IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.12.2024
Pronounced on : 21.12.2024

CORAM

THE HONOURABLE **MR.JUSTICE P.B.BALAJI**

O.P.Nos.950 of 2016 & 231 of 2017
& A.No.1716 of 2017

O.P.No.950 of 2016:

RR Donnelley India Outsource Private Limited
Having office at No.48/A,
1st Main Road, R.A.Puram,
Chennai – 600 028
Rep by its Vice President – Legal
Mr.S.Porchelvan ... Petitioner

vs.

1.Saifuddin Lukmanji Bharmal
@ Saifuddin Lukmanji Akolawala (Deceased)

2.Nishrin Saifuddin Bharmal

3.Juzer Saifuddin Bharmal

4.Ammar Saifuddin Bharmal

5.Shabbir Bharmal ... Respondents

[Respondents 4 & 5 brought on record as legal heirs of the deceased 1st respondent as per order dated 21.10.2021 in A.No.3621 of 2021]

PRAYER: Arbitration Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 05.05.2016 insofar as it relates to (a) directing the petitioner to pay a sum of Rs.20,00,000/- together with interest @ 12% per annum from 01.07.2016 to the respondents; (b) directing the respondents to retain the security deposit of Rs.10,99,440/-; and (c) dismissing the counter claims of the petitioner.

For Petitioner : Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramaniam Associates

For Respondents : Mr.P.Solomon Francis

O.P.No.231 of 2017:

1.Saifuddin Lukmanji Bharmal
@ Saifuddin Lukmanji Akolawala (Deceased)

2.Nishrin Saifuddin Bharmal

3.Juzer Saifuddin Bharmal

4.Ammar Saifuddin Bharmal

5.Shabbir Bharmal ... Petitioners

vs.

RR Donnelley India Outsource Private Limited
Having office at No.48/A,
1st Main Road, R.A.Puram,
Chennai – 600 028
Rep by its Vice President – Legal
Mr.S.Porchelvan ... Respondent

[Respondents 4 & 5 brought on record as legal heirs of the deceased 1st respondent as per order dated 21.10.2021 in A.No.3762 of 2021]

PRAYER: Arbitration Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996, to set aside the award dated 05.05.2016 passed in Arbitration proceedings by the Arbitrator as without jurisdiction in the matter of Termination of Lease Agreement dated 11.06.2012 entered into between the petitioners and the respondent or alternatively if this Court is pleased to come to a conclusion that the above tenancy matter is arbitral one, this Court may be pleased to modify the order with regard to the claim of compensation by enhancing the same from Rs.30,99,440/- to Rs.1,29,56,608/- as claimed in the claim petition with further rental charges as per the lease agreement dated 11.06.2012 till the date of delivering the possession of the leased premises to the petitioner herein.

[Prayer amended as per order dated 06.01.2022 in A.No.4394 of 2021]

For Petitioners : Mr.P.Solomon Francis

For Respondent : Mr.S.Shivathanu Mohan
for M/s.S.Ramasubramaniam Associates

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COMMON ORDER

The disputes have arisen between the landlords and the tenant. The parties submitted their disputes to arbitration before the Arbitral Tribunal and aggrieved by the award dated 05.05.2016, the tenant has preferred O.P.No.950 of 2016 while the landlords have preferred O.P.No.231 of 2017.

2.I have heard Mr.S.Shivathanu Mohan, for M/s.S.Ramasubramaniam Associates, learned counsel for the petitioner in O.P.No.950 of 2016 and respondents in O.P.No.231 of 2017 and Mr.P.Solomon Francis, learned counsel for the petitioners in O.P.No.231 of 2017 and respondent in O.P.No.950 of 2016.

3.For the sake of convenience, the parties shall be referred to as tenant and landlords.

4.Besides considering the oral submissions advanced by the learned counsel for the parties, I have also gone through the documents placed before me by way of typed set of papers, which includes the pleadings, oral and documentary evidence as well as the impugned award.

5.The brief fact of the case are as hereunder:

(i) The landlords are the joint owners of a unit to be used as shop/showroom/office place admeasuring 3054 sq.ft of super built up area in the shopping/office complex by name, 'Spencers Plaza' at Phase II, Anna Salai, owning a corresponding undivided share in the land to an extent of 3054/15 lakhs parts in the land measuring 30745.37 sq.mts. The claimants purchased the said unit in the year 2002 and had leased out the property to one M/s.Office Tiger Database Systems India Pvt. Ltd., under a lease deed of the year 2002, lease being effective for a period of three years. Subsisting the said lease agreement, the said tenant Company was taken over and amalgamated with the tenant herein, namely R.R.Donnelly Outsource Pvt. Ltd. Subsequent to the expiry of the initial lease period with the erstwhile tenant, the landlords executed various lease agreements with the present tenant. Admittedly, the last deed was entered on 11.06.2012 between the landlords and the tenant and the same was also duly registered on the file of the Joint Sub-Registrar II, Central Chennai. The duration of lease period was three years from 01.03.2012.

