(2017) 03 DEL CK 0134

In the Delhi High Court

Case No : OMP No. 637 of 2008

Mahanagar Telephone Nigam Limited APPELLANT

Vs

Anant Raj Agencies Pvt Ltd RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2017) 3 ADDelhi 357

Hon'ble Judges : S.Muralidhar, J.

Bench : Single Bench

Advocate : Ms. Geeta Luthra, Senior Advocate with Ms. Srishti Gupta, Mr. Ashish Kumar, Advocates along with Mr. Azad, official in person, for the Petitioners; Ms. Biji Rajesh with Ms. Eshita and Ms. Aditi Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This petition by Mahanagar Telephone Nigam Limited ("MTNL"), challenges an Award dated 9th August, 2008 passed by the learned sole Arbitrator in the dispute between MTNL and the Respondent, Anant Raj Agencies Private Limited, arising out of the agreement/lease deed dated 1st June, 1992 whereby the area measuring 5046 sq. ft. comprising the first and mezzanine floors in the premises known as A.R.A. Centre, E-2, Jhandewalan Extension (hereafter ''premises in question'') was given on lease by the Respondent to MTNL for a period of five years.

2. The admitted position is that the agreement/lease deed was not registered and therefore, the tenancy had to be taken to be on a month-to-month basis.

The rent payable for the said demised premises at the rate of Rs. 15.50 per sq. ft. per month for the first floor and Rs. 15.25 per sq. ft. per month for the mezzanine floor. The lease was to expire on 30th May, 1997. In terms of Clause 17 of the lease agreement, if MTNL wanted to renew the lease deed, it was to make a request to the Respondent by providing a "notice in writing not less than one month before the expiration of the term".

3. MTNL addressed a letter dated 28th April, 1997 to the Respondent proposing renewal of the lease for a further period of five years "subject to the same terms and conditions as provided in Clause 2 and 17 of the above referred Lease Deed." However, the Respondent by letter dated 8th May, 1997 informed MTNL that it would be agreeable for the rent at Rs. 66 per sq. ft. per month if the lease was to be renewed from 1st June, 1997. In that letter, the Respondent stated that the Income Tax Department ("ITD") being the tenant on the ground and second floor had increased the rent and was paying rent @ Rs. 39.50 per sq. ft. per month for the ground floor and Rs. 39 per sq. ft. per month for the second floor. At the request of MTNL the Respondent sent it a letter dated 7th August, 1997 enclosing a copy of the letter of acceptance dated 2nd May, 1997 by which the ITD approved the payment of rent at Rs. 39.50 per sq. ft. per month for the ground floor and Rs. 39 per sq. ft. per month for the second floor.

4. Since MTNL did not agree to enhance the rent, the Respondent served a legal notice dated 11th December, 1997 upon MTNL stating that the lease would come to an end on 31st January, 1998. MTNL was called upon to hand over the physical vacant possession of the premises in question on 1st February, 1998 along with the payment of entire arrears failing which the Respondent would file a suit for recovery of possession of the premises in question and recovery of arrears and future damages @ Rs. 3,33,036 per month.

5. Since MTNL did not vacate the premises in question, the Respondent filed Suit No. 287 of 1998 in this Court for recovery of possession, recovery of arrears and future damages/mesne profit. In the said suit MTNL filed an application, IA No. 7269 of 1998 under Section 8 of the Arbitration and Conciliation Act, 1996 ("Act") seeking reference of the dispute to arbitration. By its order dated 24th February, 2004 the High Court appointed a sole Arbitrator to adjudicate the disputes between the parties.

6. In the meanwhile, the vacant physical possession of the premises in question was handed over by MTNL to the Respondent on 31st March, 2003. The dispute therefore got narrowed down. The Respondent claimed mesne profits for the period from 1st June, 1997 to 31st March, 2003. Apart from claiming mesne profit for the said period @ Rs. 39 per sq. ft per month, the Respondent claimed interest. In support of its claim, the Respondent filed an affidavit dated 20th March, 2006 of Mr. Pankaj Nakra whereas MTNL filed an affidavit dated 6th May, 2006 of Mr. O.P. Chabbra. Both the witnesses were cross-examined by the opposite party.

7. Meanwhile, on 3rd November 2006, the Respondent filed an application before the learned Arbitrator seeking to place on record two letters dated 12th June, 1997 and 6th August, 1997. MTNL by its affidavit dated 5th December 2007 admitted the said two letters. Along with its rejoinder to the application, the Respondent filed copy of the lease agreement dated 15th May, 1997 executed

between the Respondent and the ITD and a copy of the letter dated 7th August 1997 purportedly sent by the Respondent to MTNL. The annexure to the above letter, being a letter dated 2nd May 1997, was also filed.

8. By an order dated 27th August, 2007, the Arbitrator allowed the Respondent''s application subject to payment of Rs. 10,000 as costs to MTNL. The Respondent was permitted to bring on record four documents, viz., letters dated 12th June, 1997, 6th August, 1997 written by MTNL to the Respondent; photocopy of the lease agreement dated 15th May, 1997 allegedly executed between the Respondent and the ITD and the copy of the letter dated 7th August, 1997 (along with its annexure) sent by the Respondent to MTNL.

9. As regards the admission/denial of the above documents, MTNL filed an affidavit dated 5th December, 2007 admitting two documents i.e., letter dated 12th June, 1997 and 6th August, 1997. It denied the remaining documents.

