



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

O.P. No.171 of 2014

In the matter of Section 34 of
Arbitration & Conciliation Act
1996

And

In the Matter of dispute arising out
of Agreement dated 17th April 2008

Between

ICICI Prudential Life Insurance
Co.Ltd.

And

Mrs.P.Usha & A.M.Swaminathan.

ICICI Prudential Life Insurance Co. Ltd.

Regd. Office at ICICI Prulife Tower,

1089, Appa Saheb, Marathe Marg,

Prabhadevi, Mumbai 400 025,

Rep. by its Manager Legal - Ms.Shital Patwa

... Petitioner

Vs

1.Mrs.P.Usha

39, Habibullah Road,

T.Nagar,

Chennai 600 017.

2.Dr.A.M.Swaminathan I.A.S.(Retd)

Learned Sole Arbitrator,

Nani Palkhivala Arbitration Centre,

22, Karpagambal Nagar,

Mylapore, Chennai.

... Respondents



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Original Petition praying that this Hon'ble Court be pleased to set aside the award dated 18.11.2013 passed in Arbitration Case No.014 of 2013.

This Original Petition coming on this day before this Court for hearing in the presence of Mr.J.Sivanandaraaj for M/s Ridhima Sharma, Advocates for the petitioner herein and Mr.V.Anand, Advocate for the 1st respondent herein, and upon reading the petition and the award dated 18.11.2013 filed herein, and this court having observed that the rent and amenities charges, would in all likelihood, have exceeded the security deposit, if computed at Rs.7,50,000/- per month up to the date of handover as indicated in the Award, this may result in a dispute which the Award did not envisage or deal with, the Award also enables the parties to institute separate proceedings as regards damages to the leased premises, and the Award, including the operative part thereof, does not call for interference,

it is ordered as follows:-

That the first respondent herein, be and is hereby entitled to file an appropriate application for payment out of the amounts deposited by the first respondent as a condition for taking possession.

2. That however, open issues such as claims or disputes in relation to

amounts due and payable by the petitioner to the first respondent towards



rental dues, amenities charges, maintenance charges etc. after settling – off the entire security deposit or claim for damages shall be dealt with by the parties in accordance with law.

3. That there shall be no order as to costs.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 15th DAY OF DECEMBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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10.02.2022

O.P. No.171 of 2014

ORDER

DATED: 15.12.2021

THE HON'BLE MR. JUSTICE

SENTHILKUMAR RAMAMOORTHY

FOR APPROVAL: 15.02.2022

APPROVED ON: 15.02.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 15.12.2021

C O R A M :

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

O.P.No.171 of 2014

ICICI Prudential Life Insurance Co. Ltd.
Regd. Office at
ICICI Prulife Tower,
1089, Appa Saheb, Marathe Marg,
Prabhadevi, Mumbai – 400 025,
Rep. by its Manager-Legal
Ms.Shital Patwa

... Petitioner

Vs

1.Mrs.P.Usha

2.Dr.A.M.Swaminathan I.A.S.(Retd)
Sole Arbitrator,
Nani Palkhivala Arbitration Centre,
22, Karpagambal Nagar,
Mylapore, Chennai.

... Respondents

PRAYER : This Petition has been filed under Section 34 of the Arbitration and Conciliation Act 1996 praying to set aside the Award dated 18.11.2013 passed in Arbitration Case No.14 of 2013.

For Petitioner : Mr.J.Sivanandaraaj
for Ms.Ridhima Sharma

For Respondents : Mr.V.Anand for R-1

**ORDER**

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The Petitioner herein was the respondent before the Arbitral Tribunal. The Arbitral Award dated 18.11.2013(the Award) is assailed by this petition.

