IN THE HIGH COURT AT CALCUTTA
(Commercial Division)
ORIGINAL SIDE

Present: Hon'ble Justice Shampa Sarkar

APOT- 421 of 2024
With
IA NO: GA-COM/1/2024

HINDUSTAN PETROLEUM CORPORATION LIMITED
VS
RUKMANI DEVI BANGUR AND ORS.

For the appellant : Mr. Sabyasachi choudhury, Senior Adv.
Mr. Biswanath Chatterjee, Adv.
Mr. Sobhan Kumar Pathak, Adv.

For the respondents : Mr. Ranjan Bachawat, Senior Adv.
Mr. Sarosij Dasgupta, Adv.
Ms. Ratnadipa Sarkar, Adv.
Ms. Rajeshwari Prasad, Adv.

Hearing concluded on: 06.02.2025
Judgment on: 13.03.2025

Shampa Sarkar, J.:-

1. This appeal arises out of an order dated November 7, 2024, passed by the learned Arbitrator in the arbitral proceedings between Rukmani Devi Bangur and others and Hindustan Petroleum Corporation Limited. The appellant before this court is the respondent in the arbitral proceedings. The respondents herein are the claimants.

2. The order impugned was passed by the learned Arbitrator, while disposing of two applications filed by each party under Section 17 of the Arbitration and Conciliation Act 1996, (hereinafter referred to as the said

Act). The appellant is aggrieved by the direction to pay Rs.22,14,894/-, to the respondents, within four weeks from the date of the order, towards occupational charges.

3. According to Mr. Choudhury, learned Senior Advocate for the appellant, the direction was beyond the scope of the applications filed by either party for interim orders, under Section 17 of the said Act. Mr. Choudhury submitted that the purported claim of the respondents for occupational charges between December 1, 2023, and October 31, 2024, should have been adjudicated in the arbitral proceedings. Part of the main relief was allowed by an interim order. Moreover, whether any sum was due and payable to the respondents, was a matter of evidence. The issue should have been adjudicated at the final hearing of the proceedings, after taking into consideration the evidence that would be adduced by the parties. The appellant was willing to hand over vacant possession of the premises in December 2023, and had requested the respondents to take over possession of the property. The respondents did not take any step to facilitate the process of handing over of the keys. The premises remained vacant, but under lock and key. The appellant did not use the property after December 2023, and as such, could not be saddled with the burden of paying occupational charges. The keys remained with the appellant only because the respondents did not respond to the appellant's request to take over possession. This aspect was completely ignored by the learned Arbitrator. Mr. Choudhury submitted that the learned Arbitrator failed to appreciate such conduct of the respondents and directed payment of occupational charges for the period between December 1, 2023, and October 31, 2024, at the rate of Rs.2,01,354/- per month (i.e. agreed rent). The appellant had also filed an application under Section 17 of the said Act sometime in July 2024, but the same was disposed of after five months, along with the application filed by the respondents. The appellant could not be penalized by imposition of occupational charges, for the period when the premises remained unoccupied and unutilized.

4. It was submitted that the respondents filed the application under Section 17 of the said Act, for security of money, payment of occupational charges and other reliefs, at a belated stage, i.e., on September 2, 2024. The learned Arbitrator ought to have considered that the said application was an afterthought, vexatious and *mala fide*. When the rate of rent was in dispute, the quantum of money paid between January 2021 and November 2023, was also in dispute and the rent between January 2021 and November 2023 had been paid even after expiry of lease on December 2020, the direction for further payment was unwarranted. These issues were to be adjudicated finally, before any direction could have been passed to pay the occupational charges. Admittedly, as the appellant did not use the property after December 2023. The plea of the appellants of tenancy by holding over should have been considered by the learned Arbitrator. Rents were paid between January 2021 and November 2023, which were duly accepted by the respondents and invoices were also raised by the respondents.

5. According to Mr. Chowdhury, the learned Arbitrator failed to take into consideration that between January 1, 2021 and November 2023, the appellant continued as a monthly tenant in respect of the premises in question. The notice calling upon the respondent to vacate the premises was issued sometime in July 2023, and not before. By a letter dated January 13, 2024, the respondents were informed that the appellant shifted from the subject premises with effect from December 31, 2023. The appellant requested the respondents to take over possession of the premises within seven days from the date of receipt of the said letter. The respondents did not respond positively to the said letter. Under such circumstances, the appellant was compelled to deploy security guards in the subject premises and the electricity could not be disconnected. The appellant was willing to carry out a joint inspection of the premises before handing over the keys. Due to the laches and negligence on the part of the respondents to accept the request of the appellant with regard to holding a joint inspection and their taking over the keys and possession of the premises in the month of January 2023 itself, the vacant premises remained locked up, and the keys remained in the custody of the appellant.

