agreement, the Petitioners were entitled to adjust the arrears of license fee, if any. The respondent had offered to adjust the unpaid amount of license fees of Rs.57,27,554 less TDS of Rs.10,22,446 towards arrears of compensation for the period from May 2008 to October 2009 and had made demand for refund only of balance refundable security deposit of Rs.1,67,72,446.

26. The Respondent thereafter filed Summary Suit No.3124 of 2011 against the Petitioners for recovery of the said balance amount with interest. On 9 January 2013, this Court, by consent of the parties, referred all disputes in the said Summary Suit to the sole arbitration of Mr. Rajeev Kumar, Senior Advocate. This Court kept all contentions of the parties open.

27. The learned Arbitrator in the order dated 17 September 2013 whilst rejecting the application under Section 16(2) of the Arbitration and Conciliation Act, 1996 filed by the Petitioners considered a plea of jurisdiction raised by the Petitioners. The learned Arbitrator considered the judgments of this Court in the cases of **RMC Readymix (I) P. Ltd. Vs. Kanayo Khupchand Motwani¹**, **BNP Paribas Securities India Pvt. Ltd. Vs. Cable Corporation of India Ltd²** and **Sanjog Sadanand Parab Vs. B.P. Gharda & Co.³**. The learned Arbitration held that the claim for

1 2006 4 BCR 437

2 2012 4 BCR 251

3 2012 5 BCR 258

refund of unpaid security deposit under leave and license agreement does not fall within the ambit of Section 41 of PSCC Act. Learned Arbitrator held that the disputes referred to him were arbitral disputes and he had jurisdiction to try, entertain and dispose of the proceedings.

28. The learned Arbitrator thereafter proceeded with the matter on merit of the claims made by the Respondent and rendered an arbitral award on 12 October 2018, directing the Petitioners jointly / severally to pay to the Respondent a sum of Rs.1,67,72,446 with interest thereon at the rate of 9 per cent per annum from the date of the award till payment / realization. The learned Arbitrator framed five points for determination on 16 December 2013.

29. I shall first decide whether the order dated 17 September 2013 passed by the learned arbitrator rejecting the application filed by the petitioners under section 16(2) of the Arbitration Act warrants any interference by this court or not.

30. This court in case of **RMC Readymix (I) P. Ltd.** (supra) held that the suit for refund of security deposit is not covered by section 41 of the Presidency Small Cause Courts Act. It is held that the contention could be tenable if suit was for possession of the premises. This court specifically rejected the contention of the defendant that the deposit being related to premises on leave and licence basis and thus, it would be covered by section 41 of the Presidency Small Cause Courts Act.

31. This court in case of **BNP Paribas Securities India Pvt. Ltd.** (supra) while deciding an application under section 9 of the Arbitration Act held that the petition for refund of security deposit not refunded by the licensor would not fall under section 41 of the Presidency Small Cause Courts Act, 1882. It is held that since the reliefs of possession of the property and recovery of licence fee and damages already prayed by the licensor against the licensee in the Small Causes Court, the claim for refund of security deposit made by the licensee in the arbitral proceedings was maintainable.

32. This court in case of **Sanjog Sadanand Parab**(supra) after adverting to the judgment dated 25 April 2011 passed by the Division Bench of this court in case of **RMC Readymix (I) P. Ltd.** (supra) held that the summary suit filed for recovery of the amount of security deposit was maintainable and would not attract section 41 of the Presidency Small Cause Courts Act.

33. The learned arbitrator while rejecting the plea of jurisdiction raised by the petitioners under section 16(2) of the Arbitration Act also considered the judgment of the Division Bench of this court delivered on 25 April 2011 passed in Summons for Judgment No.445 of 2007 in Summary Suit No.29 of 2004 in case of Sanjog Sadanand Parab vs. B.P.Gharda & Co. and others while considering an issue referred by the learned Single Judge holding that the said suit was on the basis of the averments in the plaint, was a suit by the erstwhile tenant or licensee for recovery of the amount of unpaid security deposit and therefore if one goes by the averments in the plaint and provisions of section 41, this court will have the jurisdiction to entertain the suit.

