

(2009) 12 DEL CK 0331
In the Delhi High Court
Case No : O.M.P. No. 431 of 2009

Godrej Agrovat Limited

APPELLANT

Vs

Surya Soaps and Chemicals

RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2009) 12 DEL CK 0331

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.K. Vali and Tuhin, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This is a petition u/s 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 24.4.2009 passed by the sole Arbitrator in the disputes which arose between the parties in a contractual relationship wherein the petitioner was essentially a tenant and the respondent a landlord with respect to the premises being the factory premises situated at K.No. 575/577, Village Kadipur, near Nangli Puna, G.T. Garna Road, Delhi.

2. Disputes and differences arose between the parties when the contractual relationship between the parties was snapped mid way and the petitioner left the premises. By the impugned Award, the Arbitrator has decided the counterclaims of the present petitioner and the claims of the present respondent.

3. The present respondent filed the following claims before the Arbitrator:

(i) Rent for August, 1998 = Rs. 70,745/- (ii) Rent from September,1998 to August,1999 = Rs. 9,76,272/- (iii) Rent for September 1999 to 31.10.2000 = Rs. 13,09,826/- (iv) Amount on account of Telephone Bills upto 16.04.1999 = Rs. 17,009/- (v) Cost of missing items and Damages. = Rs. 20,000/- Total = Rs. 23,93,852/-

Besides the above claims, the respondent also claimed interest at 18% per annum and the costs litigation.

4. The counterclaims of the petitioner were as under:

(i) On account of damages = Rs. 6,76,742/- (ii) On account of cost of molasses Alleged to have been illegally retained by the petitioner/claimant = Rs. 40,000/- Total = Rs. 7,16,742/- _____

5. By the impugned Award, the Arbitrator has dismissed the counterclaims of the present petitioner and has passed an Award in favour of the respondent as under:

(i) that the respondent shall pay to the petitioner/claimant a sum of Rs. 19,10,115/- (Rupees nineteen lacs ten thousand one hundred and fifteen only) being the amount of monthly rent in respect of the disputed premises for a total period of 27 months i.e. from 01.08.1998 to 31.10.2000 @ Rs. 70,745/- per month;

(ii) That the respondent shall pay to the petitioner/claimant simple interest @ 12% per annum on the above amount from 31.10.2000 till actual payment;

(iii) that in addition to (i) and (ii) above the respondent shall also pay to the petitioner/claimant a sum of Rs. 3,50,000/- (Rupees three lacs fifty thousand only) towards the cost of the present proceedings; and

(iv) that the counter claim, preferred by the respondent, is hereby rejected.

6. The main contention which was urged by the counsel for the petitioner before me was that the petitioner had vacated the premises on 31.8.1998 and therefore, the Arbitrator committed an error in holding that the petitioner had vacated the premises only on 30.10.2000. Consequently, the petitioner has challenged the Award of monthly rent with respect to the disputed premises from 1.9.1998 to 30.10.2000. Incidentally, I may state that rent for one month i.e. August 1998 was also an issue and the same has been awarded by the Arbitrator to the respondent. The second argument which was urged by the counsel for the petitioner/objector was, and as an adjunct to this issue of disentitlement of the respondent for claim of the monthly rent from 1.9.1998 to 30.10.2000, that the Arbitrator was not justified in relying upon the unsigned lease agreement dated 1.6.1995 (Ex.CW1/1). It was also urged that, the fact that petitioner took on rent another premises w.e.f. 1.9.1998 namely Khasra No. 50/4 Prahladpur Bangar, Delhi 42 also establishes that the petitioner vacated the premises on 31.8.1998 and not on 30.10.2000 as was alleged by the respondent.

7. The scope of interference by a court hearing objections u/s 34 is well settled. An Award can only be interfered with if the same is illegal against the law of the land or against the contractual provisions or is so perverse that it shocks the judicial conscience. Only in such limited cases, can an Award be interfered with. A Court hearing objections u/s 34 does not sit as an appellate court to re-appraise the evidence and further, this Court will not interfere with the view taken by an

Arbitrator merely because another view is possible than the view taken by the Arbitrator. Once the view taken by the Arbitrator is one of the plausible views then this Court would not set aside the Award merely because this Court is of another view. Keeping in view the aforesaid law as applicable for hearing of the objections, I have considered the arguments of the counsel for the petitioner.

8. Before I consider the arguments of the counsel for the petitioner, I must state that the Arbitrator in his detailed Award, which runs into as many as 87 pages, has very thoroughly, exhaustively and extensively considered all issues, all arguments, documentary evidence, affidavits by way of evidence, cross-examinations etc. to arrive at the findings on each issue. Each issue has been taken up one by one and after discussing the entire pleadings and evidence, as also the arguments of the parties, such issue has thereafter been decided. The Arbitrator has also while deciding the principal contentions, given his conclusions in various sub-paras at the end of the conclusions by serially numbered paragraphs, and which are supported by the relevant reasons. In sum and substance, the Award is a detailed Award which has given detailed reasonings by apprising the evidence and the arguments before arriving at the conclusions.

