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

Reserved on: 13.09.2022
Pronounced on: 13.12.2022

\+ **FAO(OS) (COMM) 8/2019, CM APPL. 28557/2019, CM APPL. 6877/2020, CM APPL. 7219-20/2020, CM APPL. 29298/2021 & CM APPL. 32194/2022**

TEJPAL SINGH ..... Appellant

Through: Mr. M. Tarique Siddiqui, Mr Bhagat Singh, Mr. Manish Gusain, Mr. Md. Noumaan and Ms. Jyotsna Bhardwaj, Advs.

Versus

SURINDER KUMAR DEWAN ..... Respondent

Through: Mr. Anil K. Kher. Sr. Advocate with Mr. Kunal Kher, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') is directed against the impugned judgment and order dated 09.08.2018 passed by the learned Single Judge in OMP (COMM.) 178/2018, whereby the learned single judge has partially modified the award to the extent that amount awarded in favor of the respondent under Claim (A) was set aside and the amount awarded under Claim (B) was restricted to Rs.35,000/- per month for the period from May 2006 to 11.05.2007 along with interest as awarded by the learned Arbitrator. The remaining directions in the

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impugned award were upheld.

2. While entering into the facts and circumstances related to the controversy involved in the present appeal, it would be profitable to recapitulate the background and set up in which the dispute arose between the parties. The respondent (claimant before the learned arbitrator) being the absolute owner of the property bearing no. A-2/5 admeasuring 450 sq. yards, situated at Model Town, Delhi, entered into the Collaboration Agreement with the appellant on 03.05.2005, where under it was agreed that the existing structure of the aforesaid property would be demolished and a new building would be raised in conformity with the sanctioned plan and as per the specification which were mutually discussed, agreed upon and reduced into writing.

3. Since one of the argument raised by the appellant before us is that the two collaboration agreements filed by the respondent-claimant before the learned arbitrator are forged and fabricated whereas the one filed by the appellant is genuine, it is apt to deal with this argument at the outset to dispel the doubt created as regard the authenticity of collaboration agreements. It is noticed from the record that three different collaboration agreements were filed and exhibited before the learned arbitrator. Two collaborations agreements i.e. Ex.CW1/2 and Ex. CW1/C were filed by the respondent-claimant; whereas Ex. RW6/A was filed by the appellant. The learned arbitrator has recorded that the appellant had in his cross examination admitted that he had signed every page of Ex. CW-1/C and further admitted his signatures on the cuttings/corrections made thereon except the cutting/correction made at point 'A'. The appellant had also stated that the signatures at point 'B' appeared to

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be his but he had not signed the same. Thereafter, the learned arbitrator compared the admitted signatures of the appellant with those appearing at the cuttings/corrections and the same were found to tally with one another. The learned arbitrator has thus, concluded that once the appellant had admitted his signatures on Ex. CW-1/C, it did not lie in the mouth of the appellant to say that Ex.CW-1/C as filed by the respondent-claimant was a forged and fabricated document. The said findings of the learned arbitrator do not call for any interference as the view taken by the learned arbitrator is a possible view of the evidence on record. The relevant findings of the learned arbitrator in this regard reads as under:-

> *"11. It is undisputed case of the parties that claimant being owner of the subject property entered into a collaboration agreement with the respondent for redevelopment and reconstruction of the property. However, there are three collaboration agreements available on record - two agreement Ex. CW1/2 and Ex, CW 1/C filed by the claimant and Ex. RW6/A filed by the respondent. According to respondent, the collaboration agreements filed by the claimant are forged and fabricated.*
>
> *12. It has come in the statement of claimant that originally respondent brought one copy of the agreement but then he got the same photocopied and brought 5-6 copies of the same for signatures. After he read the agreement, he found that certain conditions which were agreed upon between by the parties were not incorporated in the agreement viz. the respondent would be liable to penalty in case the properly was not constructed within specified time and he would also pay rent for his stay in another premises during the period the property was under construction. Certain cuttings were therefore made in the agreement and respondent, in fact, in his own handwriting made such cuttings in agreement Ex. CW1/C. The agreement remained with the respondent and claimant was told by the respondent that whatever cuttings have been made in. Ex. CW 1/C would be made by him in the agreement which was typed on the stamp paper.*