34. A perusal of the statement of claim filed before the learned arbitrator by the respondent clearly indicates that the claim made by the respondent was only for recovery of the balance amount of security deposit with interest. There was no dispute between the parties that the respondent had already handed over vacant possession of the suit premises to the petitioner. There was thus no question of any dispute relating to recovery of possession either filed by the petitioners or respondent. In my view, the principles of law laid down by this court in the aforesaid judgments would clearly apply to the facts of this case. The proceedings filed by the respondent for recovery of the balance amount of security deposit was not an action in rem but was action in personam. Section 41 of the Presidency Small Cause Courts Act thus was not at all attracted to the facts of this case. I am respectfully bound by the said judgments. In my view, there is thus no infirmity in the order dated 17 September 2013 passed by the learned arbitrator rejecting the plea of jurisdiction filed by the petitioners under section 16(2) of the Arbitration Act.

35. It was vehemently urged by the learned senior counsel for the petitioners that under clause 3 of the leave and licence agreement, after lapse of every 12 months from the date of the aforesaid leave and licence agreement, the respondent was liable to pay monthly licence fees payable by the respondent to the petitioner, enhanced by 5% and the said issue of recovery of enhanced licence fees has not been dealt with by the learned arbitrator in the impugned order passed under section 16(2). A perusal of the record clearly indicates that though the petitioner in paragraph (22) of the written statement

had pleaded that they were entitled to file counter claim to seek the licence fee from the respondent, the petitioners admittedly neither filed any counter claim nor raised any plea of set off in the arbitral proceedings.

36. The petitioner also did not file a separate suit against the respondent in the Bombay Small Causes Court for recovery of any such amount. The respondent company itself had paid certain amount of compensation to the petitioners even after handing over vacant and peaceful possession of the suit premises to the petitioners after deducting the tax deducted at source. The respondent also had admittedly adjusted the arrears of compensation for a period from May 2008 to October 2009 in the sum of Rs.57,27,554/- less TDS of Rs.10,22,446/- and had made a demand for the balance of refund of security deposit of Rs.1,67,72,446/- only. At no point of time, the petitioners had made a demand for higher amount of compensation by invoking clause (3) of the said leave and licence agreement. In my view, even if the petitioners would have been entitled to any monthly licence fees enhanced by 5% after the lapse of every 12 months during the terms of the said leave and licence agreement, the arrears of such enhanced amount of licence fees, if any, could also be adjusted against the security deposit under clause 15 of the said leave and licence agreement. The petitioner did not seek any such adjustment of the said amount from the payment of security deposit.

37. In my view, even if such amount would have been demanded by the petitioners under clause (3) of the leave and licence agreement, the said dispute also could not have attracted section 41

of the Presidency Small Cause Courts Act, 1882. Such demand of licence fees at the enhanced rate which could be adjusted against the security deposit would not relate to the dispute falling under the expression “dispute relating to recovery of possession” attracting section 41 of the Presidency Small Cause Courts Act, 1882.

38. Insofar as the submission of the learned senior counsel for the petitioners that the respondent had not made any deposit of Rs.2,25,00,000/- with the petitioners as referred in clause (2) of the leave and licence agreement is concerned, in paragraph (22) of the written statement, it was the case of the petitioners that the respondent had neither paid any rent nor any security deposit and thus had committed breach of contract. In paragraph (22) of the written statement, it was also pleaded by the petitioners that the petitioners were entitled for counter claim to seek licence fees from the respondent which the petitioners had not claimed in light of the letter dated 9 October 2009.

39. The petitioners also did not deny the receipt of TDS certificate. The petitioners themselves had admitted in the written statement that there was an earlier leave and licence agreement dated 1 April 2004 which ended on 31 March 2007. After considering the submissions of both the parties and the evidence led, the learned arbitrator in paragraph (11) of the impugned award held that the petitioners herein had admitted the existence, execution and the contents of the leave and licence agreement. The learned arbitrator has rendered a finding that the respondent herein had proved the deposit of Rs.3,00,00,000/- in paragraphs (12) to (17) of the

impugned award. The learned arbitrator has dealt with these issues at great detail in those paragraphs and has held that the witness examined by the respondent had proved the deposit of refundable security deposit amount of Rs.2,25,00,000/- and that the same was understood by the parties. The petitioners also accepted various TDS certificates issued by the respondent from time to time after deducting those payments from the licence fees payable to the petitioners by the respondent without any demur.

