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

Decided on: 17th May, 2019

+ **FAO 211/2019 & CM APPL. 23616-23618/2019**

KULJEET SINGH

..... Appellant

Through: Mr. Manoj Gahlot and
Mr. Bharat Bagga, Advocates.

versus

ANIL KUMAR HEERA

..... Respondent

Through: Mr. Ravi Prakash, Advocate. with
Mr. Ashish Verma, Mr. Viplav
Acharya, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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CAV 536/2019

Learned counsel enters appears on behalf of the caveator, the caveat stands discharged.

FAO 211/2019 & CM APPL. 23616-23618/2019

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("The Act") is directed against the judgment of the Additional District Judge-03, (West) Tis Hazari Court, Delhi dated 26.02.2019, dismissing the appellant's petition under Section 34 of the Act. The appellant had sought setting aside of an award passed by a sole arbitrator dated 02.08.2018, awarding possession of the suit property and rent/occupation charges in favour of the respondent herein.

2. The arbitration proceedings emanated from a lease agreement dated 15.07.2013 whereby the respondent had leased the suit property (second floor of house no. 50 Avtar Enclave, Paschim Vihar, New Delhi) to the appellant. The monthly rent was ₹22,000/- per month, and the initial tenure of the agreement was 11 months, which came to a close on 30.06.2014.
3. The respondent's claim for possession and rent/occupation charges, was resisted by the appellant, *inter alia*, on the ground that the parties had entered into an agreement for sale dated 02.03.2016 by which the appellant had agreed to purchase the suit property from the respondent.
4. It is undisputed that the appellant has filed a suit for specific performance of the said agreement for sale, which is pending before the Additional District Judge, Tis Hazari Court.
5. The Arbitrator awarded the claim for possession on the basis that the rent agreement was admitted and the relationship of landlord and tenant stood established. In view of the fact that the suit property had not been vacated despite the expiry of the said agreement, an award of possession was passed as well as a consequential award of Rs. 22,000/- per month for the period of occupation.
6. In the impugned order, the appellant's petition under Section 34 of the Act has been dismissed, upholding the aforesaid findings of the learned Arbitrator. With regard to the contentions of the respondent regarding the agreement for sale dated 02.03.2016, the learned Additional District Judge held as follows:-

“16. The other contentions of the tenant is that he is no longer the tenant of the landlord as the landlord has entered into an agreement to sell dated 02.03.2016, with him to sell the suit property to him for total sale consideration amount of Rs.80 lakh, out of which Rs.10 lakh has been paid as earnest

money. He, thus urges that after entering into the agreement to sell, the status of the tenant in the suit property is of agreement purchaser and as such, he is not liable to be evicted. The landlord has urged that the agreement to sell relied upon by the tenant is a forged and fabricated document.

17. Let us examine the case of the parties by accepting the averment of the tenant as a gospel truth that the parties entered into the agreement to sell qua the suit property. Accepting, this contention of the tenant as it is then also, the tenant is not entitled for any relief in view of the several judicial rulings of the Hon'ble Higher Courts. The law is well settled that the status of tenant would not alter even if, he enters into an agreement to sell qua the tenanted premises, so much so, that he cannot avoid his ejectment even if, decree of specific performance is passed in his favour.

For this, I would first take note of a judgment reported as “**Sunil Kapoor vs Himmat Singh & ors**” 167(2010) DLT 806. MANU/DE/0203/2010. This was a suit with similar facts as in the present one. The tenant sued the landlord for specific performance of an unregistered agreement to sell. The landlord thereafter filed a suit for his ejectment. The tenant's plea that he could not be ejected in view of the agreement to sell was negatived, in this judgment by observing that “mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the landlords/plaintiffs are found to have agreed to sell the property, the tenant/defendant would not get any right to occupy that property as purchaser. This court in “**Jiwan Dass Rawal vs Narain Das**”, AIR 1981 Delhi 291, has held that in fact no rights enure to the agreement purchaser, nor even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereof is executed. Thus, in law the tenant has no right to remain in occupation of the premises or retain

possession of the premises merely because of the agreement to sell in his favour.”

18. This was followed by judgement dated 06th August, 2013, of Hon'ble Delhi High Court in RFA NO.324/2013 titled as “**Sanjiv Pathak vs Somnath**”, the facts whereof were exactly similar to the instant case. The landlord sued the tenant for his eviction, but the defendant/tenant on the strength of an agreement to sell pleaded that the landlord had agreed to sell the tenanted premises to him and his possession was thus as an agreement purchaser. This contention was negatived by the Hon'ble High Court. The only exception in the cases like the present one has been carved out in view of Section 53 A of Transfer of Property Act, under which the tenant can protect his possession as an agreement purchaser, if the said agreement to sell is registered, which is not so in the present case, hence, the tenant cannot protect his possession in the suit property on the premise of the alleged agreement to sell.”

7. In the present appeal, learned counsel for the appellant urges that the consideration of the issues by the learned Arbitrator has been one sided and in ignorance of the pleadings of the appellant herein. Learned counsel further submits that the award is contrary to the provisions of the Code of Civil Procedure and the Specific Relief Act, 1963.

8. Learned counsel for the respondent, on the other hand supported the impugned judgment with particular reference to the consideration of the agreement for sale, as extracted above.

9. Having heard learned counsel for the parties, I am of the view that interference with the impugned judgment under Section 37 of the Act is not warranted. In a petition for setting aside of an arbitral award under Section 34 of the Act, the grounds available to the Court are very narrow. In *J.G.*

Engineers (P) Ltd. vs. Union of India, (2011) 5 SCC 758, the Supreme Court held as follows:-

“27. Interpreting the said provisions, this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705] held that a court can set aside an award under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. This Court explained that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It is also observed that an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court, as then it would be opposed to public policy.”

10. In *Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49, the Supreme Court has held as under:-

“33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: “General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be

substantially right, although your reasons may be very bad, or essentially wrong”. It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held: (SCC pp. 601-02, para 21)

“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.””

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As far as appreciation of evidence is concerned, the factual findings of the Arbitrator can be disturbed only if they display manifest arbitrariness. The factual findings, in the present case, based upon the admitted lease agreement and the fact that the appellant has admittedly neither vacated the subject property, nor paid rent in terms thereof, do not suffer from any such illegality.

11. Further the judgments cited by the Learned Additional District Judge clearly establish that the existence of an agreement for sale does not *per se* extinguish the rights of the owner of the property. The Supreme Court, in *Suraj Lamp and Industries Private Limited (2) vs. State of Haryana and Anr.*, (2012) 1 SCC 656 held as follows:-

“19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

It was also held in *Sunil Kapoor vs. Himmat Singh & Ors.*, ILR (2010) II Delhi 616, by this Court, as follows :-

*“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in *Jiwan Das v. Narain Das*, AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is*

executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.”

12. The appellant has already filed a suit for a specific performance of the agreement to sell, which is pending and, according to the learned counsel for the appellant, certain interim orders have been passed therein. The rights of the appellant in respect of the agreement for sale will ultimately be decided in that suit, but do not afford to the appellant any ground for setting aside of the award which is in dispute herein.

13. The appeal is, therefore, dismissed.

PRATEEK JALAN, J

MAY 17, 2019

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