

(2014) 03 DEL CK 0048
In the Delhi High Court
Case No : OMP. 132 of 2014

Bharat Lal Maurya

APPELLANT

Vs

M/s. Godrej and Boyce Mfg. Co. Ltd.

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11 34
Registration Act, 1908 — Section 17(1)(d) 49
Stamp Act, 1899 — Section 35

Citation : (2014) 208 DLT 680 : (2014) 3 ILR 2188

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Sneha Lata Srivastava, for the Appellant; Vikas Tiwari, Advocate and Mr. Raji Abraham, AR, for the Respondent

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J.—These petitions u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act") are objections to two separate but identical arbitral awards both dated 04.10.2013. Since the awards are identical and the facts are similar the objects are being disposed of by a common judgment. The disputes relate to two separate tenanted premises taken on rent by the Respondent. The terms and conditions of letting are identical, identical pleas were raised and evidence led by the parties and both petitions were argued together.

2. The two tenanted premises being shop/space No. G-03 (in OMP No. 132/2014) & shop/space No. G-02 (in OMP No. 133/2014) situated in Parsavnath Arcadia Complex, 1, Gurgaon Mehrauli Road, near Sector 14 Gurgaon were taken on lease on 16.02.2007 by the Respondent from M/s. Parsavnath Developers Ltd. for a period of 12 years.

3. Lease Agreements dated 16.02.2007 were executed between M/s. Parsavnath Developers Ltd. and the Respondent. The said lease agreements stipulated that

the term of the lease to be 12 years and initial monthly rent to be Rs. 1,24,000/-. The lease agreements were executed on a Rs. 100/- Stamp paper each and were unregistered.

4. Subsequent to the creation of the tenancy of the Respondent, the respective spaces were sold to the Petitioners/objectors by M/s. Parsavnath Developers Ltd. Subsequent to the purchase of the said spaces by the Petitioners, the Respondent attorned their tenancy in favour of the Petitioners.

5. As per the Petitioners, the lease agreements also stipulated that there would be a 36 month lock-in-period w.e.f. 16.04.2007 to 15.04.2010 in which neither of the parties could terminate the lease. As per the Petitioners, the Respondent in violation of the terms and conditions of the lease agreement, by letter dated 20.01.2009, terminated the lease agreement, paid rent only upto 31.01.2009 and abandoned the shops on 30.03.2009. The Petitioners demanded the rent from the Respondent for the month of February and March, 2009 and also for the unexpired period of the lock-in-period. The Petitioners further contended that the Respondent had never handed over physical possession of the shops to the Petitioners and had failed to remove the fittings and fixtures affixed therein.

6. The Petitioners filed a suit for recovery against the Respondent in the Court of Additional District Judge, Saket on 01.08.2011. The said suit was disposed of with a direction to the parties to settle the dispute through arbitration. The present Arbitral Tribunal was constituted by this Court u/s 11 of the Act. The Arbitral Tribunal has published the Awards dated 04.10.2013 that are impugned herein.

7. The Petitioners before the Arbitral Tribunal claimed the rent for the month of February 2009 and March 2009 and further rent from 01.04.2009 to 15.04.2010 being the rent for the balance of the lock-in-period.

8. The Respondent contested the claim of the Petitioners on the ground that the premises were vacated by the Respondent on 30.03.2009 after two months notice to the Petitioners and as such, their liability to pay rent after they vacated the premises ceased. Further, with respect to the lock-in-period, the Respondent set up a defence that the lease agreements were neither duly stamped nor registered and as such, no term of the lease agreement could be enforced. The Respondent further took a plea that as the lease agreements were not registered, the tenancy was a month to month tenancy terminable by 15 days" notice and no clause of the lease agreements could be relied upon or enforced. The Respondent further claimed adjustment of the security deposited that was admittedly being held by the Petitioners.

9. The following issues were framed by the Arbitral Tribunal:

1) Whether the claimant has no locus standi to file the present claim petition? OPR.

2) Whether the claim petition is time barred as alleged in Para 2 of the

preliminary objections of the reply to the statement of claim? OPR.

