

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: 14th September, 2015
Judgment Delivered on: 30th September, 2015

+ **FAO(OS) 297/2015**

NEXGEN EDUSOLUTIONS PVT LTD. **Appellant**

versus

ASPIRE INVESTMENTS PVT. LTD. **Respondent**

Advocates who appeared in this case:

For the Appellant : Mr Sangram Patnaik and Ms Tehsina.

For the Respondent : Mr T. K. Ganju, Sr Advocate with Mr Atishi Dipankar.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. The appellant has filed the present appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") impugning the order dated 01.05.2015 whereby the learned single Judge has been pleased to set aside the interim award dated 26.06.2014 passed by the sole arbitrator dismissing the application filed by the respondent under Order 12 Rule 6 of the Code of Civil Procedure, 1908 read with Section 31 of the Act.

2. The appellant had taken on rent premises at flat No. F – 601 – 608 and F – 610 – 619 on the sixth floor of Aditya Tower, Building/Plot No.5, District Centre, Delhi on a monthly rental of Rs. 1,50,000/- under lease deed dated 27.03.2008. The period stipulated in the lease deed was 10 years. However, the lease deed was neither sufficiently stamped being stamped on a stamp paper of Rs. 50/- only nor was it registered.

3. Since the lease deed was neither sufficiently stamped nor registered, the lease-deed is inadmissible in evidence and cannot be looked into for any purpose and no term of the lease can be enforced. Since the terms of the lease cannot be relied upon or enforced, the term that provided the appellant a period of 10 years also cannot be enforced. The result of which is that the tenancy becomes a month to month tenancy.

4. The lease-deed granted the appellant a concession for a period of 3 months to make the leased premises habitable. The appellant was required to pay 50% of the rent i.e. a sum of Rs. 75,000/- for the initial period of 3 months and thereafter with effect from 27th June, 2008, the full rent of Rs. 1,50,000/- was payable. The appellant also deposited a sum of Rs. 9,00,000/- as security deposit and advance rent for initial three months.

5. As per the respondent, the appellant failed to pay the rent after

taking possession of the leased premises and accordingly by notice dated 13th October 2008, the tenancy of the appellant was terminated and the appellant was asked to vacate and hand over the possession of the leased premises on or before 1st November 2008.

6. The appellant in response to the said notice contended that expenses had been incurred for repair of the roof-top, which were to be reimbursed by the respondent. The appellant in its reply further contended that the lease deed was typed on requisite stamp paper and as such was not a month to month tenancy.

7. The respondent filed a suit for recovery of possession, arrears of rent. The appellant filed a counter claim against the respondent seeking a decree for recovery of the amount allegedly incurred towards repair of the premises and repair of the roof and further recovery of amount towards loss of business opportunity, reputation and goodwill and on account of mental agony and harassment. The appellant also filed an application under Section 8 of the Act seeking reference of parties to arbitration. In the said suit on the respondent's application under Order 39 Rule 10, the appellant was directed to make payment towards arrears of rent which payment was made by the appellant.

8. On the application of the appellant under Section 8 of the Act, the Suit filed by the respondent was disposed of. Thereafter, on an

application under Section 11 (6), the arbitrator was appointed to adjudicate the claims raised by the respondent which inter-alia included the relief of possession, arrears of rent and mesne profits. Before the arbitrator, the appellant filed a counter-claim seeking specific performance and registration of the lease deed. The respondent filed an application under Order 12 Rule 6 Code of Civil Procedure read with Section 31 of the Act seeking possession of the suit premises.

9. It is contended by the respondent in the said application that the relationship between the parties was admittedly that of landlord and tenant, the rate of rent of the premises was more than Rs. 3500/- per month and as such, the appellant was not protected under the Rent Act. It was further contended that since the lease-deed was not registered and was insufficiently stamped, the lease-deed could not be looked into for even collateral purposes and no clause of the lease-deed could be enforced and as such, the tenancy of the appellant was a month to month tenancy. It was further contended that the notice terminating the tenancy had been admittedly received and even replied to and as such all the ingredients required to seek possession had been duly established and even admitted by the appellant and as such it was prayed that the arbitral Tribunal should as an interim measure under Section 31 of the Act pass an interim award of possession.