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13. Although, the respondent claimed that the collaboration agreement filed by claimant is forged and fabricated, however, a perusal of the agreement Ex. CW l/C and Ex.RW6/D goes to show that the same are verbatim the same except that in Ex. CW 1/C there are certain cuttings. Respondent admitted in his cross examination that Ex. CW-1/C has been signed by him on every page. He also admitted that cuttings have also been signed by him except that the cutting at point 'A' on internal page no.5 of the document does not appear to be his. Further signatures appearing at the said cutting at point 'B' appears to be his but he had not signed the same. This denial is of no consequence as his signatures were also taken and the same tallies with the signature appearing on the cuttings. Under the circumstances, having admitted his signatures on Ex.CW 1/C and the cuttings appearing on this document, there is no substance in the plea of the respondent that the claim of the claimant is based on a forged and fabricated document. That being so, the authorities relied upon by the respondent in this regard does not help him.

4. In view of the above position, it is the collaboration agreement dated 03.05.2005, Ex. CW-1/C, which has been treated as principal and authentic document and accordingly the disputes between the parties have been decided by the arbitrator and the learned Single Judge in light of the terms contained therein.

5. As per the collaboration agreement dated 03.05.2005, Ex. CW-1/C, the construction was to be raised and completed by the appellant within a period of 12 months from the date of signing the agreement. The entire cost of construction along with other expenses were to be borne by the appellant. The appellant was further liable to pay an amount of Rs.30 lacs to the respondent, besides the cost of construction and other related expenses, of which Rs. 22 lacs were paid at the time of signing of the agreement and the balance Rs. 8 lacs would be paid at the time of laying the *lantor* of the first floor. The re-

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developed property was to be shared between the appellant and the respondent in the following manner :-

(i) the respondent (owner) was to receive the entire ground floor and the entire first floor only, with common driveway, stairs

(ii) and the appellant was entitled to entire second floor and roof/ terrace rights up to the sky.

6. It is not in dispute that as per the approved sanctioned plan, construction could be raised only up to the second floor but the appellant not only raised unauthorized construction on each floor but also constructed an additional floor i.e., third floor, which was totally unauthorized. The illegal third floor and unauthorized portion on each floor was demolished by the Municipal Corporation of Delhi and the building was sealed.

7. However, when the building was de-sealed for removing un-authorized construction, the appellant instead of getting the unauthorized portions regularized again started construction of third floor. Thereafter, the Municipal Corporation of Delhi sealed the entire property on 30.05.2006 and an FIR No. 609/2006 was registered at P.S. Model Town against the respondent at the instance of the MCD. The respondent applied for an anticipatory bail but in view of the stand taken by the officials of the MCD that unauthorized construction was still on, the respondent's bail application was rejected by the Sessions Court. Eventually, the anticipatory bail was granted to the respondent by this Court's order on 07.02.2007. In the given circumstances, the respondent terminated the Collaboration Agreement through a legal notice dated 11.05.2007 and invoked the arbitration clause. Resultantly, an Arbitral Tribunal was constituted under the Act.

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8. Pursuant thereto, the respondent-claimant made following claims before the arbitrator which were premised on the ground that the appellant failed to complete the construction work under the Collaboration Agreement and inordinately delayed the construction besides indulging in illegal acts which led to the registration of a criminal case against the respondent:-

Claim A	*A sum of Rs.5,72,000/- (Rupees Five Lakh Seventy Two Thousand Only) being rent paid by him @ Rs. 13,500/- till 31.10.2008, along with interest @ 18% p.a. and Rs.16,000/- per month which he is paying towards rent along with interest @18% p.a till the time he is able to reconstruct and occupy the said property.*
Claim B	*A Sum of Rs. 1,26,00,000/- (Rupees One Crore Twenty Six Lakh Only) @Rs. 3,00,000/- per month from the date of deprivation of property till 31.10.2008, along with interest @18% p. a. for 42 months and Rs. 3,00,000/- per month along with interest @18% p.a. till the time he is able to reconstruct and occupy the said property .*
Claim C	*Rs. 10,00,000/- (Rupees Ten Lakh Only) towards cost of demolition charges.*
Claim D	*Rs. 1,00,00,000/- (Rupees One Crore Only) along with interest @18% p.a. towards damages for mental tension, agony, harassment and humiliation suffered by him.*
Claim E	*Rs. 70,000/- (Rupees Seventy Thousand Only) towards electricity bill.*