6. The failure of the respondents to take appropriate steps at the proper time, in spite of requests by the appellant, could not be treated as delay in handing over possession. The learned Arbitrator wrongly opined that, until the premises were vacated and handed over, occupational charges would be payable by the respondents at the admitted rate of rent. In this case, non-delivery of vacant possession upon handing over keys were impossible, due to the non-cooperation of the respondents. There was no deliberate intention to occupy the premises even after shifting from the same.

7. Mr. Ranjan Bachawat, learned Senior Advocate for the respondents submitted that, the appellant occupied the premises after expiry of the lease on December 31, 2020. On the pretext of negotiating with the respondents for execution of a fresh deed of lease upon enhancement of monthly rent, the appellant continued to occupy the premises without handing over the keys. Substantial damage had been caused to the subject premises. Payment of rent for the period January 2021 to November 2023, to the tune of Rs.59,73,564.18/- could not be accepted as payment of the admitted rent. A lesser amount had been paid.

8. The specific case of Mr. Bachawat was that the appellant may have vacated the premises, but did not take any initiative to hand over the keys to the landlord. Rather, the security guard was asked to take over the keys, but the security guard was not authorized to accept the same. The process of handing over vacant possession required certain formalities to be complied with. A joint meeting between the parties should have been held. The process would be complete, upon the landlord taking note of the damage the property had sustained.

9. Mr. Bachawat pointed out that, upon analysis of the letters that were on record, the learned Arbitrator came to a specific finding that the appellant did not hand over possession of the premises to the respondents. The keys were retained by the appellant. The respondents were not willing to receive the keys to the premises from the appellants, without ascertaining the damage caused to the subject premises during the past 23 years, when the appellant was in possession.

10. The learned Arbitrator further came to the conclusion that, the respondents did not pay any rent between December 2023 and October 2024. The letter dated February 8, 2024 indicated that the respondents gave a proposal to the appellant to depute an authorized officer of the appellant for conducting a joint inspection of the subject premises for ascertainment of the extent of damage that the subject premises had sustained and thereafter, the keys would be taken over by the respondents/claimants. No document was forthcoming from the end of the appellant which would persuade the learned Arbitrator to hold that the appellant had taken an initiative for the joint inspection of the premises before offering to hand over the keys of the subject premises to the respondents. The appellant did not respond to the letter dated February 8, 2024 written by the respondents.

11. In July 2024, the appellant filed an application for appointment of special officers to carry out the inspection of the premises and for a direction upon the appellant to accept the keys of the premises. According to the learned Arbitrator, as the appellant did not respond positively to the proposal of the respondents to conduct joint inspection of the premises before taking over the keys of the subject premises, but came up with the application for interim orders after five months for holding the joint inspection, the respondents should be made liable to pay the admitted rent at the rate of Rs.2,01,354/- per month for the period between December 1, 2023 and October 31, 2024, without prejudice to the rights and obligations of the parties, which would be decided finally in the arbitration proceedings. The appellants were adequately protected by the order.

12. Having heard learned counsel for the respective parties, this court deems it necessary to document the facts leading to the filing of the applications. Sometime in the year 2007, the appellant obtained lease of the premises, upon execution of a registered deed of lease dated January 10, 2007, in respect of premises located at 6 Church Lane, 2nd floor, Kolkata, 700001, measuring 12,592 square feet. The lease was for a period of 20 years, commencing from January 1, 2021 and ending on December 31, 2020. The monthly rent payable was Rs.2,01,354/. The lease deed also contained a renewal clause. The appellant contended to have continued to remain in the premises even after the expiry of the lease, upon payment of rent on and from January 1, 2021, as a monthly tenant. The said rents were allegedly accepted by the respondents by granting receipts and the appellant claimed tenancy by holding over, for the period it was in possession, after expiry of the lease. Allegedly, negotiations for grant of a fresh lease were going on.

13. The respondents, on the other hand, determined the lease by a notice dated July 21, 2023, and asked the appellant to hand over vacant possession of the premises in question. The respondents refused to accept monthly rent on and from December 2023, and also did not accept the keys of the premises.

14. The negotiations failed. The appellant claimed to have vacated the premises with effect from December 31, 2023. By a letter dated January 13, 2024, the appellant requested the respondents to take possession of the premises and accept delivery of keys.