(ii) According to the landlords, the tenant has paid a refundable deposit of Rs.10,99,440/- and monthly rent was fixed at Rs.3,11,355/-, exclusive of service tax. According to the landlords, the tenant paid rents only up to 31.07.2013 and thereafter committed default. The tenant issued a notice of termination of lease on 30.04.2013 giving three months notice in terms of the termination clause available in the lease deed. According to the landlords, the tenant expressed its intention to hand over possession on 31.07.2013 and had requested the refund of the security deposit of Rs.10,99,440/- across such handing over. The landlords sent a reply to the said termination letter dated 30.04.2013 by reply dated 03.07.2013, expressing willingness for termination and also taking over possession and refund of security deposit. However, it was made clear by the landlords that the same would be subject to the tenant fulfilling its obligations of restoring the premises to the condition it was, on the date of handing over of the leased premises to them at the commencement of lease, as per the original plan, demarcating the premises owned by them which was more fully set out in the sketch enclosed to the lease deed and forming part and parcel of the lease deed dated 11.06.2012, as per clause 6.6 of the lease agreement.

(iii) The grievance of the landlords is that the tenant, without fulfilling their obligations as set out above, abandoned the premises and violated the terms of the lease agreement. According to the landlords, they have been sending the rental invoices every month to the tenant who have conveniently refused to pay rents beyond 31.07.2013, by placing reliance on the termination letter. According to the landlords, they have visited the tenanted premises in the last week of October 2013 and after discussions with the officials of the tenant, the tenant had agreed to get a quotation for restoring the premises to its original condition and prepare an estimate. According to the landlords, on inspection, the landlords found that the tenant had ruined the premises and it was rendered to an uninhabitable condition. The landlords, on inspection, with the assistance of a contractor, had also obtained a quotation to the tune of Rs.51,00,000/- for repairs / restoration works and the same was also intimated to the tenant. However, since the tenant did not come forward to pay the same and they moved the Arbitral Tribunal for claims under the following heads:

(i) Cost of restoration and repairs as per initial plan	- Rs.51,00,000/-
(ii) Rental arrears for the period from August 2013 to April 2015	- Rs.65,38,455/-

(iii) Service tax at 12.36%	- Rs.8,08,153/-
(iv) Maintenance arrears and other charges as on April 2015	- Rs.3,00,000/-
(v) Litigation expenses	- Rs.2,00,000/-

In all, the claimants sought for Rs.1,29,46,608/- from the tenant.

6.The tenant besides contesting the above claims of the claimants, made a counter claim for refund of the security deposit of Rs.10,99,440/-, together with interest at 24% per annum, together with additional sum of Rs.19,30,220/- being the amount withheld by the maintenance service provider, namely M/s.Plaza Maintenance Services Limited for the failure of the landlords to make payments towards maintenance and a further sum of Rs.5,00,000/- towards expenses incurred because of the litigation. In all, the counter claim was to the tune of Rs.35,29,660/-, together with interest at 24% per annum from 31.07.2013, till the date of payment by the claimants.

7.The learned Arbitrator, in and by an award dated 05.05.2016, directed the tenant to pay a sum of Rs.20,00,000/- on or before 30.06.2016, failing which, such amount would attract interest at the rate of 12% and further held that the landlords were entitled to retain the balance security deposit of Rs.10,99,440/- and all other claims and the counter claims stood rejected. Aggrieved by the said award both the landlords as well as the tenant are before this Court by way of their respective petitions under Section 34 of the Arbitration and Conciliation Act, 1996.

8.Mr.P.Solomon Francis, learned counsel for the landlords would vehemently contend that there has been no proper handing of the premises by the tenant and virtually the tenant had abandoned the tenanted premises. The landlords were not in a position to even identify the tenanted premises and therefore, the said premises has virtually been ruined because of the lapses on the part of the tenant. The learned counsel would further state that no doubt the sketch was not annexed to the last lease deed dated 11.06.2012. However, the parties clearly understood the terms of the lease deed and in fact, the said plan was annexed to the earlier lease deeds and therefore, the learned Arbitrator ought to have read the sketch available in the previous lease deed into the last lease deed dated 11.06.2012. The learned counsel for the petitioner would further submit that even as on date, the tenancy is subsisting as the landlords have not accepted the termination.