10. The defence raised by the appellant was that under Section 49 of the Registration Act even an unregistered document affecting immovable property may be received as evidence of contract in a suit for specific performance or of evidence of any collateral transaction not requiring registration of the document. Referring to Section 17 (1)(a) and Section 53-A of the Transfer of Property Act, 1882 read with Section 49 of the Registration Act, 1908, it was contended that the Arbitrator should be persuaded to conclude that the lease was for a period of 10 years and could be terminated only in terms of the said lease. It was contended that since the appellant was running an educational institution, it should stand on a different footing and the tenancy involving such an institution would have to be viewed differently.

11. The arbitrator by the award dated 26.06.2014 came to the following conclusion and dismissed the application under order 12 rule 6:-

- (a) The Petitioner could not have terminated the tenancy by giving notice under Section 106 of the TP Act since it was as much the responsibility of the Petitioner as the Respondent to get the lease deed, which was for ten years, registered.
- (b) The intention of the Respondent was to take possession of the leased premises for ten years.

- (c) The Petitioner cannot be allowed to take advantage of its own wrong in not coming forward to get this lease deed registered.
- (d) Allowing the Petitioner's application at the interim stage would cause irreparable loss to the students along with the Respondent.
- (e) Allowing the application at the initial stage would be amounting to allowing the counter-claim itself.
- (f) It was not understandable that why the Petitioner avoided getting the lease deed registered.
- (g) Since there was a serious dispute as to what prevented the Petitioner from taking steps to get the lease deed registered the provisions of Order XII Rule 6 CPC were not applicable.
- (h) While there may be a dispute as regards the prayer for specific performance of a lease deed for ten years, the execution of the lease deed, the signatures thereon, the acceptance of rent continuously were factors that persuaded the Arbitrator not to grant any interim relief to the Petitioner as prayed for.
- (i) There could be not interim Award in the facts and circumstances of the case.

12. The learned single Judge in a petition filed by the respondent under section 34 of the Act by the impugned order found, and in our view rightly so, that the basic premise on which the learned arbitrator had proceeded is contrary to the settled legal position which mandates

that a lease deed for a period of more than 11 months compulsorily requires registration. The Arbitrator erroneously proceeded on the basis that it was as much the responsibility of the respondent as of the appellant to have the lease registered and since the respondent did not cooperate in getting the lease deed registered even after several reminders, the respondent was precluded from treating the tenancy under the lease deed as a month to month tenancy and terminable by giving notice under section 106 of the Transfer of Property Act.

13. The Arbitrator has erred in not appreciating the settled legal position and the mandate of the law. The law mandates that a lease of a period exceeding 11 months compulsory requires registration. If a lease is not registered then no clause of the lease including the clause stipulating the period of the lease can be enforced.

14. The lease executed in contravention of law cannot become valid merely because the landlord was a party to the contravention of the law. It is immaterial as to who is at fault in not getting the lease registered. The law mandates that if a lease deed, compulsorily required to be registered, is not registered, the consequences of non-registration would follow irrespective of the party responsible for its non-registration.

15. The arbitrator has proceeded on the premise that since the respondent was equally responsible for the non-registration of the

lease, the respondent could not take advantage and could not claim the same to be a month to month tenancy. There is no estoppel against Statute. If the Statute mandates that the term of the tenancy under an unregistered lease-deed is month to month then the same cannot become a lease for a fixed period of 10 years merely because the landlord was a party and equally responsible for the non-registration. The lease-deed being unregistered would not give a fixed term of lease irrespective of the fault of the respondent in not having the same registered. The term of tenancy under such a lease-deed would be a month to month tenancy, terminable by a notice under section 106 of the Transfer of Property Act, 1882.