2. A Lease Agreement dated 17.04.2008 (the Lease Agreement) was entered into between the Petitioner, as lessee, and the first Respondent, as lessor. The period of lease was for an aggregate term of nine years with provision for escalation after three and six years. Consequently, the aggregate lease period was scheduled to expire on 16.04.2017. Although the lease was for an aggregate period of 9 years, the Lease Agreement was neither adequately stamped nor registered. The Lease Agreement provided for termination by the lessee by giving three months advance written notice to the lessor. The Lease Agreement stipulated that the lessee would deposit a sum of Rs.18,00,000/- as security deposit, which was repayable by the lessor on the date of termination of lease and at the time of handing over vacant possession of the relevant premises. A monthly lease rental of Rs.3,00,000/- was payable by the lessee, inclusive of municipal taxes but exclusive of service tax and any future taxes imposed by the Government.

<https://hcservices.ecourts.gov.in/hcservices/> On the same date, a separate Agreement for Provision of Amenities and Services(the Amenities Agreement) was entered into between the parties.



The Amenities Agreement dealt with the provision of the amenities listed in Annexure -1 thereto by the lessor to the lessee. These amenities included electricity connection for a total power load of 100 KVA, a diesel generator set with 100% back up, electrical fittings, fixtures, furniture, AC Units, LAN, UPS, etc. In connection with the Amenities Agreement, an interest free refundable security deposit of Rs.27 lakhs was paid by the lessee to the lessor. This Agreement was co-terminus with the Lease Agreement. While the Lease Agreement provided for dispute resolution by a sole arbitrator, the Amenities Agreement contained a separate arbitration clause, which provided for dispute resolution by a sole arbitrator, if mutually agreed upon, or, in the alternative, a panel of three arbitrators with the venue of arbitration being Mumbai.

3. By a communication dated 20.05.2009, the Petitioner issued a notice of termination of the Lease Agreement by relying upon Clause 24 thereof. By such communication, the first Respondent was called upon to refund the security deposit of Rs.45 lakhs + electricity deposit, if any. This Rs.45 lakh claim appears to be both under the Lease Agreement and the Amenities Agreement (Rs.18 lakhs + Rs.27 lakhs = Rs.45 Lakhs). A subsequent communication dated 26.08.2009 was also issued stating that the Petitioner is ready to hand over possession on 27.08.2009 and that the



rent for June to August 2009, the amenities charges for June to August 2009 and the maintenance for June to August 2009 along with the electricity charges and diesel charges would be handed over at the time of handing over possession. Further communications dated 28.06.2009 and 30.08.2009 were also issued in this connection.

4. By a reply dated 02.09.2009(wrongly mentioned as 02.09.2008), the first Respondent informed the Petitioner that she had not received the rent, service tax, maintenance charges, electricity charges and diesel charges for the months of June to September 2009. In addition, it was stated therein that the first Respondent would refund the interest free security deposit after deducting the pending amounts and interest thereon once the keys are hand over. By a further communication dated 16.09.2009, the Petitioner called upon the first Respondent to take possession by refunding the security deposit with interest thereon at 30% per annum.

5. In the above facts and circumstances, a dispute arose between the parties. The Petitioner herein filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) seeking security for a sum of Rs.45 lakhs and also requesting that a court receiver be appointed to take possession of the premises. Eventually, in appellate



proceedings arising out of the order passed in the application under Section 9, a Division Bench of this Court, by order dated 09.07.2012 in O.S.A.No.247 of 2012, directed the parties to resolve the dispute through arbitration conducted by the Nani Palkhivala Foundation. The Arbitral Tribunal was constituted pursuant to such order. The first Respondent herein submitted a statement of claim in April 2013. In such statement of claim, the first Respondent claimed a sum of Rs.4,25,86,200/-; future rents till the date of handing over of possession by the Petitioner; 30% interest on rental dues; Rs.50 lakhs towards damages to amenities; and surrender of possession. The Petitioner herein submitted a counter statement with a counter claim. In such counter statement-cum- counter claim, the Petitioner sought to recover the sum of Rs.45 lakhs with interest thereon at 30% per annum from 30.08.2009. The Arbitral Tribunal framed ten issues based on the pleadings. Both parties adduced documentary evidence: the first Respondent/claimant exhibited 11 documents as Exhibits C1 to C11; and the Petitioner/respondent exhibited 15 documents as Exhibits R1 to R15. Neither party adduced oral evidence. Eventually, the arbitral proceedings were disposed of by the Award.