According to him, the Arbitrator has not appreciated the contention of the landlords that they had clearly repudiated the termination being improper since the acceptance of the termination was purely conditional to the restoration of the premises to its original condition by the tenant.

9.The learned counsel for the landlords would take me through the builder's agreement in Ex.C1 and also the initial plan which was admitted to by RW1 during the course of the evidence. He would therefore submit that the non enclosure of the sketch or the original initial plan to the last lease deed dated 11.06.2012 was not fatal and the Arbitrator erred in misconstruing the terms of the lease deed between the parties. The learned counsel would further submit that the findings of the Arbitrator are contrary to clauses 6.4 and 6.6 of the lease deed and therefore, when there is misconstruction of material evidence, according to the learned counsel for the petitioner, it gives rise to a ground for interference under Section 34 of the Arbitration and Conciliation Act. He would therefore pray for O.P.No.231 of 2017 being allowed and O.P.No.950 of 2016 being dismissed.

10.Per contra, Mr.S.Shivathanu Mohan, learned counsel for the tenant would submit that admittedly, the initial plan, which is referred to in Clause 6.6 of the agreement dated 11.06.2012, was not annexed to the said agreement. Further, it is only the arbitration clause in the said agreement which has been referred to in initiating the claim before the Arbitrator and therefore, no extraneous material available in other documents can be read into the agreement dated 11.06.2012. He would further refer to the earlier lease agreement enclosing an initial plan and state that the plan is bereft of any specifications and it was highly impossible in such circumstances, to restore the tenanted premises to its original condition. He would further submit that the present tenant was not the tenant at the inception of the tenancy and it was only M/s.Office Tiger Database System India Private Limited who had taken the premises on lease. Therefore, it was for the landlords to establish what was the original condition in which the premises was let out. He would further submit that the premises was admittedly let out in a warm shell basis and therefore, the tenan had vacated and rendered the premises to a warm shell basis again and therefore, the landlords cannot complain of any violation of the clauses of the lease agreement between the parties.

11.The learned counsel for the tenant would further submit that the Arbitrator has rightly found that the claim of the landlords based on the builders agreement in Ex.C1 could not be put against the tenant who was not a party to the said builder's agreement and if at all, it could only be based on the initial plan that the tenant could be called upon to restore the building. In this connection, he would reiterate that the initial plan is not only not available in lease deed dated 11.06.2012, but even the initial plan available in the earlier lease deed was impossible of performance as it did not contain any specifications and was bereft of details.

12.The learned counsel for the tenant would further submit that the offer to pay Rs.20,00,000/- was without prejudice and during negotiation for an amicable settlement and such an offer cannot be imposed upon the tenants and attacking the findings of the Arbitrator in this regard, the learned counsel for the tenant would submit that the Arbitrator erred in not only awarding Rs.20,00,000/- to the landlords but also forfeiture of the advance amount of Rs.10,99,450/-. He would therefore pray for O.P.950 of 2016 being allowed and O.P.231 of 2017 being dismissed.

13.I have carefully considered the submissions advanced by the learned counsel on either side.

14.Though the landlords have filed a petition under Section 34 of the Arbitration and Conciliation Act, challenging the disallowed claims by the Arbitrator, as rightly pointed out by the learned counsel for the tenant, I am unable to see as to even under which limb of Section 34 the award is challenged by the landlords. Necessarily, for this Court to interfere with the award, the party aggrieved by the award should either show that the award is against public policy or the award is patently illegal. Neither of the said limbs of Section 34 have been established by the landlords. The attack on the award by the landlords is only on the ground that reference ought to have been made to the builder's agreement and the findings that the builder's agreement cannot be looked into since the tenant was not a party to the same is perverse.

15.Further, when the tenant had clearly admitted to restore the premises to its original condition, the tenant was obligated to discharge the said obligation and in violation of clause 6.6, the tenant had issued termination notice which could not be given effect to and therefore, the tenancy subsisted and the tenant was liable to pay rents.

16.I am unable to countenance the said submissions made on the side of the landlords for the simple reason that though it is the case of the tenant that the tenant has abandoned the premises after issuance of the termination notice taking effect by 31.07.2013, no steps have been taken by the landlords to mitigate the losses. Nothing prevented the landlords from occupying the premises and ensuring that the same does not go into further repairs or waste or from becoming uninhabitable. The fact that the tenant was able to take an Engineer to value the costs of repairs by itself establishes the fact that the landlords were in control of the tenanted premises. Further, there is absolutely no proof forthcoming with regard to the claim of Rs.51,00,000/- which is based on the report of an Engineer.

