

(2013) 01 DEL CK 0152
In the Delhi High Court
Case No : FAO (OS) No. 309 of 2012

Ansal Properties and Infrastructure Ltd.	APPELLANT
Vs	
Housing and Urban Development Corporation Ltd.	RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Citation : (2013) 2 AD 351 : (2013) 1 ARBLR 345 : (2013) 199 DLT 577 :
(2013) 199 DLT 574 : (2013) 134 DRJ 120

Hon'ble Judges : Vipin Sanghi, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Arvind K. Nigam with Mr. B.B. Gupta and Mr. Anshul Mittal, for the Appellant; Anurag Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—The Government of India issued a Letter of Allotment (for short "LoA") dated 1.11.1990 in favour of Housing & Urban Development Corporation Limited (for short "HUDCO")/respondent herein in respect of a piece of land measuring 42.6 acres at Pinjrapole, Andrews Ganj, now known as HUDCO place for development of a community centre and Government housing. An area of 4,800 sq. mtrs. was permitted to be disposed of out of the said land for construction of a shopping arcade. In view thereof on 26.12.1994 the respondent issued an advertisement for allotment of site for a shopping arcade where the appellant M/s. Ansal Properties & Infrastructure Limited was found to be the highest bidder. A LoA dated 10.3.1995 was, thus, issued on which buildable space of approximately 14,700 sq. mtrs. could be developed besides car parking space, etc. for a total consideration of Rs. 168,80,93,200.00. The relevant clause of this LoA for the present controversy is clause 6. (viii) specified in para 6 of the LoA which contained the broad terms & conditions of allotment and reads as under:

viii. You shall pay the annual ground rent at the rate of 2 1/2% of the premium for the land paid by you for the Shopping Arcade site from the date of handing

over possession of the Shopping Arcade site. The ground rent shall be revised periodically in accordance with the terms and conditions of the sub-lease deed.

A tripartite Agreement to sub-lease was executed between the Government of India, the respondent and the appellant on 1.8.1995. In the recital of the said Agreement to sub-lease, it was provided that "the Letter of Allotment mentioned above shall be deemed to be part and parcel of this Agreement" while making a reference to the LoA dated 10.3.1995. It was, however, provided in clause XXIII of the Agreement to sub-lease as under:

XXIII. In the event of any inconsistency or repugnancy in the terms and conditions of allotment letter and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

2. Clause XV of the Agreement to sub-lease provided for the grant of sub-lease for a period of 99 years upon completion of the shopping arcade in accordance with the terms set out in the agreement to lease for a period of 99 years to be reckoned from the "date of handing over possession and further subject to the payment of the ground rent to be calculated at 2 1/2% of the premium fixed for the shopping arcade site in accordance with the yearly installments to be paid".

3. On 10.11.1995 a Certificate of Provisional Entry on license basis was granted to the appellant by the respondent for the sole and exclusive purpose of constructing and erecting a shopping arcade building and for executing the related and permitted works and for no other purpose.

4. A Perpetual Lease deed was executed on 4.7.1997 but the President of India in favour of the respondent qua 17.6 acres of land meant for the community centre. A sum of Rs. 1.00 was paid as premium by the respondent, the first such payment having been made on 29.3.1996.

5. The dispute, however, arose inter se the parties qua the ground rent and interest payable by the appellant to the respondent for the shopping arcade in respect of the date from which it was payable and in view of the existence of the arbitration clause inter se the parties, Dr. Y. P.C. Dangay (Joint Secretary & Government Counsel), Ministry of Law & Justice (Department of Legal Affairs) was appointed as the sole arbitrator vide letter dated 16.06.1998 to adjudicate the said disputes. The arbitrator made and published the award dated 21.7.2006. The award is a detailed award noticing all the relevant facts. It records that though the site was to be handed over by 16.6.1995 but the respondent permitted the appellant provisional entry only on 10.11.1995 vide a Certificate of Provisional Entry with the status of the appellant as a licensee and for the limited purpose of carrying out construction activity and for no other purpose. A specific stipulation was made that the entry of the appellant would not be deemed to have acquired any right, title or interest in the land except to the extent mentioned in the Agreement.

