



\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 06.08.2024

+

FAO (COMM) 108/2024 & CM No.33373/2024**SUBE SINGH**

.....Appellant

Through: Mr.Abhijat, Mr Aarya Shekhar,
Mr.Yaspal Singh, Mr.Dhanjay
Sehrawat, Advocates.

versus

**GIAN CHAND BANSAL (SINCE DECEASED)
THROUGH LR & ORS.**

.....Respondents

Through: Mr Jeevesh Nagrath, Mr Harshit
Agarwal, Mr Aasheesh Gupta,
Mr.Arjun Gaur and Mr.Rajat Gupta,
Advocates for R1 and R2.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 18.04.2024 passed by the learned Commercial Court in OMP(COMM) 74/2023 captioned as *Shri Sube Singh Vs. Shri Gian Chand Bansal & Ors.* The appellant had filed the aforesaid application to set aside an arbitral award dated 14.02.2023 (hereafter *the impugned award*) passed by an arbitral tribunal comprising of a sole arbitrator (hereafter *the Arbitral Tribunal*). The learned Commercial Court had rejected the aforesaid application as the Court found that there were no grounds to interfere with the impugned award.



2. The impugned award was rendered in the context of disputes that had arisen between respondent nos.1 and 2 and the appellant in connection with the Collaboration Agreement dated 01.01.2021 (hereafter *the Collaboration Agreement*). Respondent nos.1 and 2 were claimants before the Arbitral Tribunal. Respondent no.1 (Sh. Gyan Chand Bansal) had expired during the course of the arbitral proceedings and his interest was represented by respondent no.2, arrayed as claimant no.2 before the Arbitral Tribunal.

3. It was the case of the respondents (claimants before the Arbitral Tribunal- hereafter also referred to as *the claimants*) that they were the owners of the property, being portion of a ground floor, admeasuring 900 sq. ft. in a building known as Shah Bhawan-2, Chamelian Road, Delhi-110006 (hereafter *the premises in question*). The claimants had entered into the Collaboration Agreement with the appellant for use of the premises in question as a ticket booking and selling centre for sale of tickets of the fleet of stage carriers run by the appellant. In terms of the Collaboration Agreement, the claimants agreed to allow the use of the premises in question for the aforesaid purpose and also agreed to provide the necessary infrastructure, furniture and fittings for the said purpose. They had also agreed to liaison and coordinate with advertising, promotional media and authorities on behalf of and at the request and cost of the appellant in furtherance of the Collaboration Agreement. In consideration for the same, the appellant had agreed to pay the commission/royalty to the claimants on the tickets booked subject to the minimum amount as specified in the Collaboration Agreement. A tabular statement setting out the consideration as agreed between the parties in terms of the Collaboration Agreement as set



out in the impugned award is reproduced below:

“Period	Commission/Royalty	Guaranteed Amount
01.01.2021–31.01.2021	Rs.15/- per ticket	Rs.80000/-
01.02.2022–31.12.2022	Rs.16.50 per ticket	Rs.85000/-
01.01.2023–31.12.2023	Rs.18.15 per ticket	Rs.92000/-”

4. The appellant allegedly failed to pay the consideration as agreed between the parties. In the aforesaid context, the claimants claimed for a minimum guaranteed amount under the Collaboration Agreement (Claim No.1) as well as rendition of accounts for calculation of the royalty / commission (Claim No.3). The claimants also made a claim for vacation and handing over of the premises in question (Claim No.2). In addition, the claimants claimed a sum of ₹50,00,000/- towards damages (Claim No.4); clearance of electricity, broadband, water, DTH bills from the date of the Collaboration Agreement till the date of handing over of the possession of the premises in question (Claim No.5); interest at the rate of 15% per annum on the claims (Claim No.6); and, cost of arbitration (Claim No.7).

5. The appellant contested the claims before the Arbitral Tribunal. He claimed that he was in the possession of the premises in question for a number of years and the Collaboration Agreement was a fraudulent document, which was never agreed between the parties. The appellant claimed that the claimants had agreed to invest in his business but subsequently resiled from their commitment. He claimed that the claimants had obtained his signatures by claiming that Sh. Gian Chand Bansal, since deceased, was the owner of the premises in question but thereafter failed to produce any document of the ownership. He claimed that the Collaboration



Agreement was never finalized and was not binding on the parties.

6. It is apparent from the above that the disputes between the parties centred around the fact whether they had entered into the Collaboration Agreement as claimed by the claimants. It is material to note that the appellant did not dispute his signatures on the Collaboration Agreement.