3) Whether the claim petition is hit by section 17(1)(d) r/w section 49 of Indian Registration Act and also hit by section 35 of the Indian Stamps Act. If so, its effect? OPR.

This issue No. 3 was amended with the consent of parties on 15-07-2013 as under:

Whether the lease deed dated 16-02-2007 is hit by section 17(1)(d) r/w section 49 of Indian Registration Act and also hit by section 35 of Indian Stamps Act. If so, its effect? OPR.

4) Whether the claimant is owner of the suit premises? OPC.

5) To what amount, if any, is the claimant entitled to recover from the Respondent? OPC.

6) To what rate of interest, if any, is the claimant entitled and if so, for what period and on which amount? OPC.

7) Relief.

10. The Arbitral Tribunal after considering the evidence and the submissions of the parties on issues No. 1 & 4 returned a finding that the Petitioners were the owners and landlord of the suit premises and, as such, were entitled to maintain the claim petition. This finding has not been assailed by the Respondent. On issue No. 2 pertaining to limitation, the Arbitral Tribunal has returned a finding that as the premises was vacated on 01.04.2009, the suit for recovery, in which the parties were referred to arbitration, was filed on 15.04.2010 well within limitation. This finding has not been impugned by the Respondent. The Respondent has not impugned the awards.

11. With regard to issue No. 3 i.e. issue pertaining to the objection of the Respondent that the claim of the petitioner for payment for the unexpired lock-in period was hit by the provisions of the Indian Stamp Act and the Indian Registration Act, the Arbitral Tribunal has held that the Lease Deed was insufficiently stamped and it compulsorily required registration and as it was unregistered, it was inadmissible in evidence and the clause of lock-in period could not be enforced.

12. The Supreme Court in the case of K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd., has laid down as under:

21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence u/s 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral

purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

13. A document that is compulsorily required to be registered and is not registered is inadmissible in evidence. A document compulsorily required to be registered but not being so registered cannot be used as evidence except for any collateral purpose. A collateral transaction must be independent of and divisible from the transaction to effect which the law requires registration. A collateral transaction must be a transaction not itself required to be effected by a registered transaction. Some examples of collateral transaction in transactions pertaining to landlord-tenant would be the relationship between the parties, nature of premises, purpose of letting, rate of rent. An unregistered lease deed can be looked into for the purposes of ascertaining any of the above collateral purposes but not for enforcing a term of the lease.

14. A clause in a lease deed fixing or stipulating a term of the lease or a fixed term of lock-in-period is not a collateral purpose. The said clause would be one of the main clauses of the lease which in the absence of registration would be inadmissible in evidence and unenforceable in law. The Arbitral Tribunal has rightly held that the clause vis-à-vis the lock-in-period cannot be called a collateral purpose and the tenancy between the parties was not a fixed term tenancy but a month to month tenancy terminable by a notice on either side.

15. The Arbitral Tribunal has further rightly held that the document was insufficiently stamped and as such, inadmissible in evidence. If the document is found to be not duly stamped, Section 35 of Stamp Act bars the said document being acted upon. (SMS Tea Estates Pvt. Ltd. Vs. Chandmari Tea Company Pvt. Ltd.,

16. The finding of the Arbitral Tribunal, that the Lease agreement compulsorily required registration and in the absence of registration and being insufficiently stamped was inadmissible in evidence and unenforceable and further that the clause stipulating a lock-in period was one of the main clauses of the lease and in the absence of registration could neither be relied upon nor enforced, cannot be faulted with.

17. The Arbitral Tribunal has, on the appraisal of the evidence of the parties, returned a finding of fact that the tenancy was terminated by the Respondent by the legal/notice dated 20.01.2009, which notice also intimated the intention of

the Respondent to vacate the premises w.e.f. 01.04.2009. The Arbitral Tribunal has further returned a finding of fact that the premises were vacated w.e.f. 01.04.2009. The Arbitral Tribunal has held the Respondent liable to pay rent for the months of February and March 2009 at the agreed rate of Rs. 1,24,000/- besides service tax and maintenance charges.