6. The answer to the query was dependent on the construction of various terms

& conditions of the arrangement between the parties. In that context in para 13 of the award it was noticed as under:

13.The controversy is regarding the interpretation of, 1) Agreement to Sub-Lease dated 1.8.1995, and 2) Perpetual Lease deed dated 4.7.1997. Since Clause XXIII of Agreement to Sub-Lease superseded the contents of Letter of Allotment dated 10.3.1995, as such the Agreement to Sub-Lease is the last document, which has to be looked into for the purpose of the present dispute. Clause XV of the Agreement to Sub-Lease dated 1.8.1998 envisages the payment of Ground Rent, which reads as under:

XV. Upon completion of the construction of the said Shopping Arcade building strictly in accordance with the terms hereof and to the entire satisfaction of the Corporation in all respects and upon due fulfillment and performance of all other obligations on the part of the Intended Sub-lessee under this Agreement, the President and the Corporation shall grant or cause to be granted to the Intended Sub-lessee a sub-lease of the said demised premises hereinbefore described for a period of 99 years (Ninety nine) years (or lessor period but subject to being co-terminus with the lease granted by the President to the Corporation) to be reckoned from the date of handing over of possession and further subject to the payment of the ground rent to be calculated @ 2 1/2% of the premium fixed for the Shopping Arcade site in accordance with the yearly installments to be paid on or before 15th January of each year; the first of such payment becoming due and to be made on or before the date of execution of these presents and upon the terms and conditions contained herein

PROVIDED ALWAYS that the ground rent payable by the Intended Sub-Lessee as stipulated in this clause shall be without prejudice and in addition to any payment that may be due to be paid by the Intended Sub-Lessee to the Corporation hereunder.

(emphasis supplied)

7. The learned arbitrator found that the commencement of the clause quoted aforesaid with the expression "upon completion of the construction of the said shopping arcade building" and providing for payment of ground rent to be calculated @ 2 1/2% premium fixed from the date of handing over possession implied that the ground rent would be payable from that date. The aforesaid clause also having provided that a sub-lease had to be executed in favour of the intended sub-lessee and the same to be co-terminus by the President of India in favour of the respondent, clearly established that the perpetual lease granted by the President of India in favour of the respondent would be the principal document and prevail over Sublease dated 10.11.1995. The arbitrator thereafter referred to the various clauses of the agreement to conclude that the correct position in respect of the liability to pay ground rent would arise only after spaces had been built upon and such built upon spaces had been allotted, i.e., prior to that the liability would not arise. It was opined that the respondent was

required to act in accordance with the terms & conditions of the perpetual lease deed in its favour. Taking into consideration clause XV of the agreement to sub-lease providing for payment of ground rent from the date of handing over possession, it was opined that since the appellant had been allowed to carry out commercial activities by the respondent vide letter dated 29.9.1999 when the built up spaces came into existence, it could be only concluded that the "meaningful possession" came into existence in November, 1999 when commercial activities are stated to have been started by the appellants. The liability of the appellant to, thus, pay ground rent was held to be effective from November, 1999 in terms of the Agreement to Sub-lease dated 1.8.1995 and perpetual Sublease dated 4.7.1997. Finally in order to balance equity the appellant was held liable to pay interest @ 7 per cent per annum over delayed payment of ground rent from the date it became due, noticing that the appellant had already paid the ground rent under protest in the year 1997 and, thus, would be entitled to refund of the excess amount with interest @ 7 per cent while determining its liability towards ground rent.

8. The respondent, aggrieved by this award filed objections u/s 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the "said Act") which was registered as OMP No. 515/2006. These objections were amended on 10.5.2012 by allowing IA No. 8397/2012. The OMP was also heard on the same date and in terms of the impugned order dated 10.5.2012 the award dated 21.7.2006 was set aside.