6. The Petitioner assailed the Award on multiple grounds. The

Petitioner contended that the Award is contrary to public policy and is



patently illegal by referring to the documentary evidence on record. By drawing reference to the Lease Agreement, the Petitioner contended that the Lease Agreement provided for a security deposit of Rs.18 lakhs. Such security deposit was liable to be refunded by the lessor upon expiration or termination of the Lease Agreement. The Petitioner relied upon Clause 24 of the Lease Agreement which enables the lessee / Petitioner to terminate the Lease Agreement without assigning any reason by providing three months' advance written notice. The Petitioner also relied upon Clause 30 of the Lease Agreement which stipulates that the first Respondent / lessor shall refund the security deposit on the date of handing over of keys / vacant possession of the demised premises. In case the security deposit is not refunded as per the Lease Agreement, it was contended that interest at 30% per annum is payable from the date the security deposit became refundable.

7. The Petitioner also relied upon the communications dated 20.05.2009, 26.08.2009, 30.08.2009 and 31.08.2009 so as to emphasize that it had called upon the first Respondent to take vacant possession. According to the Petitioner, the rental dues, amenities charges, maintenance, electricity charges and diesel charges were offered to be paid at the time of handing over possession, but the first Respondent refused to take possession. Indeed, the Petitioner contended that it was constrained to file



applications under Section 9 of the Arbitration Act both to ask for security for the sum of Rs.45 lakhs and also for the appointment of a receiver to take possession of the premises.

8. The Petitioner also referred to the Award. After pointing out that the Arbitral Tribunal framed 10 issues, the Petitioner contended that the Arbitral Tribunal committed a patent illegality by refusing to rely upon the Lease Agreement even for collateral purposes. As regards the Amenities Agreement, the Petitioner contended that the said Agreement was duly stamped and that it did not require registration. With regard to the inadequacy of stamp duty on the Lease Agreement, the Petitioner contended that such defect was curable. In addition, it was contended that the Arbitral Tribunal was duty bound to impound the document and send it to the Collector for levying the deficit stamp duty with penalty. Once the deficiency was remedied, the document should have been taken into consideration to adjudicate the dispute. After pointing out that the Lease Agreement was marked as Exhibit C3 and the Amenities Agreement as Exhibit C2, the Petitioner contended that once a document is received in evidence and exhibited, it cannot be disregarded because it is inadequately stamped as per Section 36 of the Indian Stamp Act, 1899 (the Stamp Act).

9. More importantly, as indicated above, the Petitioner contended that

the Amenities Agreement did not require compulsory registration as per



Section 17 of the Indian Registration Act, 1908 (the Registration Act).

However, the Arbitral Tribunal erroneously concluded that the Amenities Agreement was inadequately stamped and that it required compulsory registration. On such basis, it was contended that the Arbitral Tribunal disregarded both the Lease Agreement and the Amenities Agreement. As a corollary, the Arbitral Tribunal failed to take into account the clauses of the Lease Agreement and the Amenities Agreement as regards refund of the security deposit along with interest thereon.

10. The Petitioner further contended that the Arbitral Tribunal gravely erred in concluding that its authority was derived entirely from the order of the Division Bench of this Court by which the dispute was referred to the Nani Palkhivala Foundation. The Petitioner also contended that the Award is liable to be interfered with because the Arbitral Tribunal exceeded its jurisdiction and held that the first Respondent is entitled to set-off the rental dues and amenities charges, even in the post-termination period, until the date of handing over of keys and possession by the Petitioner.