9. So far as the first argument with respect to whether the petitioner vacated the premises on 31.8.1998 or on 30.10.2000, the Arbitrator has dealt with this issue/aspect from pages 17 to 41 of the Award i.e. in 24 pages. The Arbitrator has while deciding this issue, referred to, inter alia, (i) the order dated 30.10.2000 passed by this Court in A.A 194/1999 whereby permission was given to the respondent for breaking open of the locks; (ii) the statement of one Sh. Chander Pal Singh, who the petitioner alleged to be an employee of the respondent, but who was in fact the employee of the petitioner and whose statement was recorded by this Court on 30.10.2000 and in which statement the said Chander Pal Singh stated that the possession of the disputed premises continued with the petitioner even after 31.8.1998 and the locks in the premises were put by one Mr. Sushil who was employee of the respondent. (iii) the correspondence between the parties which showed that the respondent categorically stated that the petitioner had not handed over possession and the petitioner continued to be in possession and which assertions in the letters of the respondent were never denied by the petitioner. Some of these letters are letters dated 29.8.1998, of the petitioner to the respondent, letter dated 28.9.1998 of the petitioner to the respondent, letter dated 17.10.1998 of the respondent to the petitioner, letter of January, 1999 of the petitioner to the respondent, the letter dated 29.1.1999 of the respondent to the petitioner, letter dated 5.3.1999 of the respondent to the petitioner and so on. Some of the relevant paragraphs of the Award in which the reasoning and the conclusions are given are reproduced as under:

On a perusal of the statement of said Shri Chanderpal Singh, recorded by the Hon?ble High Court on 30.10.2000, it is clear that his statement said Shri ChanderPal Singh had stated in clear cut terms (i) that he was employed as a Chowkidar in the premises of the respondent since 1995; (ii) that after the

closure of business of the respondent from 31st August, 1998 the premises are in the possession of the respondent; and (iii) that he had received his salary from the respondent till August, 2000. Not only this he has specifically denied the possession of Mr. Ramesh Chand Bhutani and that of Mr. Ravinder Ghai over the disputed property. He has also stated that on 31.08.1998 when the factory premises were closed, the locks on the premises were put by Mr. Sushil (RW-1) an employee of the respondent and the keys were not handed over to him.....

On the above point the document Ex.RW-2/YY (letter dated 29.08.1998) relied upon by the respondent, is of no less significance because according to the respondent's witnesses Mr. Sushil (RW-1) and Sh. D.S. Bhullar, (RW-2) the same was sent to the claimant after 31.08.1998 per Regd. Post. In the above said document which as per the respondent's witnesses (RW-1 and RW-2) was sent after 31.08.1998, nowhere it has been mentioned that the possession of the property in dispute had been delivered to the claimant by the respondent through Mr. Chander Pal Singh, Chowkidar/Employee/Caretaker of the claimant on 31.08.1998. When the above said communication, according to the version of RW-1 and RW-2, was sent to the claimant per Regd. Post after 31.08.1998 then what prevented the respondent from mentioning the fact regarding the delivery of the possession of the property in dispute to the claimant through said Mr. Chander Pal Singh on 31.08.1998. This clearly shows that the plea of the delivery of the possession to the claimant of the property in dispute on 31.08.1998 through said Chander Pal Singh is decidedly far from truth....

As per respondent's case, the respondent had sent letter dated 28.09.1998 (Ex.RW-2/TTTTT) to the Counsel for the claimant under the signatures of Sh. D.S. Bhullar (RW-2). Even in the above said document (Ex.RW-2TTTT) which is dated 28.09.1998 nowhere it has been mentioned that the respondent had delivered the possession of the property in dispute to the claimant through said Sh. Chander Pal Singh on 31.08.1998. In the above said communication it is also not mentioned that there was any obstruction about the removal of the molasses from the disputed premises by the claimant. Thus, the contents of this document also indicate that the possession of the property in dispute was not delivered to the claimant on 31.08.1998 as claimed by the respondent and the molasses belonging to the respondent was there in the premises in dispute even after 31.08.1998....

Sh. D.S. Bhullar (RW-2) during his cross examination admitted that the respondent was maintaining the account books and details of the employees but strangely enough these material/documents have not been filed by the respondent which shows that had these documents been filed, the contents of the same would have gone against the respondent.