9. Besides the above claims, the following further reliefs were also claimed by the respondent in his statement of claim:-

> *"...a) Granting permission to the claimant to apply to the MCD/concerned authorities for de-sealing the premises bearing no. A-2/5, admeasuring 450 sq. Yards situated at Model Town,*

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Delhi and for the purposes of bringing the structure thereon within the norms of the permissible limits;

b) Allowing the claims of the claimant as detailed in para 27, and accordingly pass an award of the said amounts, along with interest @ 18%;

c) Permanently restraining the respondent, his agents, employees, workmen, attorneys and /or any other person claiming through the respondent from accessing, entering/trespassing into the premises bearing No. A-2/5, Model Town, Delhi;

d) Awarding the pendent lite and future interest in favour of the claimant and against the respondent on the aforesaid amount @ 18% p.a. till the date the whole of the amount is liquidated to the claimant;

e) Awarding the cost of the present reference/ proceedings in favour of the claimant."...

10. Before the learned arbitrator, the appellant contended that- (i) the respondent has tampered with the Collaboration Agreement; (ii) the appellant has been given the ownership rights and the possession of the entire second and third floor with roof rights of the property and only the formality of execution of the sale deed remains pending therefore the respondent cannot be restrained from entering into the second and third floor of the same; (iii) the respondent has himself averred in his bail application that no unauthorized construction has been done on the said property and in the light of the fact that the appellant has paid the entire sale consideration of the second and third floor of the property, the respondent do not have right to restrain the appellant from entering into the portions of which the entire consideration has been paid by the appellant. The appellant also denied the claims made by the respondent.

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11. The learned arbitrator, considering the evidence on record, awarded the following claims :-

Claim A	**Rs. 18,20,000/-** (rent awarded with effect from May, 2006 till the date of the award i.e., 29.12.2017 @ Rs. 13,000/- per month;
Claim B	**Rs. 95,80,000/-** (deprivation of rental income to the tune of Rs.23,80,000/- from the period of May, 2006 till 31.12.2011 @ Rs.35,000/- per month **+** Rs.72,00,000/- for the period with effect from January, 2012 till December 2017 @ Rs.1 lac per month) along with the simple interest @12% till the date of award;
Claim C	This claim was found to be not tenable for want of evidence and was thus **rejected**;
Claim D	**Rs.25,00,000/-** was awarded towards damages on account of mental tension, agony, harassment and loss of reputation in the society due to criminal prosecution, suffered by the respondent on account of wrongful and illegal acts of the appellant;
Claim E	Claim of amount towards bill in respect of electricity consumed during the construction of the building was **rejected** in the absence of the evidence.

12. The appellant assailed the award by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996, laying challenge to Claims A, B and D which were allowed by the learned arbitrator.

13. The learned Single Judge held that the impugned award, in so far as it grants Claim (A) in favor of the respondent, cannot be sustained as the obligation to pay rent was mentioned only in the Collaboration Agreement marked as CW 1/1, which was not produced before the learned Arbitrator and

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thus, it remained unproved. Whereas, Claim (B) was modified by the learned Single Judge by restricting the damages for deprivation of property to Rs.35,000/- per month for the period commencing from May, 2006 till the date of termination of Collaboration Agreement dated 11.05.2007. The Claim (D) for grant of damages of Rs. 25 lacs on account of mental agony, humiliation and harassment suffered by the respondent, as awarded by the learned arbitrator, was not interfered by the learned Single Judge.