16. There is no infirmity in the order of the Learned single Judge, holding that the arbitrator could not have entertained any prayer for specific performance for registration of the lease-deed in view of Section 23 of the Registration Act, 1908. Under the said section, a document cannot be registered unless presented within four months from the date of execution. Though under Section 25 of the Registration Act, the Registrar can accept a document after 4 months where delay is properly explained on payment of a fine but the additional period in which the registrar can so accept the document is also 4 months. Thus under Section 23, a document can be presented for registration within four months without payment of fine and under Section 25 a document can be present within an additional period of

four months on payment of fine and on rendering of a proper explanation to the registrar.

17. In the present case, admittedly the document was not presented for registration even within 8 months of the date of the execution of document. The lease-deed has been executed by both the parties, i.e. the respondent as well as the appellant. There is nothing on record to show that on the failure of the respondent to present the document for registration, the appellant presented the document before the registrar for registration. It is admittedly not the case of the appellant that the document was presented for registration and the sub-registrar thereafter failed to take steps for registration or refused the registration recording any reasons. It is an admitted position that the appellant did not present the document for registration.

18. Further, we may note from a copy of the lease deed placed on record by the appellant that the lease deed is executed on a stamp paper of only Rs. 50/-. The initial rent stipulated was Rs. 1,50,000/- per month. The period of the lease mentioned is 10 years with an increment of 10% cumulatively every third year.

19. Further, we may notice that under Clause 12.1 of the lease the cost and expenses of stamp papers and registration of the lease deed were to be borne by the lessee (the appellant). The above clause of the lease deed clearly shows that it was the appellant, who had to bear

the cost of the stamp papers for the execution and registration of the lease-deed. Thus, the only person to benefit by execution of the lease-deed on a stamp paper of Rs. 50/- was the appellant as the cost of execution of the lease-deed on full stamp paper was to be borne by the appellant. That being the position, the appellant cannot be now permitted to say that the appellant was wanting the documents to be registered and it was the respondent, who had prevented the registration of the document.

20. The learned single Judge, in our view, has rightly held that the arbitrator could not have treated the unregistered lease-deed as a registered one and could not have ignored the consequences of non-registration of the lease deed and could not have treated the lease period as 10 years.

21. In our view, the learned single Judge has rightly held that the learned arbitrator committed an error in observing that provisions of Order 12 Rule 6 would not be applicable as there was serious dispute as to what made the applicant not to take any steps to get the lease-deed registered particularly in view of the purpose for which it was given, that is, for running an educational institution which could not have been on a month to month basis.

22. An educational institution cannot be treated any differently in the matter of leases of immovable properties. Section 106 of the

Transfer of Property Act, 1882, makes an exception only in respect of leases of immovable property for agricultural and manufacturing purposes, which leases, in the absence of a contract or local law or usage to the contrary, shall be deemed to be from year to year, terminable by a six months' notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable by fifteen days' notice.

23. The effects of non-registration of a lease-deed are automatic and applicable irrespective of the nature of tenancy or the purpose for which the same has been let. The educational institution cannot be treated any differently. The consequences of non-registration are the mandate of law and not dependent on the conduct of parties. If the lease-deed is not registered, the consequences would follow irrespective of the nature of lease or conduct of parties.

24. The learned single Judge, in our view, has rightly held that the principles analogues to Order XII Rule 6 CPC are equally applicable to arbitration proceedings. As noticed above, there is no dispute between the parties as to relationship i.e. of landlord and tenant; there is no dispute as to the rate of rent being more than Rs. 3500/- and that the tenancy is not protected under the Delhi Rent Control Act, 1958. There is also no dispute that notice terminating the tenancy has been received. As held by us, the tenancy is month to month and terminable by fifteen days' notice and thus all ingredients required to seek

ejection of the appellant are established for the purposes of an application under Order XII Rule 6 CPC.

25. In view of the above, we find no infirmity in the impugned order restoring the application under Order XII Rule 6 CPC to the file of arbitrator. The appeal is accordingly dismissed with costs quantified at Rs. 25,000/- to be paid by the appellant to the respondent in addition to the costs imposed by the learned single Judge within a period of two weeks from today.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 30 , 2015
sk