40. In paragraph (20)(d) of the award, the learned arbitrator recorded the finding that the witness of the petitioners in examination in chief specifically referred to the sum of Rs.3,00,00,000/- transferred to the respondent herein by Natasha Construction and Patel Holdings, both of which companies were controlled by the petitioner no.2 and who in turn, transferred the said amount to the petitioner no.1 of which the petitioner no.2 was a trustee. The witness examined by the petitioners admitted that Rs.3,00,00,000/- was mentioned in the bank statement produced by the respondent. The said witness produced by the respondent had also given details of the bifurcation of the amount as to how the said sum of Rs.3,00,00,000/- was paid in December 2005.

41. The petitioners did not produce any evidence to show as to why there was a reference to Rs.2,25,00,000/- in the said leave and licence agreement and did not explain the mention of the said amount in the said agreement. On the other hand, the respondent had led the evidence of the three witnesses to establish that Rs.3,00,00,000/- was deposited by the respondent with the

petitioners and that the petitioners had refunded a sum of Rs.75,00,000/- to the respondent leaving the deposit of Rs.2,25,00,000/- lying with the petitioners.

42. The learned arbitrator after interpreting the terms of the leave and licence agreement in paragraph (20)(f) held that it was an inevitable conclusion that the parties understood and proceeded to act on the said agreement on the basis that Rs.2,25,00,000/- was lying in deposit with the petitioners as an interest free refundable security deposit, to be refunded against surrender of the possession of the said premises. The petitioners did not make any monetary claim under the said agreement. The learned arbitrator accordingly held that it could be reasonably inferred that they have no claim against the respondent. Learned Senior Counsel for the petitioners could not point out any inconsistency in the pleadings in Summary Suit and statement of claim.

43. In my view these findings of fact rendered by the learned arbitrator based on the pleadings, documents and the evidence does not show any patent illegality and thus cannot be interfered with by this court. The interpretation of the leave and licence agreement by the learned arbitrator is not only the possible interpretation but is correct interpretation. Even if such interpretation of the learned arbitrator is considered as a possible interpretation, such possible interpretation of the learned arbitrator cannot be substituted by another possible interpretation by this court under section 34 of the Arbitration Act. There is no substance in the submission of the learned Senior Counsel for the petitioners that a perusal of statement

claim would itself show that learned Arbitrator had no jurisdiction to try and entertain the dispute.

44. The learned Arbitrator rightly rejected the plea of the petitioners that the said amount of Rs.2,25,00,000/- was not a refundable security deposit. The petitioners themselves pleaded in the written statement that the respondent was in breach of the said leave and licence agreement and thus the petitioners had right to forfeit the security deposit. It is held by the learned arbitrator that the petitioners received the vacant possession of the said premises on 14 December 2009. However, the petitioners did not make any claim against the respondent nor filed any counter claim in the arbitral proceedings. The witnesses examined by the respondent had clearly proved that the petitioners had committed the breach of the said leave and licence agreement by not refunding the balance amount of refundable security deposit inspite of the respondent handing-over vacant possession of the said premises to the petitioners.

45. Learned senior counsel for the petitioners did not urge any other submissions before this court.

46. It is an admitted position that the respondent had produced its statement of accounts, the financial documents and the annual report to prove its case before the learned arbitrator. Though the respondent had called upon the petitioners to produce their books of account to show that no security deposit was received by the petitioners from the respondents as alleged by the petitioners or to

show that no amount of licence fees was recovered from the respondent arising out of the said leave and licence agreement, the petitioners deliberately withheld such documents. I do not find any infirmity in the impugned award dated 12 October 2018 or the impugned order dated 17 September 2013 passed by the learned arbitrator. Commercial Arbitration Petition No.452 of 2019 is devoid of merits.

47 I, therefore, pass the following order :-

- (a) Commercial Arbitration Petition No.452 of 2019 is dismissed.
- (b) In view of the dismissal of the commercial arbitration petition, Notice of Motion No.911 of 2019 does not survive and is accordingly disposed off.
- (c) No order as to costs.

(R.D. DHANUKA, J.)