9. The reasoning of the learned Single Judge is, once again, based on appreciation of clauses of the various documents. Clause 6 (viii) of LoA dated 10.3.1995 referred to aforesaid was reproduced and it was observed that the Agreement to Sub-lease dated 1.8.1995 by the respondent in favour of the appellant also contained a clause consistent with the said clause by referring to clauses XI, XV & XXIII. Clauses XV & XXIII have already been produced hereinabove. Clause XI reads as under:

XI. The Intended sub-lessee shall be liable to pay all rents, taxes, charges, claims and other payments in respect of the said demised premises, i.e., the Shopping Arcade and the Common facilities on and from the date of possession of demised premises and thereafter.

10. It has been thereafter observed in the impugned order that in terms of the Perpetual Lease deed dated 4.7.1997 the preamble acknowledged that up to 1996 the ground rent was paid by the respondent and, thus, it could not claim ground rent from the appellant prior to the year 1997. The dispute pertained to the demand raised by the respondent on the appellant concerning ground rent payable from the date the appellant took over possession of site on 10.11.1995. On 13.8.1997 the appellant had paid a sum of Rs. 3,92,50,000.00 representing ground rent for a period of one year only although the ground rent was due from 10.11.1995 to 31.12.1997. Thus, the respondent filed an application before the learned arbitrator with regard to the ground rent in the arbitration proceedings

which commenced in June, 1998. The opinion of the learned arbitrator that rights were acquired only from 23.7.1997 were taken note of but the learned Single Judge did not agree with the same. In fact, the conclusions are contained only in three paragraphs-paras 15 to 17 stating that there was no ambiguity in the relevant clauses in terms of which ground rent was payable by the appellant. The conditions of the LoA had been made part and parcel of the Agreement to Sub-lease and clause 6 (viii) of the LoA had stated that the appellant was liable to pay ground rent from the date of handing over possession of the shopping arcade site. The Certificate of Provisional Entry being dated 10.11.1995, the same evidenced the handing over of possession of the shopping arcade to the appellant. The learned Single Judge referred to the note at the end of the Certificate of Provisional Entry (which is actually part of the certificate itself being the last sentence), which reads as under:

The licensee shall not entry upon the said permission be deemed to have acquired any right, title or interest in the same except to the extent mentioned in the Agreement.

11. The aforesaid, however, was held not to mean that it negated the factum of the possession of the site in question being given to the appellant on 10.11.1995 nor did it mean that clause 6(viii) of the LoA in terms whereof the ground rent became payable from the date of possession of the site.

12. The reference by the learned arbitrator to clause XV of the agreement to sub-lease has been held to be misplaced. The opening words of the clause "upon completion of construction" has been held to refer to the period from which the sub-lease became effected and is alleged to do nothing from the date from which the ground rent became payable. Similarly the clause of the Perpetual Lease deed between the Union of India and the respondent has been held to have no bearing on the relevant clauses of the Agreement to Sub-lease dated 1.8.1995. The conclusion, thus, reached is that irrespective of the date till when the respondent was paying ground rent to Union of India, the appellant was liable to pay ground rent to the respondent from the date of possession of shopping arcade site handed over to it.

The appellant's case:

13. Learned senior counsel for the appellant contended before us that the dispute before the arbitrator only related to interpretation of documents and nothing else and, thus, this decision of the arbitrator was not open to challenge. The interpretation put forth by the learned arbitrator must prevail even if two plausible views exist, unless a conclusion is reached that the learned arbitrator acted contrary to the terms of the contract or arrives at an absurd interpretation or an interpretation contrary to law. It was pleaded that in the present case there is not even a finding or observation by the learned Single Judge that the view taken by the learned arbitrator of the aforementioned four documents was not a plausible view or that the arbitrator had acted contrary to the terms of the

agreement or that the interpretation was absurd.