11. In support of these contentions, the Petitioner referred to and relied upon the following judgments in course of oral submissions:

(i) *Silicon Graphics Systems India Private Limited v. NIDAS Estates*

Private Limited and Ors. 182(2011) DLT 753, wherein, at paragraph 18, the

Delhi High Court held that the licensor was required to refund the security



deposit at the time of vacant possession being handed over and that if the licensor refuses to do so, the licensee is entitled to retain physical possession.

(ii) *ICRA Limited v. Associated Journals Limited and Ors. (2008) ILR 1 Delhi 684*, wherein, at paragraph 21, the Delhi High Court concluded that once the lessee offers to hand over possession and the lessor refuses to take possession, the lessee would be entitled to remain in possession.

(iii) *N.N.Global Mercantile Private Limited and others v. INDO Unique Flame Limited and others (2021) 4 SCC 379*, wherein, at paragraph 36.1, the Hon'ble Supreme Court held that the Arbitral Tribunal is obligated by Section 33 of the Stamp Act to impound an insufficiently stamped instrument and direct the parties to pay the requisite stamp duty and penalty, if any, and obtain an endorsement from the Collector concerned.

12. These contentions were refuted by the first Respondent. The first Respondent submitted that a sum of Rs.39,51,000/- was due and payable by the Petitioner towards rental arrears, amenities charges, maintenance charges, electricity charges, diesel charges, etc. as of August 2009. Indeed, the first Respondent asserted that the Petitioner also admitted in contemporaneous correspondence that there were dues towards rent, amenities, maintenance, etc. By referring to the communication dated



payments specified therein were not made by the Petitioner. The first Respondent further submitted that the Lease Agreement was for an aggregate period of nine years. Therefore, the Lease Agreement was required to be adequately stamped and registered. Since it was admittedly not adequately stamped or registered, no rights were created in favour of the parties by such Lease Agreement. As regards the Amenities Agreement, the first Respondent contended that the said Agreement was supplementary to the Lease Agreement. Therefore, it did not have an existence independent of the Lease Agreement. Since the Lease Agreement was void, the Amenities Agreement, which was supplementary thereto and co-terminus therewith, was also void.

13. The first Respondent clarified that physical possession of the property was taken by her only on or about 26.07.2017 pursuant to orders passed by this Court. At such time, by way of security towards the refund claim, the first Respondent made a deposit of a sum of Rs.12 lakhs. The first Respondent contended that the Award is certainly not in violation of public policy and cannot be termed as patently legal or as shocking the conscience of the Court. As regards the conclusion of the Arbitral Tribunal that it derived authority from the order of the Court, the first Respondent pointed out that the parties had agreed, under the Lease Agreement, to



under the Amenities Agreement to arbitration in Mumbai by a panel of three arbitrators, whereas the Court referred the dispute to the Nani Palkhivala Foundation. In effect, it was contended that the reference of the dispute for arbitration was not as per the relevant clause of the Lease Agreement but on the basis of the order of this Court.

14. Upon considering the rival submissions, several questions arise for consideration. The first question is whether the Arbitral Tribunal was justified in disregarding the Lease Agreement. This question was considered and dealt with under Issues 1 and 2 by the Arbitral Tribunal. Upon examining the Lease Agreement, there is no doubt that the term of lease is an aggregate period of nine years. Therefore, as per Section 107 of the Transfer of Property Act, 1882, read with Section 17 of the Registration Act, the document required compulsory registration. The said document bears stamp duty of only Rs.300/-, which is not adequate for a nine year lease under the Stamp Act. Therefore, the stamp duty is also inadequate. Consequently, the Arbitral Tribunal was justified in concluding that no rights in respect of the immovable property can be founded on the Lease Agreement. Learned counsel for the Petitioner contended that the Lease Agreement could be relied upon for collateral purposes as per the proviso to Section 49 of the Registration Act. However, from the pleadings and the



Arbitral Tribunal. In any event, the handing over of vacant possession is not collateral to a lease. Consequently, the refund of security deposit, which is to be effected simultaneously with the handing over of vacant possession, cannot be looked at in isolation and construed as collateral. The contention of the Petitioner that the Lease Agreement was exhibited in evidence and, therefore, cannot be eschewed may be a valid contention from the perspective of the Stamp Act, but does not cure the defect of non-registration under the Registration Act or avert the consequences thereof.

