

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

ARBITRATION PETITION NO. 378 OF 2018

Union of India & Anr. ...Petitioners
vs.
M/s.Prakash Express Cargon & Anr. ...Respondents

Mr.Chetan C. Agrawal with Jyoti S. Agrawal and Pravin Mengane for
Petitioners.
Mr.Mutahhar Khan with Amit Chaurasiya i/b. Rajesh Gupte for
Respondents.

CORAM : S.C. GUPTE, J.

DATE : 11 SEPTEMBER 2019

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petition seeks to challenge an award passed by a sole arbitrator in a reference arising out of a contract of leasing of parcel vans between the Petitioner Railways (Respondent in the arbitration reference) and the Respondent (claimant in the arbitration reference).

3 The parties entered into a contract for leasing of parcel vans for carriage of goods. The contract period was of three years. Whereas the Railway administration was entitled to terminate the lease after giving one month's notice, so far as the lessee was concerned, he could terminate the agreement by service of a 60 days' notice but he could do so only after one year of contract. In the event of any prior termination by the lessee, he was liable to forfeit his security deposit and be debarred from submitting any tender for a Railways contract for a period of one year. The Respondent lessee in the present case terminated the contract within one year. The reason

for such termination was said to be a breach on the part of the Petitioner Railways. It was the case of the Respondent that the Railways did not allow him adequate time for loading/unloading. It was claimed that he needed at least 40 minutes' time for loading of a parcel van at Mumbai Central. Since adequate time was not allotted to the Respondent lessee, the contract was terminated. The arbitrator found that the Respondent/claimant had duly advised Railway authorities that time given to him for loading operations was inadequate and that he was losing business on account of such inadequate time and needful action ought to be done. The learned arbitrator, accordingly, accepted the Respondent's case for entitlement to an early termination.

4 Learned Counsel for the Petitioner Railways submits that even if one were to treat the Respondent's case of inadequate time allotted to it originally for loading/unloading operations as correct, that was rectified subsequently by the Railways. Learned Counsel relies on a letter dated 1 March 2013 addressed by the Respondent which suggests that the issue of inadequate loading time had since been resolved with effect from 30 January 2013. The Respondent's grievance, however, is that he had indicated that due to inadequate time given to him earlier, he would not be paying any leasing charges for the intervening period between 29 December 2012, when he had last loaded a parcel van, and 2 January 2013. The Railways, however, insisted on deposit of lease charges for these three days. Considering this circumstance, as also past breaches on the part of the Petitioner Railways in affording adequate time to the Respondent, for loading/unloading operations, the Arbitrator was of the view that though the contract was determined by the Respondent within a period of one year, his security deposit should be refunded and his registration should not be cancelled and he should not be debarred

from participation in tenders in future.

5 The view of the sole arbitrator is clearly a possible view; it is supported by some evidence on record. It does not take into account any irrelevant or non-germane material or disregard any relevant or germane material.

6 Learned Counsel for the Petitioner submits that the impugned award is in the teeth of a specific provision of the contract between the parties that the lessee cannot terminate the contract within the first year of the contract. The termination, referred to in paragraph 21.2 of the contract of lease, is termination of lease by the lessee in ordinary circumstances without having to give any reason for such termination. The termination, however, in the present case is due to a purported breach on the part of the Railways by allotting inadequate time for loading/unloading operations and by insisting upon payment of lease rentals for the days on which the loading/unloading operations were refused by the lessee due to inadequate loading time. In other words, the termination in the present case is not under paragraph 21.2 but on account of a breach on the part of the counter party, namely, the Railways. If the arbitrator's view on the factum of such breach is a possible view, there is nothing in the impugned award to fault the conclusion on legitimacy of the termination on the basis of the stipulation contained in paragraph 21.2.

7 Accordingly, there is no merit in the challenge. The arbitration petition is dismissed.

(S.C. GUPTE, J.)