14. Learned counsel for the appellant referred to judicial pronouncements to support of this plea which are discussed herein below:

i. Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. Vs. Union of India (UOI) and Others, -The Supreme Court agreed with the submission of the learned Additional Solicitor General that if the claims are based on the agreement and nothing else, the arbitrator has to decide a question of law, i.e., of interpreting the document and his decision is not open to challenge. It was observed in para 12 as under:

12. Mr. Nariman, the Additional Solicitor General, appearing on behalf of the respondents also contended that the appellants having specifically stated that their claims are based on the agreement and on nothing else and all that the Arbitrator had to decide was as to the effect of the agreement, the Arbitrator had really to decide a question of law, i.e. of interpreting the document, the agreement of 6-5-53 and his decision is not open to challenge. We agree with him: see the decisions in AIR 1949 334 (Privy Council) and Ghulam Jilani v. Muhammad Hassan (1901) 29 IA 51.

ii. Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., of the said judgment was referred to for canvassing that the only question being interpretation of documents which is a question of law and the same having been referred to arbitration, no interference was called for. In that context the observations of the Supreme Court in para 54 of the judgment are as under:

54. It is true that if the arbitral tribunal has committed mere error of fact law in reaching its conclusion on the disputed question submitted to it for adjudication then the Court would have no jurisdiction to interfere with the award. But, this would depend upon reference made to the arbitrator: (a) If there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the Court could interfere; (b) It is also settled law that in a case of reasoned award, the Court can set aside the same if it is, on the face of it, erroneous on the proposition of law or its application; (c) If a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit of its being set aside, unless the Court is satisfied that the arbitrator had proceeded illegally.

iii. M/s. Kapur Air Products Vs. Municipal Corporation of Delhi, Division Bench of this Court relied upon the judgment in Tarapore and Company Vs. Cochin Shipyard Ltd., Cochin and Another, laying down that if a question of law is specifically referred and it becomes evident that the parties desired to have a decision on the specific question from the arbitrator about the specific question from the arbitrator about that rather than one from Court, then the Court will not interfere with the award of the arbitrator on the ground that there is an error apparent on the face of the award, even if the view taken by the arbitrator does

not accord with the view of the Court. In that context it was held whether a question of law has been specifically referred to the arbitrator has to be determined in the facts & circumstances of each case.

iv. Indian Farmers Fertiliser Cooperative Ltd. Vs. M/s. Duggal Constructions (India) Ltd., -In the facts of the case the learned Single Judge had not agreed with the interpretation of the clauses of the arbitrator tribunal. In that context it was observed that interpretation of terms of a contract by the arbitral tribunal ought not to be interfered with unless such interpretation was absurd or contrary to law. As long as the view taken by the arbitral tribunal is plausible, though perhaps not the only correct view, the Court could not interfere or substitute its own opinion. Arbitrator was a Judge chosen by the parties. However, if the arbitrator acted contrary to the terms of the contract or finds an absurd interpretation or an interpretation contrary to any law, the Court is not without jurisdiction to interfere with the same.

The respondent's case:

15. On the other hand, learned counsel for the respondent relied upon clause 6(viii) of the LoA to canvas that the same clearly spelt out that the ground rent is to be paid from the handing over of the possession of the shopping arcade while clause XV of the agreement to sublease is only to the effect regarding grant of sub-lease and has nothing to do with the date from which the ground rent become payable. It was pleaded that there was no inconsistencies between clause 6(viii) of LoA dated 10.3.1995 and clause XV of the sub-lease dated 1.8.1995 and, thus, the findings of the arbitrator were pleaded to be absurd. It was further pleaded that the learned arbitrator had, in fact, re-written the contract by using the word "meaningful possession", thus, going beyond the terms of the contract which was contrary to the mandate of Section 28(3) of the said Act.