17.It is also admittedly not the case of the landlords that they have spent any amount towards the restoration/repair of the tenanted premises. Therefore, I am not able to find any fault with the findings of the Arbitrator, disallowing the claims in this regard, as prayed for by the landlords. Further, referring to the plan which is referred to as 'initial plan' annexed to Ex.C4, admittedly not annexed to Ex.C5, the last lease deed dated 11.06.2012 between the parties, the plan does not contain any specifications (Ex.B8) or the total extent or even admeasurements. Further, a reading of the lease deed dated 11.06.2012 and also with specific reference to the schedule of the property, it appears that what was leased was only a super built up area of 3054 sq.ft situated in 6^{th} Floor, Phase II of Spenser Plaza. The lease does not refer to any fixtures or fittings provided by the landlords. Further, even the builder's agreement which has been relied on by the landlords, is an agreement dated 12.04.2002 between the landlords and the developer M/s.Mangal Tirth Estate Limited, which in fact was admittedly entered into after the inception of the first lease in favour of the M/s.Office Tiger Database System India Private Limited.

18.I am unable to see that any fixtures and fittings were provided and as contended by the tenant, the lease in favour of the tenant could have only been a warm shell constructed by the developer and handed over to the landlords. Further, the argument advanced by the learned counsel for the landlords that without the tenant restoring the premises to its original condition, the landlords would not even be in a position to identify their property can never be countenanced. The landlords have let out the premises belonging to them originally to M/s.Office Tiger Database Systems India Pvt. Ltd, from whom the present tenant has taken over possession of tenanted premises. To contend that the landlord depends upon the tenant to identify the property owned by the landlords is only amusing. As already found the initial plan also does not lend any support to the contentions of the landlords. I also find merit in the argument of the learned counsel for the tenant that if the landlords did not even know the lay of the property which belong to them, then it was virtually impossible for an estimate to be obtained for a sum of Rs.51,00,000/- to carryout restoration/repair.

19.For all the above reasons, I do not find any patent illegality or the findings of the Arbitrator being opposed to public policy warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996, insofar as the Section 34 petition filed by the landlords.

20.Coming to the counter claim made by the tenant with regard to refund of the security deposit and the balance maintenance amount from and out of the security deposit paid to the service provider, the learned Arbitrator has put an offer for settlement against the tenant and disallowed the claim for refund of the security deposit from the landlords. In respect of the claim regarding the security deposit towards maintenance, the Arbitrator has held that the tenant has to take steps to recover the same from the service provider and not from the landlords. The Arbitrator in fact referred to a letter dated 11.07.2014 in Ex.R4 where the tenant has written to M/s. Plaza Maintenance and Service Limited, marking of copy to the claimants, asking them to return the deposit without deducting any further amounts towards maintenance after 31.07.2013, as the tenant has vacated the premises. Placing reliance on the said letter, the Arbitrator has found that the claim regarding security deposit will have to be made only to the service provider and not the landlords and the service provider admittedly not being a party to the arbitration proceedings, the claim against the landlords in this regard was unsustainable. The said finding of the Arbitrator is a possible view which any reasonable person would take and hence, it does not offer a ground for interference under Section 34 of the Arbitration and Conciliation Act, 1996.

21.With regard to disallowing the security deposit amount of Rs.10,99,440/-, the learned Arbitrator has found from the terms of the agreement that the tenant is entitled to get back the security deposit from the claimants, subject to certain conditions. With regard to the decision of the learned Arbitrator to award Rs.20,00,000/- to be paid by the tenant to the landlords and also forfeit the security deposit of Rs.10,99,440/-, the Arbitrator has referred to the pre-arbitration exchange of notices pending Section 9 application before this Court in A.No.6166 of 2013. Though the tenant expressed willingness to pay Rs.20,00,000/- and also waive the security deposit, the said settlement offer was rejected by the landlords and thereafter, the Arbitrator came to be appointed by this Court.

22.It is the specific contention of the learned counsel for the tenant that such an offer for settlement cannot be put against the tenant and the tenant being called upon to pay Rs.20,00,000/- to the claimants, besides also forfeit the advance amount of Rs.10,99,440/-. The learned Arbitrar having rightly held that the claimants cannot rely upon the builders agreement since the tenant was not a party to the said document and was also not even referred to in the lease deed dated 11.06.2012 in Ex.C5 and that the claimants were not even in a position to set out the specifications of the tenanted premises, held that the termination of the lease was valid, ought not to have passed an award directing the tenant to pay a sum of Rs.20,00,000/-, besides also forfeit the security deposit of Rs.10,99,440/-.