15. The next aspect to be considered is the conclusion of the Arbitral Tribunal on the Amenities Agreement. The subject matter of the Amenities Agreement is the provision of the amenities listed in Annexure-1 thereto. As indicated earlier, these amenities included, *inter alia*, electricity connection, diesel generator, electricity fittings, fixtures, furniture, AC Units, router. The Amenities Agreement was clearly not a document by which interest in immovable property was created, declared, transferred, limited or extinguished. It also does not fall within the scope of any of the clauses in sub-section (1) of Section 17 of the Registration Act. Therefore, an agreement of this nature did not require compulsory registration under Section 17 of the Registration Act. The said Agreement bears the stamp duty of Rs.300/-, which is adequate because an agreement of this nature



Act. On this issue, the Arbitral Tribunal committed an error by treating it in the same manner as the Lease Agreement. Hence, the material clauses of the Amenities Agreement should be examined so as to determine if the non-consideration of the same vitiates the Award. Clause 1 of the Amenities Agreement provided for payment of a sum of Rs.4,50,000 per month as charges for the provision of amenities and services and Clause 2 stipulated that such charges shall be paid on or before the 7th of each month. Clause 4 of the Amenities Agreement deals with the security deposit and is, therefore, of significance. The said Clause is as under:

"4. An interest free refundable Security deposit amounting to Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) shall be payable to the Lessor upon the signing of the agreement. The security deposit will be held by the Lessor during the said leave and licence agreement and this amenities agreement and shall be returned upon the expiration or earlier termination of the agreement after the deduction of any reasonable dues or damages if any arising out of and in pursuance of the Leave and Licence agreement. **The Lessor shall refund security deposit on the date of handing over of keys/Vacant possession of the demised premises by the lessee either by Demand Draft/ Current Dated cheque.** In case if the lessee gives written communication before 5 days of handing over of the keys / Vacant possession, then the lessor shall



communication dated 16.09.2009 from the Petitioner sets out these amounts with no room for ambiguity. Besides, the communication dated 26.08.2009 from the Petitioner clearly indicates that there are dues towards rent, amenities, maintenance, etc. from June 2009 onwards. In this factual context, the Arbitral Tribunal examined whether possession was handed over by the Petitioner especially while dealing with Issues 5 and 6 by looking at the correspondence between the parties. Upon considering such evidence, the Arbitral Tribunal recorded, in relevant part, as under while dealing with Issue 5:

“Copies of the correspondence filed as Exhibits show the Respondent using the terms like “ready to hand over”, “called upon to take over”, etc. Even in his final written submission the Respondent submitted that they “only held de jure possession, they are not enjoying the benefits of the premises”, etc. When it comes to immovable property like a locked office premises, when the key to the premises is still held by the tenant, it cannot be said that proper possession has been handed over to the landlord. Issue 5 is answered accordingly.”

In this manner, the Arbitral Tribunal proceeded to enter a finding that the Petitioner had not handed over possession and therefore continued to be under an obligation to pay rent and amenities charges. These conclusions were based on a reasonable appraisal of the documentary evidence on



record. Therefore, such conclusion does not warrant interference under Section 34 of the Arbitration Act. Clause 4 of the Amenities Agreement would have enured to the benefit of the Petitioner only if the Arbitral Tribunal had concluded that the Petitioner had handed over or at least taken all possible steps to hand over possession to the first Respondent. However, the Arbitral Tribunal concluded that the Petitioner did not hand over possession either by delivering physical possession or by handing over the keys because of pending issues such as rental arrears, maintenance and amenities charges arrears, etc. Consequently, the error committed by the Arbitral Tribunal in not taking into account the Amenities Agreement does not vitiate the Award. In other words, it cannot be construed as an illegality which goes to the root of the case.