16. In support of his contentions learned counsel for the respondent referred to the following judgments:

i. Rajasthan State Mines and Minerals Limited Vs. Eastern Engineering Enterprises and Another, -para 21 of the judgment was referred to qua the observations that by ignoring the terms of the contract the arbitrator has travelled beyond his jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement.

ii. Steel Authority of India Limited Vs. J.C. Budharaja, Government and Mining Contractor, -The clauses of the contract prohibited claim for damages with breaches mentioned in those clauses and the only consequence was extension of time for completion of work. It was, thus, held that it was not open to the arbitrator to ignore the conditions which are binding on the contracting parties and by ignoring them he had acted beyond the jurisdiction conferred upon him. It was observed that the arbitration act did not given power to the arbitrator to act arbitrarily or capriciously and his existence depends upon the agreement and

his function is to act within the limits of the said agreement. So in order to find out whether the arbitrator has travelled beyond his jurisdiction and acted contrary to the terms of the agreement between the parties, the agreement is required to be looked into while interpretation of a particular condition in the agreement was within the jurisdiction of the arbitrator; where there is no question of interpretation of any term of the contract but of solely reading the same as it is, the arbitrator cannot ignore it and award amounts despite the prohibition in the agreement.

iii. New India Civil Erectors (P.) Ltd. Vs. Oil and Natural Gas Corporation, -it was, once again, observed that it is axiomatic that the arbitrator being a creature of the agreement must operate within the four corners of the agreement and cannot travel beyond it. More particularly, he cannot award any amount which is ruled out or prohibited by the terms of the agreement.

iv. Associated Engineering Co. Vs. Government of Andhra Pradesh and another, - The Supreme Court observed that the arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract as his sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. Thus, if he travels outside the bounds of the contract, he has acted without jurisdiction. But if he has remained inside the parameters of the contract, the construction of the provisions of the contract would be within his domain. Thus, an arbitrator who acts in manifest disregard of the contract acts without jurisdiction as his authority is derived from the contract.

v. Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., -The observations in para 28 dealing with the phrase "public policy of India", have been referred, to canvas that this expression is not required to be given a narrow meaning. Thus, if contractual terms are ignored, the award on the face of it would become erroneous and in violation of the terms of the contract and thereby violates Section 28 (3) of the said Act. In the facts it was held that reference to the arbitral tribunal was not with regard to the interpretation of the question of law but it was only a general reference with regard to the claim of the respondent therein which could be interfered with.

Conclusion:

17. On a conspectus of the aforesaid submissions, we considered it appropriate to peruse the record, and have taken into consideration the order of reference to arbitration. This is contained in a letter dated 16.6.1998 issued by the Chairman & Managing Director of the respondent and reads as under:

No. HUDCO/AG/SA/APIIL/98

June 16, 1998

Sub: Arbitration between M/s. Ansal Properties and Industries Ltd. (APIL) and Housing & Urban Development Corporation Ltd. regarding construction of Shopping Arcade at Andrews Ganj New Delhi-payment of ground rent under

Agreement to Sub-Lease dated 1st August, 1995

Disputes have arisen between the above named parties in respect of the payment of ground rent. The said dispute between the parties is required under clause XXI of the Agreement to Sub-Lease to be referred to the sole arbitration of a person appointed by HUDCO.

I, therefore, appoint Dr. Y.P.C. Dangay, Arbitrator, in the Ministry of Urban Affairs and Employment, New Delhi as an Arbitrator to decide and make award regarding the dispute relating to the payment of ground rent by APIL to HUDCO and any counter claims of HUDCO against M/s. APIL in connected therewith and to make his award in the matter.

Sd/-

V. SURESH

Chairman & Managing Director

Dr. YPC Dangay

Arbitrator,

Ministry of Urban Affairs and Employment,

Govt. of India,

6th Floor, Middle Wing,

Janpath Bhawan,

New Delhi-110001.

18. The aforesaid shows that by invoking clause 21 of the agreement to Sub-lease requiring the dispute to be referred to the sole arbitrator, the dispute relating to payment of ground rent by the appellant to the respondent and any counter claims of the respondent against the appellant in connection therewith has been referred for the decision of the arbitrator. This leaves no manner of doubt that the only issue was relatable to the interpretation of the clauses dealing with the aspect of payment of ground rent. In fact, that is how the plea has also been appreciated by the arbitrator by noticing in para 13 of the award that the controversy related to the interpretation of the Agreement to Sub-lease dated 1.8.1995 and Perpetual lease deed dated 4.2.1997 along with the agreement to sub lease.