23.In fact, the said finding is purely based on an offer for settlement proposed by the tenant pending Section 9 proceedings before this Court, which proposal was outright rejected by the landlords. To place reliance on the same, was highly unjustified and uncalled for on the part of the Arbitrator. Further, once the Arbitrator had accepted the termination to be valid and proper and binding on the landlords, as a necessary corollary, the learned Arbitrator ought to have allowed the counter claim for refund of security deposit of Rs.10,99,440/-. The reasons assigned by the learned Arbitrator that referring to letter dated 02.12.2013 in Ex.C13 sent by the tenant to the landlords, wherein they had expressed readiness to pay Rs.10,00,000/- as a goodwill gesture for the alleged restoration of the leased premises as per the initial plan itself clearly states that the offer proposed was without prejudice to the lessees rights, interest and defence.

24.Further, placing reliance on the proof affidavit of R.W.2 that the tenant has incurred expenses towards restoration work was only meant that the tenant has already incurred expenses for restoring the premises and the Arbitrator erroneously misread the said evidence to mean that certain restoration/repair work had to be carried out in the leased premises. Therefore, placing reliance on a proposal for settlement given without prejudice by the tenant, to pass the award in favour of the claimant for payment of Rs.20,00,000/- as well as forfeiture of the security deposit amount is clearly warranting interference under Section 34 of the Arbitration and Conciliation Act.

25.The finding of the Arbitrator that the said amount of Rs.20,00,000/- can be safely taken as costs of the restoration of the premises is contrary to the evidence available on record. Having rightly held that the jural relationship between the landlord and the tenant came to an end by 31.07.2013 and no rents were payable by the tenant thereafter, the learned Arbitrator ought to have ordered refund of the security deposit of Rs.10,99,440/- and the reasons for finding that the said amount would stand forfeited being based on the proposal for settlement without prejudice is wholly unsustainable.

26.The learned Arbitrator has further held that the respondent has not denied the averments in the claim statement that the tenant was willing to pay Rs.20,00,000/- besides waiver of security deposit to the claimants. However, it is seen from the statement of defence that the tenant has specifically referred to the same in paragraph No.13 of the statement of defence and denied the averments in the claims statement. Therefore, the finding of the Arbitrator ignoring vital material evidence and pleadings renders the award patently illegal.

27.The learned counsel for the landlords would place reliance on the decision of the Hon'ble Supreme Court in *National Highways Authority of India Vs. Hindustan Construction Company Ltd*, reported in *AIR 2024 SC 2383*, where the Hon'ble Supreme Court dealt with the approach of the Arbitral Tribunal to terms of the contract and held that the Court does not sit in appeal over the award and can interfere only on limited grounds provided under Section 34(2)(b)(ii), namely, where the award is against the public policy of India or it is patent illegality by amounting to contravention of substantive law of India and contravention of the terms of the contract agreed to between the parties.

28.Even applying the said ratio to the facts of the present case, I do not find patent illegality or misapplication of substantive laws prevailing in India to non suit the claimants. The Arbitrator has rightly held that the termination notice was valid and the landlord tenant relationship came to be determined and also held that the landlords had not established even the basic specifications to call upon the tenant to restore the premises to its original condition. However, while dealing with the counter claim, the Arbitrator has erroneously held that the tenant has not denied the claim of the landlords regarding the settlement offer in the statement of defence and that the said offer can be imposed upon the tenant and consequently the security deposit being forfeited and also by calling upon the tenant to pay a sum of Rs.20,00,000/- as offered by them in the proposal for settlement pending Section 9 proceedings before this Court. There is a clear omission to look into the material evidence on record and by enforcing an offer for settlement, made without prejudice, is also opposed to public policy.

29.With regard to the other limbs of the counter claim, I do not find any illegality or perversity in the findings of the learned Arbitrator directing recovery of the security deposit amount paid towards maintenance from the service provider and not from the landlords. Therefore, the same does not require any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

30.For all the above reasons, the original petition filed by the landlords in O.P.No.231 of 2017 is liable to be dismissed and the original petition filed by the tenant in O.P.No.950 of 2016 is to be partly allowed.

31.In fine, O.P.No.231 of 2017 is dismissed and O.P.No.950 of 2016 is partly allowed, directing the landlords to refund the security deposit amount of Rs.10,99,440/- together with 12% interest from 01.08.2013 till date of award and thereafter, at the rate of 6% interest per annum till the date of payment. Consequently, O.P.No.231 of 2017 is dismissed. There shall be no order as to costs. Connected application is closed.

21.12.2024

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Index : Yes / No
Internet : Yes / No

P.B.BALAJI, J.,
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O.P.Nos.950 of 2016 & 231 of 2017
& A.No.1716 of 2017

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