14. The learned Single Judge in Paragraph 26 also records that no other challenge was made to the impugned award. In effect, the award was partially modified as summed up by the learned Single Judge in paragraph 27 of the impugned order, which is reproduced hereunder:-

> *"...27. In view of the above, the Award is partially modified to the limited extend that amount awarded in favour of the respondent under claim A is set aside and in claim B the respondent shall be entitled to damages calculated at Rs. 35,000/- per month for the period from May 2006 to 11May, 2007 alongwith interest as awarded by the arbitrator. The remaining directions in the Impugned Award are upheld."...*

15. The claims of the respondent, the award of the learned arbitrator and the findings of the learned single judge can thus, be summarized as under:

Claims by the respondent	**Award by the learned arbitrator**	**Findings of the Ld. Single Judge**
Claim A - A sum of Rs.5,72,000/- (Rupees Five Lakh Seventy Two Thousand Only) being rent paid by him	**Claim A** - Rs. 18,20,000/- (rent awarded with effect from May, 2006 till the date of the award i.e., 29.12.2017 at the rate of Rs. 13,000/- per month;	**Claim A - Set aside**
Claim B - A Sum of Rs.	**Claim B** - Rs. 95,80,000/-	**Claim B** - The learned

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1,26,00,000/- (Rupees One Crore Twenty Six Lakh Only) @Rs. 3,00,000/- per month from the date of deprivation of property till 31.10.2008, along with interest @18% p. a. for 42 months and Rs. 3,00,000/- per month along with interest @18% p.a. till the time he is able to reconstruct and occupy the said property	(deprivation of rental income to the tune of Rs.23,80,000/- for the period from May, 2006 till 31.12.2011 at the rate of Rs.35,000/- per month **+** Rs.72,00,000/- for the period with effect from January, 2012 till December 2017 at the rate of Rs.1 lac) along with the simple interest @12% till the date of award	Single Judge **modified** the award and restricted the claim of Rs.35,000/- per month to the period commencing from May 2006 till the date of termination of the collaboration agreement of agreement i.e., 11.05.2007.
Claim C - Rs. 10,00,000/- (Rupees Ten Lakh Only) towards cost of demolition charges.	**Claim C –Rejected**	**Claim C – Not interfered with**
Claim D - Rs. 1,00,00,000/- (Rupees One Crore Only) along with interest @18% p.a. towards damages for mental tension, agony, harassment and humiliation suffered by the Respondent.	**Claim D** - Rs.25,00,000/- was awarded towards damages on account of mental tension, agony, harassment and loss of reputation in the society due to criminal prosecution, suffered by the respondent on account of wrongful and illegal acts of the appellant.	**Claim D – Upheld and not interfered with**
Claim E - Rs. 70,000/- (Rupees Seventy Thousand Only) towards electricity bill.	**Claim E - Rejected**	-

16. No appeal has been preferred by the respondent against the impugned order of the learned Single Judge. However, the present appeal preferred by the appellant is confined only to Claim B as modified by the learned Single Judge and Claim D which was upheld by the learned Single Judge.

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CLAIM B - Deprivation of property

17. In regard to the Claim (B), the learned Single Judge opined that as far as the amount of Rs.35,000/- per month awarded by the learned Arbitrator from May 2006 till the date of termination of agreement i.e., 11.05.2007 at the rate of Rs.35,000/- per month is concerned, the same cannot be faulted as it was based on the testimony of RW-2 Mr. Raj Kumar who was produced as a witness by the appellant himself. But the claim awarded by the learned Arbitrator beyond the date of the termination of the Collaboration Agreement was found to be untenable on the premise that once the Collaboration Agreement was terminated by the respondent vide his notice dated 11.05.2007, it was for the respondent to prove before the learned Arbitrator that the appellant had restricted the access of the respondent to the area in his endeavor to complete the building and occupy the same, for which the evidence was not forthcoming. The relevant paragraph of the impugned judgment reads as under:-

> *"...23. I have considered the submissions made by the learned senior counsel for the petitioner. As far as the amount of Rs. 35,000/- per month awarded by the Arbitrator from May 2006 is concerned, the same cannot be faulted as it was based on the testimony of RW2 Mr. Raj Kumar, who was produced as witness by the petitioner himself. The said witness claims himself to be a property broker and also a builder in the area where the building was constructed. He therefore, would have been aware of the rent that could reasonably be expected by the respondent on completion of the building in terms of the Collaboration Agreement. At the same time, once the Collaboration Agreement was terminated by the respondent vide its notice dated 11.05.2007, it was for the respondent to have proved before the Arbitrator that the petitioner still restricted respondent's access to the building area in its endeavour to complete the building and occupy the same. In the absence of such evidence, the claim beyond the date of termination of the Collaboration Agreement could not have been*

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granted in favour of the respondent. I therefore, restrict the claim awarded, to Rs. 35,000/- per month for the period from May 2006 to 11 May, 2007."....