19. It is in the aforesaid context that we have appreciated the plea of the learned senior counsel for the appellant based on the judgment of the Supreme Court in M/s. Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. case (supra) that when the arbitrator has to decide a question of law, i.e., of interpreting the documents, his decision is not open to challenge.

20. A common thread which runs through the judgments in Oil & Natural Gas

Corporation Ltd. Vs. Saw Pipes Ltd. case (supra); M/s. Kapur Air Products case (supra); M/s. Tarapore & Co. case (supra) and Indian Farmers Fertiliser Co-operative Ltd. case (supra) is that whether the parties desire to have a decision on a specific question from the arbitrator, would depend on the terms of reference.

21. We may note that there are a number of judicial pronouncements on the issue as to in what circumstances can it be said that a question of law is specifically referred. One of the seminal judgments on this aspect is in Seth Thawardas Pherumal Vs. The Union of India (UOI), . It would be appropriate to extract the relevant paragraphs of the said judgment which read as under:

11. In India this question is governed by section 16(1)(c) of the Arbitration Act of 1940 which empowers a Court to remit an award for reconsideration "where an objection to the legality of the award is apparent upon the face of it.

This covers cases in which an error of law appears the face of the award. But in determining what such an error is, a distinction must be drawn between cases in which question of law is specifically referred and those in which decision on a question of law is incidentally material (however necessary) in order to decide the question actually referred.

If a question of law is specifically referred and it is evident that the parties desire to have a decision from the arbitrator about that rather than one from the Courts, then the Courts will not interfere, though even there, there is authority for the view that the Courts will interfere if it is apparent that the arbitrator has acted illegally in reaching his decision, that is to say, if he has decided on inadmissible evidence or on principles of construction that the law does not countenance or something of that nature. See the speech of Viscount Cave in Kelantan Government v. Duff Development Co. (1923) A.C. 395). But that is not a matter which arises in this case.

12. The law about this is, in our opinion, the same in England as here and the principles that govern this class of case have been reviewed at length and set out with clarity by the House of Lords in F.R. Absalom Ltd. v. Great Western (London) Garden Village Society (1933) A.C. 592 (B), and in (1923) A.C. 395 (A).

In Durga Prasad v. Sewkishendas (54 C.W.N. 74, 79 the Privy Council applied the law expounded in Absalom's case (1923) A.C. 592 to India: see also Champsey Bhara & Co. v. Jivraj Balloo Spinning and weaving Co. (50 I.A. 324, and Saleh Mahomed Umer Dossal v. Nathoomal Kessamal (54 I.A. 427, 430. The wider language used by Lord Macnaghten in Ghulam Jilani v. Muhammad Hassan (29 I.A. 51, 60 had reference to the revisional powers of the High Court under the CPC an must be confined to the facts of that case where the question of law involved there, namely limitation was specifically referred.

An arbitrator is not a conciliator and cannot ignore the laws or misapply it in order to do what he thinks is just and reasonable.

He is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not, he can be set right by the Courts provided his error appears on the face of the award. The single exception to this is when the parties choose specifically to refer a question of law as a separate and distinct matter.

13. Reference was made to a decision of this Court in *A.M. Mair and Co. Vs. Gordhandass Sagarmull*, where Fazl Ali, J., quoted a passage from Viscount Simons's speech in *Heyman v. Darwins Ltd.* 1942 A.C. 356 where the learned Lord Chancellor (Viscount Simon) in turn quoted from Lord Dunedin in another case. It was argued on the basis of this that if you have to have recourse to the contract to establish your case, then the dispute must fall within the arbitration clause.