15. The specific case of the appellant was that, from December 2023, the subject premises had been lying vacant and the appellant did not have any other alternative, but to keep the same under lock and key, as the respondents had refused to take over possession of the vacant premises, with an ulterior motive and for monetary gain. The respondents invoked arbitration and filed an application for appointment of an Arbitrator. The said application was allowed by the referral court and the learned Arbitrator was appointed. The parties filed their statement of claim and defense. The appellant filed two applications, one under Section 16 of the said Act and one under Section 17 of the said Act. The application under Section 16 of the said Act was dismissed on contest on October 1, 2024.

16. The prayers in the said application under Section 17 are quoted below:-

> "(a) An Order be passed appointing the Advocates-on-Record of both parties as Special Officers without remuneration to make inspection of the said subject premises being 6, Church Lane, 2nd Floor, Kolkata 700001;
> (b) An Order be passed giving appropriate Direction upon the Claimant for Accepting the keys of the subject premises from the respondent;
> (c) Alternatively, Joint Special Officers/Receivers SO appointed to take possession of the subject premises and the keys of the subject premises;
> (d) Ad interim order in terms of prayers above;
> (e) Costs of and incidentals to this application be borne by the claimant;
> (f) Such other or further order or orders be passed and/or direction or directions be given in favour of the Applicant/Respondent as this Learned Arbitral Tribunal may deem fit and proper;"

17. The respondents also filed an application under Section 17 of the said Act. The respondents prayed for the following orders:-

> "a) The Respondent be directed to secure the amount in dispute by depositing with this Learned Tribunal, a sum of Rs.9,47,67,472.62 or such other sum as may be determined by this Learned Tribunal, as mentioned in paragraph 18 hereof;
> b) The Respondent be directed to pay an amount of Rs.28,86,011.82 to Claimants, as mentioned in paragraph 19 hereof;
> c) The Respondent be directed to pay occupational charges to the Claimants at the rate of Rs.25,63,101.60 per month or such other amount as may be determined by this Learned Tribunal, until the present reference is decided by this Learned Tribunal or until the Respondent hands over the vacant and peaceful physical possession of the said property to the Claimants;

> d) Ad interim orders / directions be passed in terms of the prayers above;
> e) Costs of and incidental to this application be directed to be paid by the Respondent; and
> f) Such further or other order or orders be passed and/or direction or directions be given as this Learned Arbitral Tribunal may deem fit and proper."

18. Both the applications were heard by the learned Arbitrator and disposed of analogously, by the order impugned.

19. The issue before this court is whether the learned Arbitrator erred in directing payment of admitted rent, in the facts and circumstances narrated hereinabove. This court finds from the order impugned that in paragraph 2 of the order, the learned Arbitrator summarized the submissions of the learned Senior Advocate for the appellant. The points raised by the appellant were discussed.

20. In paragraphs 3 to 5, the submissions of the learned Senior Advocate for the respondents were recorded in detail. Upon considering the rival contentions of the parties, the learned Arbitrator rightly laid down the parameters to be satisfied, for grant of interim orders as prayed for by the respondents in their application. The learned Arbitrator observed as follows:-

> "(i) a strong prima facie case must be made out by the claimants,
> (ii) the balance of convenience ought to be in favour of passing an interim order i.e. the Tribunal is required to examine and weigh the hardship caused to the claimants as consequences of refusal of interim relief with the hardship caused to the respondent as consequences of grant of interim relief,
> (iii) a strong possibility of diminution of assets of the respondent must be made out even if there may not be actual attempt to dispose of the property by the respondent to defeat or delay realisation of impeding arbitral Award, and
> (iv) the Tribunal cannot ignore the basic principles of the Code of Civil Procedure, though the power to grant interim relief u/s 17 of the

> Arbitration Act, 1996, is not curtailed by the rigours of procedural technicalities under Civil Procedure Code."

21. In my opinion, the learned Arbitrator rightly balanced the convenience and inconvenience of the parties and weighed the hardships that may be caused to the rival parties in refusing and/or allowing the prayers of the respondents, before passing the order impugned. The fact that there was no possibility of diminution of assets of the appellant was considered, before denying the claim of the respondents for security of the amount of Rs.9,47,67,472.62/-. The learned Arbitrator rightly held that the decision in **B*ijay Kumar Manish Kumar HUF vs. Ashwin Bhanulal Desai*** reported in ***2024 INSC 445***, would not support the case of the respondents. The amount claimed by the respondents in their application were denied on the following grounds:-

a) It was, prima facie, established that the appellant had paid monthly rent to the respondents during the period of negotiation between January 1, 2021, and November 30, 2023, although, the amount was disputed.
b) The amount of Rs.9,47,67,742/- which was calculated to be the mesne profit could not be accepted to be final at the interim stage, when the amount of rent was disputed by the appellant and the total amount claimed as mesne profit was in the nature of unliquidated damages.
c) The calculation could be finally arrived at, upon weighing the evidence and at the final disposal.