18. Mr. M. Tarique Siddiqui, the learned counsel for the appellant assails Claim (B) as awarded by the learned Single Judge for deprivation of the use of property. He submits that once the third floor was raised with the implied consent of the respondent and he accepted the same, the appellant cannot be saddled with damages for deprivation of the property, in absence of any breach of Collaboration Agreement on his part.

19. The submission of the learned counsel for the appellant is misconceived The Collaboration Agreement (Ex. CW1/C) contemplated construction of the property only up to the second floor. Concededly, the building plan was also sanctioned for construction of the property up to the second floor. The appellant by raising construction on each floor in excess of the sanctioned plan and further constructing an additional floor (third floor), not only flouted the sanctioned plan but also committed breach of the Collaboration Agreement. The learned Arbitrator has recorded a finding based on appreciation of evidence that the respondent has been able to prove that he was deprived of use of his own property since May 2005, onwards. The learned Arbitrator has also returned a finding on the breaches committed by the appellant which were not remedied by him despite show cause notice having been issued by the MCD, which eventually led to the ceiling of the entire property and also led to the registration of an FIR against the respondent. The succinct findings of the learned arbitrator in this regard, reads as under:-

"...15.5 A bare reading of clause1, 4 and 11 of the agreement goes to show that there was neither any agreement to construct third floor or

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its sale to respondent. It is only in clause 6 that there was a stipulation for allocation of second floor, third floor with its roof/terrace rights upto sky to respondent. However, admittedly certain cuttings were made in this agreement. As per agreement Ex. CW1/C admittedly signed by respondent on all pages, in para 6 allocating the share to respondent, there is cutting at point A, B and C whereby " entire third floor" was deleted. Although respondent has tried to challenge his signatures at point A and B in para 11 of the agreement, interestingly he did not dispute the cuttings at point A, B and C in para 6 of the agreement. Therefore, a combined reading of clause 1, 4 and 11 of the agreement coupled with the cutting made in para 6 of the agreement at point A, B, C goes to show that there was no agreement for construction of third floor which even otherwise could not have been constructed as per municipal bye laws prevalent at that time and for which no plans was sanctioned or its sale to the respondent.

15.6 Respondent then tried to take a plea that as per prevalent bye laws of MCD, on a 80 feet wide road, construction of third floor is permissible. However, he himself stated in cross examination that the building is situated on 75 feet wide road. Therefore, even as per the present bye laws also, construction on third floor was impermissible.

15.7 By examining RW2 Raj Kumar, respondent has sought to establish a practice prevalent in the market at that time that in case the property is raised upto second storey, the rate is between Rs. 18 lacs to Rs. 22 lacs and in case, the third floor is raised the rate is between Rs. 28 lacs to Rs. 32 lacs. RW4, Vinod was also examined who deposed that at the time of striking the deal. Mr. Diwan was demanding a sum of more or less 20 lacs in case the third floor is not constructed and more or less 30 lacs in case third floor is constructed and after discussion it was agreed that a sum of Rs. 30 lacs would be paid by Shri Tejpal to Sh. Surinder Diwan and construction upto three storey would be raised and two storey's i.e GF and FF would remain with Mr. Diwan and second and third floor would remain with Mr. Tejpal.

Here it would be suffice to say that construction of third floor was impermissible under the prevalent byelaws at that time. Therefore,

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even if there is any agreement to the contrary, that would be illegal. Even otherwise, it is the admitted case of the parties that only a sum of Rs. 22 lacs was paid by the respondent to the claimant. It is the admitted case of the parties that claimant was to execute sale deed of the second floor at the time of laying lantor of first floor and respondent was to pay Rs. 8 lacs. However, that was never paid. According to the respondent, despite repeated request claimant did not execute the sale deed but admitted that he did not make any request in writing to claimant to execute sale deed and take the money nor he purchased any stamp paper. According to him, draft was not approved by claimant however, even that draft has not been placed on record. No reliance can be placed on the testimony of RW4 Vinod Kumar that respondent requested him to keep Rs.8 lac for Mr. Diwan as this was not even the case of the respondent. In any case, if the claimant refused to execute sale deed, remedy available to the respondent was to file suite for specific performance of the agreement which remedy was never availed by him.