That is undeniable but it is not enough that the dispute should fall within the clause. It is also necessary that the parties should define what the dispute is and agree to refer the dispute so set out and denied to arbitration, or, if they do not, that the Court should compel them to do so: (see Lord Macmillan in *Hayman's* case (1933 A.C. 592 just cited at pages 369 and 370).

If, therefore, no specific question of law is referred, either by agreement or by compulsion, the decision, of the arbitrator on that is not final however much it may be within his jurisdiction, and indeed essential, for him to decide the question incidentally. Lord Russell of Killowen and Lord Wright were both in the earlier case, *F.R. Absalom Ltd. v. Great Western (London) Garden Village Society* (1933 A.C. 592, as well as in *Hayman's* case (1942 S.C.R. 792 and they would have pointed to any distinction had there been a likelihood of conflict; but in fact there is none and we do not read Fazl Ali J.'s judgment as a decision to the contrary.

14. We have next to see whether the arbitrator was specifically asked to construe clause 6 of the contract or any part of the contract, or whether any question of law was specifically referred. We stress the word "specifically" because parties who make a reference to arbitration have the right to insist that the tribunal of their choice shall decide their dispute according to law, so before the right can be denied to them in any particular matter, the Court must be very sure that both sides wanted the decision of the arbitrator on a point of law rather than that of the Courts and that they wanted his decision on that point to be final.

(emphasis supplied)

22. In the facts of the present case, if we apply the aforesaid test, it cannot be said that the question qua interpretation of the documents being a question of law, is only incidental in order to decide the question which has arisen. In fact, this is the only dispute which was required to be adjudicated. No doubt even on a decision of a question of law it is circumscribed by certain parameters as discussed aforesaid.

23. In *M/s. Tarapore & Co. case* (supra) in para 16 a reference has been made to the observations in *Russel on the Law of Arbitration Twentieth Edition* at page 22, which read as under:

A pure question of law may be referred to an arbitrator; and where such a question is specifically referred his award will not be set aside merely upon the ground that his decision is wrong.

24. In the same paragraph a reference has also been made to *Halsbury's Laws of England Vol. 2 Para 623 4th Edition* where the statement of law reads as under:

If a specific question of law is submitted to the arbitrator for his decision and he decide it, the fact that the decision is erroneous does not make the award bad on its face so as to permit its being set aside; and where the question referred for arbitration is a question of construction, which is, generally speaking, a question of law, the arbitrator's decision cannot be set aside only because the court would itself have come to a different conclusion.

25. We have also come across a Full Bench decision of this Court arising from an initial divergence of view of two learned Judges and the matter being referred to the third learned Judge. The judgment is reported as *Rampur Distillery & Chemical Co. Ltd. Vs. Ramakrishna Rao* 20 (1981) DLT (SN) 51. The majority view reflected in the third opinion, thus, is that where a specific question of law as to the meaning, effect and construction of clauses of a contract is referred to an arbitrator the same is not open to challenge in the Court. When an arbitrator is called upon to decide the effect of the agreement he has really to decide a question of law, i.e., interpreting the agreement and that is the reason for his decision being beyond the pale of challenge. As to whether a specific question of law has been submitted to the arbitrator would depend on the character of the reference of each case and there is no particular form which is obligatory. The reference in that case to the arbitrator was found to be one of construction of the agreement and the mere dissent of the Court from the arbitrator's conclusion was found not enough to permit it to be set aside. This view has been reiterated by this Court in *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.*, at para 54 wherein it was held that if a specific question of law is submitted to the arbitrator, an erroneous decision in point of law does not make the award bad, so as to permit its being set aside, unless the court is satisfied that the arbitrator had proceeded illegally.

26. The aforesaid case is, thus, apposite to the facts of the present case where also a dispute pertains to the interplay of the terms of the agreement which has been referred specifically to the arbitrator.

27. The legal principle is that in view of the consent of the parties, the matter having been referred to arbitration, there is no reason why the Court should try to impose its view of law substituting the view of the tribunal whose decision the parties have to abide by. A question of construction is, generally speaking, a

question of law but if this very aspect is referred to the arbitrator, the award cannot be set aside only because the Court would itself have come to a different conclusion.