18. The Petitioner contended that the Arbitral Tribunal erred in concluding that it derived authority and jurisdiction from the judgment of the Division Bench and not from the arbitration clause in the Lease Agreement and Amenities Agreement. There is merit in this contention inasmuch as the arbitration agreement is required to be treated as independent of other clauses in an agreement as per Section 16(1)(a) of the Arbitration Act and, as per clause (b) of the above Section, even if it is concluded that the contract is invalid, it does not lead to the inference that

the arbitration clause is invalid. Nonetheless, the error on this count is a



non-sequitur because the Award cannot be interfered with merely because the Arbitral Tribunal was under the misconception that it derived authority only from the judgment of the Division Bench of this Court.

19. Another contention was raised that the Arbitral Tribunal exceeded the scope of authority in directing payment of rent and amenities charges in the post-termination period. This contention should be tested by examining the arbitration clause in the Lease Agreement and Amenities Agreement. Both Clause 45 of the Lease Agreement and Clause 10 of the Amenities Agreement, which are the arbitration clauses, are wide and use the expression “any dispute”. In addition, both use the expression “howsoever arising”. In such context, it certainly cannot be concluded that the direction to pay rent and amenities charges in the post-termination period is beyond the scope of reference or beyond jurisdiction.

20. This arbitration and even the Section 34 petition were prior to Act 3 of 2016. Therefore, the law that applied prior to 23.10.2015 should be applied. Under the then prevailing legal regime, an arbitral award could be interfered with if it conflicts with public policy, including on account of being patently illegal. While the Petitioner contended that the Award is liable to be interfered with by citing *Delhi Development Authority v. R.S. Sharma and Company, New Delhi (2008) 13 SCC 80* and *Associate*



judgments instruct that an award is patently illegal if it is so unfair and unreasonable that it shocks the conscience of the Court. The Award in the case at hand may contain errors in certain respects, but when viewed dholistically does not qualify as being patently illegal or as shocking the judicial conscience. Therefore, the Petitioner's challenge fails.

21. By the operative part of the Award, the Arbitral Tribunal concluded that the first Respondent is entitled to set-off amounts due and payable towards rent and amenities charges, at Rs.7,50,000/- per month, from the security deposit of Rs.45 lakhs until the date of handing over of possession by the Petitioner to the first Respondent. Since the Award was pronounced on 18.11.2013, it proceeded on the assumption that after setting-off such amounts, a portion of the security deposit would be refundable to the Petitioner. Accordingly, the balance of the security deposit was directed to be paid by the first Respondent to the Petitioner herein. However, the Petitioner challenged the Award before this Court, and did not hand over physical possession until about 26.07.2017. As a corollary, the rent and amenities charges would, in all likelihood, have exceeded the security deposit, if computed at Rs.7,50,000 per month up to the date of hand over, as indicated in the Award. This may result in a dispute which the Award did not envisage or deal with. The Award also enables the parties to institute separate proceedings as regards damages to the leased premises.



22. For reasons set out above, the Award, including the operative part thereof, does not call for interference. Consequently, the first Respondent is entitled to file an appropriate application for payment out of the amounts deposited by the first Respondent as a condition for taking possession. However, open issues such as claims or disputes in relation to amounts due and payable by the Petitioner to the first Respondent towards rental dues, amenities charges, maintenance charges, etc. after setting-off the entire security deposit or claims for damages may be dealt with by the parties in accordance with law. O.P.No.171 of 2014 is disposed of on the above terms without any order as to costs.

Sd./-S.K.R.J.
15.12.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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