10. In the impugned Award, the learned Arbitrator came to the following conclusions:

(i) Since the lease agreement was not a registered one, it had to be treated as a lease on month-to-month basis which was determinable in terms of Section 106 of Transfer of Property Act;

(ii) By the order dated 16th August, 2000 in IA No. 1362 of 1998 in Suit No. 287 of 1998 filed by the Respondent, the Delhi High Court had directed that "without prejudice to rights and contentions of the parties, the Defendant shall pay the entire arrears of rent due from 1st June, 1997 @ Rs. 77,085/- per month within four weeks and will continue to pay the future rent/damages for use and occupation of the premises by the 7th day of each subsequent month." The High Court also directed the adjustment of amounts so paid against the claim for arrears of rent/damages. Therefore, the acceptance of amount of rent/damages by the Respondent from MTNL after 31st May, 1997 was pursuant to the aforementioned order of the High Court dated 16th August, 2000.

(iii) As regards Claim No. 1 pertaining to mesne profits, it was held that the Respondent was entitled to recover from MTNL mesne profit at Rs. 39 per sq. ft. per month for the period from 1st February, 1998 to 31st March, 2003. It was held that additional documents produced by the Respondent justified its claim for damages at Rs. 39 per sq. ft. per month.

(iv) As regards interest, it was ordered that the Respondent would be entitled to simple interest @ 8% per annum for the period March 1998 to 31st March, 2008. The learned Arbitrator allowed the Respondent costs of Rs. 1,50,000. It was further directed that if the awarded sum was not paid within two months from the date of the Award, the Respondent would be entitled to simple interest @ 12% per annum from the date of the Award till the date of payment.

11. Ms. Geeta Luthra, learned Senior counsel appearing for the Petitioner, MTNL, assailed the impugned Award on the ground that the determination by the

Arbitrator that the Respondent was entitled to damages @ Rs. 39 per sq. ft. per month was based on no evidence. In particular, Ms. Luthra referred to the affidavit of MTNL''s witness Mr. O.P. Chhabra where it was stated that "so far as the claim of the claimant pertaining to the period with effect from 1st June, 2002 to 31st March, 2003 (when the Respondent company handed over the possession of the premises) is concerned, it is submitted that the rate of rent had drastically fallen down during the said period and the Respondent company has already paid the excessive amount which was more than the prevailing rate of rent in the said area." Ms. Luthra pointed out that there was no cross-examination of Mr Chhabra on the above statement. Ms. Luthra further submitted that the additional documents produced by the Respondent were not proved in accordance with law and could not have been relied upon by the learned Arbitrator.

12. Without prejudice to the above submissions, Ms. Luthra submitted that since the rent set out in the lease agreement was accepted by the Respondent up to August 2000 without demur, the Respondent would be estopped from claiming a higher rent at least from 1st April 1998 till that date. Reliance was placed on the decisions in DMHP Sales Limited v. New Howrah Transport Company & Ors. 162 (2009) DLT 248; Kavita Gambhir v. Hari Chand Gambhir & Anr. 162 (2009) DLT 459 and Gian Chand Gupta (Through LRs) v. COIR Board (2011) 183 DLT 675.

13. The Court has carefully considered the above submissions. At the outset, it requires to be noticed that the scope of interference with an impugned Award by the Court under Section 34 of the Act is extremely narrow. The legal position in this regard has been explained in the decision of the Supreme Court in NHAI v. ITD Cementation India Limited (2015) 14 SCC 21 as follows:

"25. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do."

14. In sum, the Court is not expected to re-appreciate the evidence and arrive at a different conclusion only because it is possible to do so. The second important factor to be noticed is that under Section 19 (1) of the Act, the Arbitrator is not bound by either the CPC or the Indian Evidence Act, 1872. Therefore, the principles on which the findings in a suit are assailed as regards the appreciation of evidence do not strictly apply in the context of judicial review of arbitral Awards. There has to be some flexibility as far as rules of evidence governing arbitral proceedings. The legislative intent is not to constrain the arbitral proceedings by the rigidity of the IEA or the CPC. Each of the decisions cited by Ms. Luthra arose in the context of a civil suit. This is one clear distinguishing feature in considering their application to the present case.

15. Be that as it may, what the Court proceeds to examine whether the finding of the learned Arbitrator that the Respondent is entitled to damages for the aforementioned period at Rs. 39 per sq. ft. per month was based on no evidence.

16. A careful perusal of the impugned Award reveals that the learned Arbitrator has discussed the documents placed before him as well as the evidence in the form of affidavits at great length. What weighed with the learned Arbitrator was the fact that the Respondent had let out to the ITD of the same premises at Rs. 39.50 per sq. ft. per month and Rs. 39 per sq. ft. per month respectively. This was made good by the Respondent by producing a copy of the lease agreement entered into with the ITD. Importantly, the letter addressed by the Department of Revenue, Government of India to the Chief Commissioner of Income Tax as regards the renewal and conveying sanction for the enhanced rent was produced. Although the Respondent claimed damages @ Rs. 66 per sq. ft. per month, the learned Arbitrator considered it appropriate to grant Rs. 39 per sq. ft. per month on the basis of the above documents.

17. The Court is unable to agree with the submission of Ms Luthra that the above finding is not based on any evidence whatsoever. The Court is not persuaded, even going by the law explained in the above decisions, to come to the conclusion that the learned Arbitrator''s finding is perverse so as to call for interference on any of the grounds under Section 34 of the Act.

18. The award of simple interest @ 8% per annum and 12% per annum for the post-award period cannot by any stretch of imagination be construed as arbitrary or excessive.

19. No ground has been made out for interference by the Court under Section 34 of the Act.

20. The petition is dismissed with no order as to costs.