(Emphasis added)

10. As already stated by me above since the Award proceeds in great detail in as many as 24 pages by referring in detail to various contentions, evidence,

documents, cross examination and so on, it is difficult to reproduce in the present order all the detailed findings but, the fact of the matter is that there are very exhaustive and detailed findings which in the opinion of this Court cannot be a subject matter of challenge u/s 34. A real important point is that there is absolutely no contemporaneous correspondence of the relevant period of August/September 1998 by which the petitioner has at all stated that possession of the property was handed over on 31.8.1998. As already observed by the Arbitrator, even in the letter of January, 1999 right at the end of the letter as an afterthought it is stated "possession of the premises is handed over to you". This line, shows that in January, 1999 possession was sought to be handed over because the words used are "is handed over to you". In fact, there is no date of the handing over of possession in this letter and which if it was of 31.8.1998 would have been surely mentioned in this letter of January 1999 (Ex.D-13). In sum and substance, the Arbitrator has arrived at a reasoned and considered decision and it is not for this Court to interfere with such findings in a petition u/s 34.

11. The second aspect which was urged by the counsel for the petitioner was that the agreement dated 1.6.1995 (Ex.CW1/1) did not govern the parties and the parties were in fact governed by an earlier agreement dated 1.6.1994 (Ex.D-5). This argument has been considered by the Arbitrator again at great length and in detail from pages 42 to 49 of the Award and the Arbitrator has given as many as 11 reasons for rejecting the contention that the parties were governed by the agreement 1.6.1994 (Ex.D-5). The Arbitrator has held that the parties were governed by the agreement dated 1.6.1995 for inter alia, the following reasons:

(i) In the reply to the Arbitration petition A.A. 194/99, there was no denial of the agreement dated 1.6.1995.

(ii) The petitioner's own letter dated 29.8.1998 refers to the lease agreement dated 1.6.1995 and its clauses.

(iii) In a case before the Labour Court in a petition ID No. 1106/1997, the petitioner company itself had filed a written statement in which it was clearly stated that the premises were taken from June 1995 by a registered lease deed for a period of five years.

(iv) The statement of D.S. Bhullar (R-2) on behalf of the petitioner mentioned about the payment of service charges and increase of rent and which aspects do not find any mention in the document of 1994 and in fact are the terms in the lease deed dated 1.6.1995.

(v) The letter dated 13.2.98 on behalf of the petitioner to the respondent (Ex.RW2/XX) also refers to a lease deed and service charges at the rate of Rs. 3000/- per month and which again are only contained in the lease of 1995 and not of 1994.

12. At this stage, I may also advert to one of the arguments raised by the counsel for the petitioner that since the lease deed was not registered, it was not permissible for the Arbitrator to refer to the same. This aspect has been dealt with by the Arbitrator at pages 63 and 64 of the Award and the findings in this regard are as under:

On the above point too, I have heard the Learned Counsel for the parties at length and have also carefully gone through the material made available to this Arbitral Tribunal by the parties. On the basis of material, made available by the parties to this Arbitral Tribunal and also on the basis of facts stated by Mr. D.S. Bhullar (RW-2) in his cross-examination on various dates, it is not in dispute that the respondent was a "tenant" in the disputed premises. Said Mr. D.S. Bhullar (RW-2) in his cross examination on 18.05.2005 while admitting that the respondent was a tenant in disputed premises also admitted the rate of rent paid/payable by the respondent to the petitioner/claimant every month as rent in respect of the disputed property. Our own High Court in case I.T.D.C. Ltd. Vs. Chander Pal Sood and Son, placing reliance on a decision of the Hon^{ble} Supreme Court in case *Burmah Shell Oil Distributing*, now known as *Burmah Shell Oil Distributing* now known as *Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others*, have held that in the absence of a registered instrument the lease shall be deemed to be "Lease from month to month". The above decision of our own High Court virtually clinches the matter finally in favour of the petitioner/claimant. The decision of the Hon^{ble} Supreme Court in case *Bajaj Auto Ltd. (Supra)* instead of helping the cause of the respondent, lends support to the cause of the petitioner/claimant because in the above said case it has been held by their Lordship of the Hon^{ble} Supreme court that an unregistered Lease Deed could be looked into for collateral purpose. Similar view has been taken by our own High Court in case *Vinod Khanna and Others Vs. Bakshi Sachdev*,

13. No fault also therefore can also be found with respect to this reasoning and conclusion as given by the Arbitrator.

14. The last contention which was urged by the counsel for the petitioner was that since the petitioner had taken another premises on lease on 1.9.1998, it should be held that possession was therefore handed over on 31.8.98. In law, there is no presumption that merely because another premises is taken on rent automatically possession of an earlier premises is surrendered to the landlord. As already discussed by me above and as held by the Arbitrator, the petitioner however, continued to retain the disputed premises right till 31.10.2000 when possession was taken after breaking open of the locks. This aspect has been considered by the Arbitrator from pages 35 to 38 of the Award. These paras are reproduced as under:

35 During the course of arguments, it was contended by the Learned Counsel for the respondent that prior to 31.08.1998 i.e. before vacating the disputed property, the respondent had before vacating the disputed property, the

respondent had taken new premises on rent w.e.f. 01.09.1998. It was contented by him that the very fact that the respondent had taken another premises on rent w.e.f.01.09.1998 supports the plea of the respondent that the property in dispute was vacated and vacant and peaceful possession of the same was delivered to the claimant on 31.08.1998. In support of his above contention the Learned Counsel for the respondent has placed reliance on an Agreement dated 01.09.1998 (Ex.RW-2/1), purported to have been executed between the respondent and M/s Sharuti International.

On the above point too I have heard the Learned Counsel for the parties and have also carefully gone through the contents of the above document (Ex.RW-2/1), relied upon by the respondent. In the first place the original of the above said document has not been produced for the perusal of this Arbitral Tribunal and only a photo copy of the same has been made available. On a perusal of the photo copy, made available to this Arbitral Tribunal, it is apparent that though the above said document has been executed on a stamp paper of Rs. 20/- but material particulars i.e. name of the purchaser of the stamp paper, date of the purchase of the stamp, the place from where that stamp paper was purchased, the purpose of purchasing the stamp paper, the seal of the stamp vendor and the signature of the concerned stamp vender are not there. Further on a perusal of the above said document, it is apparent that the document was executed at Mumbai whereas the property which is the subject matter of the above said Agreement is situated at Khasra No. 50/4, Prahladpur Bangar, Delhi-110042. Strangely enough, Sh. D.S. Bhullar (RW-2) stated in his statement that the above said document was executed at Khanna (Punjab) on 01.09.1998. There are cuttings in the document which have not been signed or initialled by the parties. This witness has gone to the extent of saying that the place of execution in the above said document has been wrongly mentioned at Mumbai. Further on a perusal of the above said document, it is apparent that there are attesting witnesses-two from the side of respondent M/s Godrej Agrovat Ltd and two from the side of M/s Sharuti International. None of the attesting witnesses, who could have testified the true facts, have been produced by the respondent before this Arbitral Tribunal without any plausible excuse. The statement of Sh. D.S. Bhullar (RW-2) about this document is also evasive and vague. Said Shri. D.S. Bhullar (RW-2) during his cross-examination on 20.05.2006 stated that the stamp paper for the execution of the above said document was purchased by one of his officers whose name he was not in a position to recollect, at Khanna (Punjab). This witness could not give the date or month of the purchase of the stamp paper by that officer for the execution of the above said document. All the above mentioned facts which are based on record, create a reasonable doubt about the genuineness/authenticity of the above said document and also make the plea advanced by the Learned Counsel for the respondent regarding the taking on rent the premises on 01.09.1998, doubtful.

Shri D.S. Bhullar (RW-2) in his cross-examination has stated that the goods of the respondent were removed from the disputed premises to the new premises

w.e.f. 22/23.08.1998. This again also does not appeal to reason in the presence of the fact that as per the case of the respondent the Agreement in respect of the new premises (Ex.RW-2/1) was executed on a later dated i.e. on 01.09.1998. This is highly improbable that any lessor would permit occupation of the premises prior to the execution of the Agreement which is dated 01.09.1998.

15. Even if, two views are possible on the basis of the aforesaid findings of the Arbitrator, I am not inclined to interfere with the aforesaid finding because as already stated by me above, taking of another premises on rent does not mean that possession of an earlier premises are automatically handed over to the earlier landlord. It cannot be ruled out that the petitioner continued to occupy the earlier premises. As already discussed by me above while dealing with the aspect as to when the possession was handed over to the petitioner, there is not a single letter from the period August 1998 to January, 1999 in which in any manner, the petitioner had categorically stated that possession was handed over to the respondent on 31.8.1998. Having already dwelled at length on this issue, I need not do so again.

16. I may at the end state that counsel for the petitioner has sought to take me through inconsistencies and admissions on behalf of the respondent in the cross examination of the witnesses in order to establish the receipt of certain letters, however, even assuming what is argued by the counsel for the petitioner is correct that cannot change the conclusion that the petitioner has failed to file contemporaneous letters showing that possession of the disputed premises being allegedly handed over to the respondent on 31.8.1998. Nothing therefore turns on this argument as urged by the counsel for the objector.

17. In view of the aforesaid discussion, I do not find any merit in this petition. The petition is therefore dismissed though without any order as to costs.