18. The Arbitral Tribunal has held that the Respondent is entitled to the balance of the security deposit after adjustment of the amount held to be payable by the Petitioners alongwith interest @ 18% per annum.

19. The Petitioners have impugned the findings of fact by the Arbitral Tribunal.

20. A perusal of the claim petition filed by the Petitioners shows that the Petitioners had claimed rent under two heads, rent for the month of February and March, 2009 and rent from 01.04.2009 to 15.04.2009 as rent from the lock-in-period separately. This segregation by the Petitioners is an indication of the fact that the Petitioners were themselves treating the two periods as distinct. The rental for the said two periods was same and thus the only purpose for showing the said two periods separately appears to be the fact that the Petitioners were aware that the premises had been vacated on 01.04.2009. Further in the legal notice dated 27.04.2009 (Ex. CW1/10) issued on behalf of the Petitioners, the Petitioners have themselves admitted that the Respondent had vacated the premises on 30.03.2009. However, have disputed, the handing over of physical possession. The finding by the Arbitral Tribunal is that the Respondent had vacated the premises w.e.f. 01.04.2009. This finding is purely factual.

21. The powers exercised by the Court while deciding objections u/s 34 of the Act are not appellate powers. The Court does not sit as a Court of appeal. If the Arbitral Tribunal has taken a plausible view, the Court while dealing with objections u/s 34 would not substitute its view for the view of the Arbitral Tribunal even in a case where the Court were to come to a conclusion that a different view is possible from the view taken by the Arbitral Tribunal, provided the view taken by the Arbitral Tribunal was a plausible view. The Court entertaining objections u/s 34 is not to appreciate or re-appreciate the evidence for the purposes of returning a finding of fact. The findings of fact returned by the Arbitral Tribunal are not to be interfered with unless they are perverse or erroneous on the face of the record. No such perversity or error apparent has been pointed out in the present case. The findings of the Arbitral Tribunal that the agreement being unregistered and insufficiently stamped and thus inadmissible in evidence and further that no clause of the said agreement can be enforced, are the findings in accordance with the settled judicial principles.

22. The Supreme Court of India in the case of McDermott International Inc. Vs. Burn Standard Co. Ltd. and Others, has laid down as under:

35. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the

arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

23. The Supreme Court of India in the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd., has laid down as under:

54. It is true that if the Arbitral Tribunal has committed mere error of fact or 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; and (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 its being set aside, unless the court is satisfied that the arbitrator had proceeded illegally.

24. The Supreme Court of India in the case of AIR 2001 2933 (SC) has laid down as under:

9. The position in law has been noticed by this Court in Union of India (UOI) Vs. A.L. Rallia Ram, and Firm Madanlal Roshanlal Mahajan Vs. Hukumchand Mills Ltd., Indore, to the effect that the arbitrator's award both on facts and law is final; that there is no appeal from his verdict; that the court cannot review his award and correct any mistake in his adjudication, unless the objection to the legality of the award is apparent on the face of it. In understanding what would be an error of law on the face of the award, the following observations in AIR 1923 66 (Privy Council) , a decision of the Privy Council, are relevant (IA p. 331)

An error in law on the face of the award means, in Their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.

10. In M/s. Arosan Enterprises Ltd. Vs. Union of India and Another,] this Court again examined this matter and stated that where the error of finding of fact having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference in the award based on an erroneous finding of fact is permissible and similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle, the award could not have

been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator.

25. The Arbitral Tribunal has returned a finding and rightly so, that as the Lease Agreement was unregistered and insufficiently stamped, the clause stipulating a lock-in-period could not be enforced. The Petitioners were rightly held not entitled to seek any amount for the unexpired lock-in-period. As regards the finding by the Arbitral Tribunal that the premises were vacated w.e.f. 01.04.2009, the findings are factual and not an error apparent on the face of the record. The same are not perverse and cannot be interfered with. In view of the above, I find no merit in the petitions. The petitions are accordingly dismissed. No costs.