7. During the course of the arbitral proceedings, the claimants gave up their claims for damages for the sum of ₹50,00,000/-.

8. The Arbitral Tribunal examined the pleadings and the material placed by the parties and found the same in favour of the claimants. The Arbitral Tribunal rejected the contention that the claimants were not the owners of the premises in question. The claimants had produced the copy of the sale deed of the premises in question and the Arbitral Tribunal accepted the same. The Arbitral Tribunal also held that the claimants were entitled to commission / royalty at the rate of ₹15/- per ticket for the period from 01.01.2021 to 31.01.2021; at the rate of ₹16.50 per ticket for the period from 01.02.2022 to 31.12.2022 and at the rate of ₹18.15 per ticket for the period from 01.01.2023 to 31.12.2023. Since the Collaboration Agreement did not provide for the rate of commission / royalty after 31.12.2023, the Arbitral Tribunal held that the claimants would also be entitled to the commission / royalty at the rate of ₹18.15 per ticket for 31.12.2023 till the vacant possession of the premises in question is handed over to the claimants. The Arbitral Tribunal also held that till the amounts of royalty are determined, the claimants would be entitled to a minimum guaranteed amount of ₹80,000/- per month for the period from 01.01.2021 to 31.01.2021;



₹85,000/- per month for the period from 01.02.2022 to 31.12.2022 and ₹92,000/- per month for the period from 01.01.2023 till the vacant possession of the premises in question is handed over to the claimants. The Arbitral Tribunal directed that the premises in question be vacated by the appellant and the possession of the same be handed over to the claimants.

9. Insofar as the utility bills are concerned, the Arbitral Tribunal found that there was no material to establish the existence of the bills of broadband and DTH, however, as far as the other utilities are concerned, held the appellant liable to pay the same till the vacation of the premises in question. The Arbitral Tribunal also awarded the interest at the rate of 9% per annum; costs comprising of arbitral fee of ₹4,49,937.50 and the counsel fee of ₹50,000/-.

10. As noted above, the controversy between the parties essentially revolved around as to whether the parties were bound by the Collaboration Agreement. The Arbitral Tribunal found that the appellant had not raised any objection or any allegation that the Collaboration Agreement was fraudulent or his signatures were obtained without free consent at any stage prior to the arbitral proceedings. The Arbitral Tribunal noted that even in response to the legal notice dated 07.03.2022, no such defence was raised. The appellant's contention that the claimants were not the owners of the property was rejected by the Arbitral Tribunal as the claimants had produced a copy of the sale deed. The Arbitral Tribunal reasoned that the appellant's defence ran contrary to the written agreement and therefore rejected the same.



11. The impugned award is supported by cogent reasons. We are unable to accept that the same is vitiated on the ground of patent illegality or is in conflict with the public policy of India.

12. Mr. Abhijat, learned counsel appearing for the appellant sought to challenge the impugned award on the singular ground that the appellant did not have full opportunity to contest the claim. He contended that the impugned award was liable to be set aside in terms of Section 34(2)(a)(iii) of the A&C Act as the appellant was unable to present its case. He founded the said challenge on the ground that the appellant was not granted any opportunity to lead evidence. He submitted that the entire dispute between the parties was factual and yet the appellant was not permitted to lead evidence. And, the Arbitral Tribunal had decided the dispute on the basis of pleadings and documents produced on record.

13. The impugned award clearly records that on 19.09.2012, the counsels for both the parties had stated that no oral evidence is required to be led and had requested the Arbitral Tribunal to list the matter for final arguments on the basis of pleadings and documents on record. Paragraph no. 9 of the impugned award is set out below:

“On 19.09.2022, the counsel for both the parties had stated that no oral evidence is required to be lead in the matter and the matter could be listed for final arguments on the basis of the pleadings and documents on the record. Accordingly, considering the stand taken by the parties, no need was felt to frame specific points of dispute. It was directed that the parties shall be at liberty to argue on the basis of their respective stands in the pleadings based on documents on record. The matter was listed for final arguments on 11.10.2022.”

14. In view of the above, Mr. Abhijat fairly conceded that the challenge to



2024:DHC:6248-DB



the impugned award on the said ground is not sustainable.

15. We find that there are no grounds that warrant interference with the impugned award. The appeal is unmerited and accordingly dismissed. Pending application is also dismissed.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 06, 2024

‘gsr’