15.8. Besides the testimony of claimant, there is admission on the part of respondent that building plan was sanctioned for construction of property up to second floor and approx 2000 square feet on each floor was to be constructed. However, in utter violation of sanctioned plan third floor was also constructed and construction of approx 2750 square feet on each floor was raised with the result a show cause notice was issued by the MCD raising objection to the unauthorized construction. Since the respondent failed, to remedy the breaches, officials of MCD demolished the third floor of the property during the period 23rd to 28th April, 2006. However, respondent again started construction of third floor, therefore, MCD sealed the entire property on 30.05.2006. Thereafter one FIR was registered against the claimant being no. 609/20006 u/s188, 466(1) of the Delhi Municipal Corporation Act and S.188 and 457 of IPC. The claimant applied for anticipatory bail, however, in view of the information placed on record by the officials of MCD that unauthorized construction was still being raised, the application was rejected. Another application was moved before High Court on 3rd November 2006 and ultimately on 07.11.2006 High Court granted bail. For the purpose of getting property de-sealed, representation was made before MCD and property was de-sealed vide letter dated 22.01.2007 for a period of 7

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days in order to remove unauthorized construction and submit relevant documents for regularization of property. However, instead of removing unauthorized construction, respondent again started raising construction on third floor. Therefore, property was again resealed by MCD. Respondent did not stop his nefarious designs and according to claimant, respondent trespassed into the property and took construction work at the said property. Therefore claimant was constrained to write to MCD not to entertain any request from the respondent with regard to sanctioning of plan etc. and claimant also terminated collaboration agreement vide legal notice dated 11.05.2007. There is no substance in the submission of the learned counsel for the respondent that claimant could not have unilaterally cancel the collaboration agreement and it was undeterminable in nature. Since the respondent was not remedying the breach by removing the unauthorized construction but was also bent upon raising construction upto third floor, there was no option left with the claimant but to cancel the collaboration agreement. Even otherwise, even if according to the respondent the collaboration agreement could not be terminated, a wrongful termination of contract could have been challenged by an independent claim which steps have not been taken by the respondent.

15.9. xxxxx xxxxx xxxxx

15.10. According to the respondent, he invested approximately Rs. 1 Crore on raising construction. Despite granting sufficient number of opportunities he could not prove the same. Moreover, although, in reply to the claim petition, he stated that he will be filing a counter claim, no such counter claim was filed by him.

15.11. As regards the plea that collaboration agreement was in fact an agreement to sell and only a formal sale deed remained to be executed, the same is devoid of any force. Collaboration agreement prescribed certain terms and condition and on fulfillment of the same, the sale deed was to be executed. However, respondent failed to comply with those terms and conditions. In any case, if there was any breach of contract on the part of claimant, remedies were available to the respondent, which he has failed to take recourse.

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> *In view of the aforesaid discussion, claimant has been able to prove that he has been deprived of the use of his own property since May 2005 till date."...*

20. The learned counsel for the appellant has also drawn our attention to the application (Annexure A-15) filed before this Court by the respondent under Section 438 CrPC seeking anticipatory bail in the FIR registered by the MCD, to contend that it was the respondent's own stand in the said bail application that the construction on the property was as per the Bye-laws, Rules and Procedures, therefore, no breach or illegality could be attributed to the appellant. The relevant part of the application referred to by the learned counsel for the appellant, reads as under:-

> *"....5. That while reconstructing/altering the said property, the Accused/Applicant had duly complied with all the building and Municipal, Bi-Laws, Laws and Procedures and had taken all the appropriate sanctions and approvals from the Government and Municipal Bodies concerned.....*
> .....
> *7. ....It is further submitted that the construction of the said property was done in strict compliance of all the Government and Municipal Bi-Laws, Rules, Procedures and Norms.....*

The aforesaid contention is refuted by Mr. Anil K. Kher, the learned Senior Counsel for the respondent. He submits that the counsel who drafted and filed the bail application on behalf of the respondent was, in fact, engaged by the appellant himself. This was voluntarily done by the appellant as he was guilty/conscious of the fact that the respondent was facing criminal prosecution for the illegalities committed by him. The learned senior counsel further submits that the same counsel had later on sent a legal notice dated 08.06.2007 (Annexure A-13) to the respondent, at the instance of the appellant.