22. The learned Arbitrator held that even if, a prima facie, case for security had been made out, the quantum claimed as mesne profit was still in the realm of un-ascertained damages.

23. Moreover, the learned Arbitrator was of the view that there was no possibility of depletion of the assets of the respondents, which was a public sector undertaking. The balance of convenience did not tilt in favour of the respondents, and an interim order to provide security for the amount calculated and disclosed by Annexure C to the application under Section 17 of the said Act, was correctly denied.

24. In the opinion of the learned Arbitrator, respondents/claimants were not entitled to any security of the estimated mesne profits, during the pendency of the arbitral reference. Moreover, the learned Arbitrator also held that the direction upon the appellant to pay occupational charges at the rate of Rs.25,63,101/- per month, could not be decided without evidence. The rate of rent was in dispute.

25. The next question for determination before the learned Arbitrator, i.e., whether the respondents were entitled to an interim order for the balance amount of admitted rent on account of the appellant having occupied the premises between January 2021 to November 2023, the learned Arbitrator held that the dispute with regard to the amount of rent deposited during the said period could not be resolved without scanning the evidence and, such issue would be decided at the final stage of the hearing.

26. Thus, the learned Arbitrator refused to direct the respondents to pay the balance amount of rent, over and above the amount of Rs.59,73,564/-, which was deposited towards rent from January 1, 2021 to November 30, 2023.

27. The learned Arbitrator came to the conclusion that the appellant had not deposited any rent in favour of the respondents during December 1, 2023 to October 31, 2024. The admitted position was that the keys of the subject premises had not been handed over to the respondents till the date of the order. The letter of the respondents dated February 8, 2024 clearly indicated that the respondents had given a proposal to the appellant to depute an authorized officer for conducting a joint inspection of the subject premises, for ascertainment of the damage that may have been caused to the premises and thereafter, hand over the keys to the representative of the respondents.

28. No document was produced by the appellant to show that any initiative had been taken by the appellant for holding the joint inspection and for handing over the keys. On July 19, 2024, the application was filed by the appellant under Section 17 of the said Act, for appointment of special officers to carry out the inspection work and for a direction upon the respondents to accept the keys. The filing of the applications indicates that the appellant had not taken steps for a joint inspection, earlier.

29. The learned Arbitrator was of the view that the respondents remained silent, without responding to the proposal for holding a joint inspection made by the respondents by letter dated February 8, 2024. The prayers of the appellant in the application under Section 17 of the said Act were more or less akin to the proposal of the respondents in their letter dated February 8, 2024.

30. Under such circumstances, the learned Arbitrator rightly held that the period during which the keys were not handed over to the respondents**,** should be treated to be in the occupation of the appellant and the appellant should pay occupational charges at the rate of the applicable rent of Rs.2,01,354/- per month and directed payment of Rs.22,14,894/-.

31. The learned Arbitraor also left the adjudication of the amount payable as occupational charges, to be finally decided at the time of disposal of the arbitral proceeding. Thus, the payment and acceptance of the amount will abide by the result of the arbitral proceedings. In the event the appellant is successful in the arbitral proceeding, the said amount can be refunded to the appellant and, if the appellant is unsuccessful, the said amount can be adjusted with the mesne profit to be calculated finally in the arbitral proceeding.

32. In the decision of ***Sarup Singh Gupta v. S. Jagdish Singh*** reported in ***(2006) 4 SCC 205***, the Hon'ble Apex Court noted and observed that, in the event of termination of lease, the Courts had followed the practice of permitting the landlord to receive rent every month by way of compensation for the use and occupation of the premises at an amount equal to the monthly rent payable by the tenant.

33. The delay in handing over the premises, prima facie, entitled the respondents to the agreed rent. The respondents could have generated an income from the property, had the premises been handed over in the proper manner, in December, 2023, when the shifting took place.

34. Admittedly the physical possession of the premises in question, were handed over in the presence of the learned Special Officers, who were appointed by the learned Arbitrator.

35. The order impugned does not call for any interference. The amount directed to be paid by the appellant shall be paid within a period of six weeks from date of this judgment and the respondents shall accept the amount. The only modification to the order impugned is that, the respondents shall file an undertaking before the learned Arbitrator that, in the event the appellant is successful and the claim is dismissed, the amount shall be refunded to the appellant within two weeks from the disposal of the arbitral proceedings upon publication of the award.

36. Accordingly, the appeal and the connected application are disposed of.

37. Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)