

(2018) 08 RAJ CK 0239

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1980 of 2018

M/s Magma Fincrop Ltd @APPELLANT@Hash Smt.Kamal Kumari

Date of Decision : 20-08-2018

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9, 11, 18, 34(3)

Citation : (2018) 08 RAJ CK 0239

Hon'ble Judges : Pradeep Nandrajog, CJ

Bench : Single Bench

Advocate : G.P. Sharma, Mahesh Chand Gupta, Rajendra Prasad, Deepak Sharma, Sanjeev Singhal

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.

2. The appellant, formerly known as Magma Fincorp Limited has its registered office at 24, Park Street, Kolkata. It took on lease the 2nd floor of

respondents premises at 8-9 and 8-10, Bapu Nagar, Jaipur on 01/03/2008. The duration of the lease was 3 years. The lease agreement in writing was

executed on 17/03/2008 recording that the possession had already been taken over and lease had commenced from 01/03/2008 and would end on

28/02/2011. Monthly rent was ₹ 54,000/-; to be enhanced 5% after expiry of every year. ₹ 5,000/- towards maintenance charges and electricity

consumption as per bills raised was payable. The lease agreement was not got registered. It had a term that upon the appellant exercising option for

renewal the same shall be on the same terms and conditions as per the lease agreement dated 17/03/2008, which contained a lock-in period of one

year. On 30/11/2010, before three years expired the appellant sought renewal of the lease. The respondent agreed. On 11/05/2011 the appellant

terminated the lease. The respondent took the stand that because of the lock-in

period of one year the lease could not be determined. The appellant withdrew the notice determining the lease. But relations soured.

3. The original lease agreement having an arbitration clause, the respondent proposed the name of a retired Judge of this Court to act as a sole

Arbitrator. The appellant filed an application under Section 11 of the Arbitration and Conciliation Act before the Calcutta High Court seeking

appointment of an Arbitrator and by way of interim measure by filing application under Section 9 sought appointment of a Receiver to receive the

security deposit received by the respondent at the time of the tenancy. When the dispute was on, the possession was handed over on 21/12/2011. The

appellant's proceedings initiated in Calcutta under the Arbitration and Conciliation Act came to be dismissed. The respondents application under

Section 11 of the Arbitration and Conciliation Act filed in this Court resulted in a sole Arbitrator being appointed who pronounced the award on

08/12/2014. The award is in favour of the respondents.

4. On 03/08/2015 objections were filed against the award and for purposes of limitation the appellant claimed that it acquired knowledge of the award

when it received a notice in the month of August, 2015 from the executing court.

5. The respondent raised the bar of limitation and relied upon Section 34(3) of the Arbitration and Conciliation Act as per which the award had to be

challenged within three months of notice of the award and as per the proviso delay not beyond 30 days could be condoned by the court.

6. The first issue which had to be decided by the court which heard objections to the award filed by the appellant was the bar of limitation. Merits had

to follow later.

7. The impugned judgment dated 06/03/2018 holds that the objections were barred by limitation for the reason record of the Arbitrator showed that on

10/12/2014 copy of the award dated 08/12/2014 was sent by registered post at the registered address of the appellant and the website of the postal

department, on which website documents sent by registered post could be tracked, showed that the docket dispatched by the Arbitrator was delivered

to the appellant on 16/12/2014. Accordingly, it has been held that the objections are barred by limitation. Thereafter, on merits the award has been

upheld.

8. In the appeal, I find no pleading urged concerning the finding returned in the impugned order that the objections were barred by limitation.

9. Learned counsel for the appellant fairly concedes that there are no pleas in the appeal challenging the said finding returned by the learned District and Sessions Judge.

10. Thus, in the appeal, I need not discuss anything further on the issue of limitation.

11. In view of the objections being barred by limitation the learned District and Sessions Judge ought not to have discussed the merits of the award

and indeed learned counsel for the appellant concedes that in the appeal the appellant cannot urge any issue regarding the merits of the award for the reason the objections were filed were beyond limitation.

12. Learned counsel submits that he has only one contention to urge. The same is that in view of the Rajasthan Rent Control Act, 2001 the dispute could not be referred to an Arbitrator and that the award is without jurisdiction.

13. Now, no such plea was raised when objections were filed to the award. However, the plea being legal I discuss the same.

14. The Rajasthan Rent Control Act, 2001 provides for control of eviction, letting or issues concerning rent of premises in State of Rajasthan to which

the Act is extended. It is not in dispute that the Act was extended to the city of Jaipur. Section 9 of the Act contains a provision concerning eviction of

a tenant where the tenant has not paid the rent. Section 18 is the bar for civil courts to entertain the disputes between the landlords and tenants which are triable by the court of law.

15. From the conspectus of the facts which gave birth to the dispute between the parties, suffice it to state that it is not a case where the landlord was

seeking ejectment of the tenant. It was a case where tenant wanted to surrender possession of the tenanted premises and the landlord pleaded a lock-

in period. This dispute is not governed by the Rent Control legislation.

16. Indeed, the appellant was aware of the said legal position evidenced by the fact that the appellant filed an application under Section 11 of the

Arbitration and Conciliation Act in Calcutta praying for an Arbitrator to be appointed and sought an interim measure by requesting the court that a

Receiver be appointed to deliver possession of the tenanted property to the appellant and receive the security deposit.

17. The sole contention urged in appeal concerning jurisdiction of the Arbitrator is thus rejected.

18. I emphasize once again that the learned counsel has made no submissions regarding the merits of the award because on merits the challenge

cannot be premised due to the reason objections to the award were filed beyond the period of limitation.

19. The appeal is dismissed.