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21. We note that the legal notice dated 08.06.2007 has not been examined by the learned arbitrator, therefore, we refrain from examining the said document in an appeal under Section 37 of the Act. But the fact remains that the learned arbitrator did consider this argument of the appellant and rejected the same for a different reason that there is voluminous evidence on record which establishes that unauthorized construction was done by the appellant contrary to the sanctioned plan which also led to registration of FIR against the respondent. Besides that, the appellant had also admitted violation of sanctioned plan. The relevant part of the award of the learned arbitrator reads as under:-

> "*...15.9 Much emphasis has been laid by the learned counsel for the respondent upon the contents of bail application filed by the claimant for submitting that the claimant himself admitted that construction was raised as per the sanctioned plan. Respondent does not get any benefit from this plea taken by the claimant in the face of voluminous evidence available on record that in violation of sanctioned plan, instead of 2000 square feet area, area of 2750 square feet was constructed. Third floor was also constructed with the result twice third floor was demolished and since unauthorized construction was not removed, property was sealed twice and now it is lying sealed. Not only that, FIR was also registered against the claimant. Over and above, there is admission in regard to all these facts by the respondent himself.*"....

22. From the above, it is evident that the view taken by the learned arbitrator is a possible view based on the evidence and that there is no perversity in the finding recorded by the learned Arbitrator. Clearly, the appellant was in breach of the Collaboration Agreement which led to deprivation of use of the property by the respondent. As far as quantum of Claim (B) as awarded by the learned Single Judge is concerned, the same has not been questioned before us.

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CLAIM D – Award of sum of Rs. 25 lakhs towards damages on account of mental agony, harassment suffered by the Respondent:

23. The learned Single Judge also dealt with and rejected the challenge of the appellant to the award of Rs.25,00,000/- towards damages on account of mental tension, agony and harassment suffered by the respondent in the following terms:-

> *"…24. The learned senior counsel for the petitioner has further challenged the award of a sum of Rs. 25 lakhs towards damages on account of mental tension, agony, harassment suffered by the respondent. He relies upon the judgment of the Supreme Court in Ghaziabad Development Authority vs. Union of India and Another (2000) 6 SCC 113, to contend that compensation for mental agony cannot be granted in such commercial contracts.*
>
> *25. I am unable to agree with the contention raised by the learned senior counsel for the petitioner. In the present case, the respondent, being the owner of the land, had entrusted the work of construction of a building on his land to the petitioner. The petitioner not only raised unauthorized construction but also made the respondent suffer the agony of facing criminal prosecution on FIR lodged against him. Inspite of the property being de-sealed for the purpose of demolishing the unauthorized construction, the petitioner, instead of rectifying the same, carried out fresh unauthorized construction thereby leading to the re-sealing of the property. Clearly the respondent has been able to make out a case for damages on account of mental agony and harassment suffered at the hands of the petitioner. In this view, the award of Rs.25 lakhs as damages, being a reasonable amount, cannot be faulted."…*

24. The submission made before us by the learned counsel for the appellant is that the Collaboration Agreement is a commercial contract and in such contracts no damages on account of mental harassment or agony could be awarded. In this regard, he places reliance on the decision of the Supreme

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Court in ***Ghaziabad Development Authority vs. Union of India and Anr.*** (2000) 6 SCC 113, more particularly on paragraph 5 thereof, which reads as under:-