28. We are, thus, of the view that clearly the reference was made only for purposes of determination of the question arising from interpretation of the clauses of the agreement and, thus, the view taken by the arbitrator did not call for any interference by the Court.

29. The alternative submission raised by learned senior counsel for the appellant was that, even otherwise, even if the aforesaid principle would not apply, the view taken by the arbitrator was a plausible view and if two plausible views exist, the view of the arbitrator is not required to be interfered with. It is only if there is absurdity of interpretation or an interpretation is contrary to law would the occasion so arise. In fact, the judgments cited by learned counsel for the appellant on the first proposition also support the second proposition.

30. On the other hand, the submission of the learned counsel for the respondent based on the judgments cited are that the arbitrator cannot go beyond the terms of the contract as he is a creature of the contract. If he does so he would be acting beyond his jurisdiction. Similarity of this view is expressed in Rajasthan State Mines & Minerals Limited case (supra); Steel Authority of India Ltd. case (supra); New India Civil Erectors (P) Ltd. case (supra) and Associated Engineering Co. case (supra). In such an eventuality the wider interplay would have to be given to the words "public policy of India" as set out in Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd. case (supra).

31. If the aforesaid factual matrix of the present case is examined, we notice that the LoA was the prelude to the execution of the Sub-lease deed. The Sub-lease deed is the relevant document which was executed subsequently and which would govern the rights and obligations of the parties. The LoA, however, by reason of the recital of the Sub-lease deed was deemed to be a part and parcel of the agreement but in terms of clause XXIII, the terms of the Sublease deed, in case of any inconsistency or repugnancy between the two, were to prevail.

32. The reliance by the respondent is on clause 6 (viii) of the LoA which provides for the ground rent @ 2 1/2 % of the premium fixed to be paid from the date of handing over possession of the shopping arcade site. This clause in a sense gets incorporated into the Sub-lease deed in view of the recital clause referred to aforesaid. However, clause XV of the Sub-lease deed while defining the period of the lease of 99 years specified that the said period would be counted from the date of handing over possession and further subject to the payment of the ground rent to be calculated at 2 1/2% of the premium fixed for the shopping arcade site in accordance with the yearly installments to be paid. On 10.11.1995 only provisional entry on license basis was given restricted to purposes of constructing, erecting the shopping arcade building, a delayed one as against the originally specified date of 16.6.1995.

33. It is in the aforesaid circumstances that the learned arbitrators found, relying on clause XXIII of the agreement to lease that clause XV of the Agreement to Sub-lease dated 1.8.1998 would prevail. This clause begins with "Upon completion of the construction of the said Shopping Arcade building....". The sub lease for 99 years was to be granted on completion of construction and was to be reckoned from the date of handing over possession and subject to payment of ground rent to be calculated at 2 1/2% of the premium fixed. To say the least this, at least, is a plausible, if not the only correct interpretation of the interplay of the clauses of the agreements in question.

34. In view of the legal parameters referred to aforesaid the same did not qualify for interference by the learned Single Judge.

35. We have already noticed that the reasoning for interference is contained in only paragraphs 15 to 17 of the impugned order. It is based on an interpretation of the clauses stating that the learned Single Judge did not find any contradiction. The principles requiring interference, i.e., the view taken by the arbitrator is not a plausible one or that it is contrary to any law of the land have not even been set out. These paragraphs only state that clause XV should not have been relied upon in view of the terms of the LoA. We, thus, find the view taken by the learned Single Judge unsustainable as the learned Judge is not sitting in original jurisdiction interpreting the interplay of the terms of the agreement but is dealing with an award of an arbitrator to whom a specific question had been referred for adjudication.

36. The result of the aforesaid is that the impugned order is set aside and the award dated 27.6.2006 of the learned arbitrator is restored.

37. The appeal is accordingly allowed. The appellant is entitled to costs of Rs. 10,000.00