

Anglo Properties and Traders Pvt. Ltd. and ors. Vs. the Controller General of Patents, Designs and Trademarks and anr.

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Court : Kolkata

Decided On : Feb-26-2010

Judge : Sanjib Banerjee, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 28(3), 31, 34 and 34(2)

Appeal No. : AP No. 328 of 2009

Appellant : Anglo Properties and Traders Pvt. Ltd. and ors.

Respondent : The Controller General of Patents, Designs and Trademarks and anr.

Advocate for Def. : L.K. Chatterjee, ;Ramesh Chowdhury and ;Aryak Dutta, Advs.

Advocate for Pet/Ap. : Jishnu Saha and ;Samrat Sen, Advs.

Judgement :

Sanjib Banerjee, J.

1. The lessors have challenged an award passed by a departmental arbitrator to the extent that the arbitrator declined a claim for rent of four months. The lessors say, in the present proceedings under Section 34 of the [Arbitration and Conciliation Act, 1996](#), that the arbitrator acted in derogation in terms of the

contract and the award, to the extent challenged, is not in accordance with the substantive law of the land.

2. Under an agreement of December 29, 2000, the petitioners demised unto the Government of India an area of 9400 sq. ft. on the ninth floor of premises No. 44, Park Street, Calcutta - 700 016. The Controller of Patents used the premises as his office. The agreement provided for enhancement of rent on a periodic basis. The petitioners carried two major heads of claim to the reference. The petitioners sought the enhanced rate for a particular period which the arbitrator allowed. The arbitrator also allowed interest on the unpaid enhanced rate. The arbitrator rejected the second head of claim which was for the rent for the months of May to August, 2005. Some incidental claims on account of damages and costs were also made, but the petitioners have not urged such heads of claim in the present proceedings.

3. In a well-structured and organised award, the arbitrator disposed of the matter in quick time. The arbitrator recorded the points as urged in the pleadings and rendered his conclusion thereon on the basis of written submission and limited oral submission. The parties report that the arbitrator had not deemed oral evidence necessary.

4. As recorded in the initial paragraphs of the award, the petitioners herein contended that the Controller of Patents operated his office at the premises till or about April, 2005 but the furniture and fixtures thereat were removed only on September 6, 2005. The claim for rent for the months of May to August, 2005 was made in such circumstances. At paragraphs 8(iv) and 8(vii) the arbitrator has recorded the petitioners' version of things. At paragraph 8(viii)(e) of the award the arbitrator has noticed the statements in paragraph 13 of the respondents' counter-statement wherein it had been alleged that the fittings and fixtures had been removed from the demised premises 'on 18th April 2005 itself and (the respondents) vacated the possession & handed over the keys of the leased premises to the Claimant on 20th April 2005 itself...'

5. The petitioners say that Section 34 of the 1996 Act that had been liberally construed in the ONGC Ltd v. Saw Pipes Ltd case : (2003) 5 SCC 705, has been

recently interpreted by in the judgment reported at (2008) 13 SCC 80 Delhi Development Authority v. R.S. Sharma and Co.. The petitioners place paragraph 21 of the report that summarises the legal position:

21. From the above decisions, the following principles emerge:

(a) An award, which is

(i) contrary to substantive provisions of law; or

(ii) the provisions of the [Arbitration and Conciliation Act, 1996](#); or

(iii) against the terms of the respective contract; or

(iv) patently illegal; or

(v) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(b) The award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality.

(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India..

6. In deciding the issue as to whether the petitioners were entitled to rent for the four months as claimed, the arbitrator concluded that in view of the petitioners' assertion that the keys to the demised premises had been made over to them on April 20, 2005 and the further admission that the respondents stopped operating

the office from April 25, 2005, the petitioners were not entitled to the rent as claimed. In the arbitrator's words,. Thus, it shows that the building was under the Administrative control of the claimants w.e.f. 25th April 2005 though they have already received the keys of the demised premises a few days earlier i.e. on 20th April 2005. Thus it may be legally inferred that the demised premises had been under administratively control of claimant since 25th April 2005 itself ...

7. The award has referred to the agreement and the petitioners invite attention to Clause 11 thereof. According to the petitioners, the fixtures and fittings in the demised premises were the property of the lessee and the lessee was required to remove them and make over possession upon the termination of the lease. The petitioners also criticise the concept of 'administrative control' introduced by the arbitrator.

8. The arbitrator has noticed that the petitioners had asserted that the keys to the premises had been delivered to the petitioners but effective possession thereof had not been made over since the furniture and fittings had not been removed therefrom. The arbitrator has not alluded to the nature of the furniture or fittings that may have remained beyond April 20, 2005 and upto September 6, 2005. The petitioners say that an initial offer was made by the petitioners to purchase the furniture and fittings but the lessee did not accede to such proposal and ultimately, in accordance with government rules, the respondents auctioned the same in August-September, 2005. There appears to be no dispute between the parties that some material that remained at the premises was disposed of by the respondents much after the keys to the premises had been handed over to the petitioners. The respondents submit that it was open to the lessee to enter into the premises and remove the furniture and fittings that allegedly remained thereat as the lessee had not resisted the petitioners obtaining complete possession.

9. In assessing such head of claim the arbitrator has noticed the opposing stands taken by the parties to the reference and the arbitrator has drawn a 'legal' inference that the handing over of the keys to the premises amounted to the petitioners having been given 'administrative control' thereof. There is no adjudication of the issue, far less any reasons for rejecting the claim. Section 31 of

the 1996 Act mandates an arbitrator to give reasons but it is apparent from the few lines that the arbitrator has expended on the matter that he merely concluded that possession had been effectively made over to the petitioners in April, 2005 itself. The arbitrator erred in failing to take into account the terms of the deed of lease and the substantive law on the aspect in reaching an unreasoned conclusion. The arbitrator has failed to base his conclusion on the issue on any material that the parties had, or could have, brought; but has merely preferred one version to the other. There is no discussion in the award as to how the parties were to conduct themselves in such a situation in accordance with the terms of the deed of lease. In failing to refer to the agreement between the parties while considering the matter and in not assessing the evidence that the parties had, or could have, brought to bear on the issue, the award in such respect falls foul of Section 28(3) of the 1996 Act and may be said to be prejudicial to the petitioners. That is not to suggest that the issue had to be decided in the petitioners' favour, but only that the arbitrator's decision on such score was required to be founded on cogent material and reasons.

10. The award is set aside only on such count and the matter is remitted to the same arbitrator for adjudicating the issue as to whether the petitioners are entitled to rent for the months of May to August, 2005 and any interest thereon. The remainder of the award is left undisturbed.

11. AP No. 328 of 2009 succeeds in part. Considering the commendable despatch with which the arbitrator rendered his award, he need not be reminded that his decision on the limited aspect upon the matter being remitted should be rendered with utmost expedition. There will be no order as to costs.

12. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.