> *"…5. When a Development Authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation to offer. Several members of the public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to rules of priority or preference laid down by the Authority result in a contract between the applicant and the Authority. The legal relationship governing the performance and consequences flowing from breach would be worked out under the provisions of the Contract Act and the Specific Relief Act except to the extent governed by the law applicable to the Authority floating the scheme. In case of breach of contract damages may be claimed by one party from the other who has broken its contractual obligation in some way or the other. The damages may be liquidated or unliquidated. Liquidated damages are such damages as have been agreed upon and fixed by the parties in anticipation of the breach. Unliquidated damages are such damages as are required to be assessed. Broadly the principle underlying assessment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would have been performed. Here the rule as to remoteness of damages comes into play. Such loss may be compensated as the parties could have contemplated at the time of entering into the contract. The party held liable to compensation shall be obliged to compensated for such losses as directly flow from its breach. Chitty on Contracts (27th Edn., Vol I, para 26.041) states-*
>
> > *"Normally, no damages in contract will be awarded for injury to the plaintiff's feelings, or for his mental distress, anguish, annoyance, loss of reputation or social discredit caused by the breach of contract;... The exception is limited to contracts whose purpose is 'to provide peace of mind or freedom from distress,'..... Damages may also be awarded for nervous shock or an anxiety state (an actual breakdown in health) suffered by the plaintiff, if that was, at the time the contract was made, within the contemplation of the parties as a not unlikely consequence of the*

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> *breach of contract. Despite these developments, however, the court of appeal has refused to award damages for injured feelings to a wrongfully dismissed employee, and confirmed that damages for anguish and vexation caused by breach of contract cannot be awarded in an ordinary commercial contract."…*

25. As evident from the findings (*supra*) of the learned Arbitrator, it is not a case of breach of contract simpliciter. The respondent who was 72 yrs of age at the relevant time was not only deprived of his property but had to face the agony of sealing of his property by the MCD due to unauthorized and illegal construction raised by the appellant. The construction was once demolished by the MCD but the appellant instead of getting the unauthorized portion regularized started further unauthorized and illegal construction which led to the re-sealing of the building and registration of the FIR. Under the anticipation of impending arrest, the appellant had to move for his anticipatory bail which at the first instance was rejected by the Court of Sessions. It is only on the second bail petition being filed in this court that he was granted anticipatory bail.

26. Evidently, the respondent who is a senior citizen had to undergo harassment of facing a criminal case and the threat of arrest on account of illegal designs and acts of omission and commission on part of the appellant in raising construction in excess of the approved sanctioned plan and failure on his part to remedy the breach. Taking into all these factors, the learned arbitrator has awarded the damages for mental agony and harassment undergone by the respondent. The learned Single Judge has also affirmed the claim on the said count. We are in agreement with the findings of the learned arbitrator as well as the learned Single Judge. Clearly, the respondent had to face mental agony and harassment directly on account of the nefarious acts of

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the appellant. It could not have been reasonably foreseen by the respondent that due to the illegal and nefarious acts of the appellant, a criminal case would be registered against him. Possibly for this reason, a clause providing for damages for mental agony and harassment do not find place in the collaboration agreement. All that the respondent wished for, was a better roof over the head of his family. It was for this objective that the collaboration agreement was devised, but the appellant subjected the respondent to undue harassment on account of his illegal designs which led to the registration of the FIR, and the respondent had to run from pillar to post due to the direct acts of the appellant. Such circumstances do warrant awarding of damages on account of mental agony and harassment.

27. We are supported in our view by a decision of the Supreme Court titled as *R. Padmanabhan vs. R. Natesan*, in Civil Appeal No. 16930/2017, (MANU/SCOR/45877/2017), wherein the Supreme Court has upheld the award of damages on account of mental agony which a person underwent on account of highly indifferent, lethargic and wrongful retention of his house by the builder. The Supreme Court repelled the contention that such damages on account of mental agony cannot be awarded in a commercial contract by observing as under:-

> *"...6. Also, his plea that an award on account of mental agony may not be given in a commercial contract situation obviously would not cover a case in which the builder is highly indifferent, lethargic and wrongfully retains a house belonging to another person. This is specifically stated to be the reason for awarding damages on this count in the arbitration award. Ultimately, we must never forget that it is an arbitration award which is being challenged, and the grounds for challenge are constricted."...*

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28. The decision of the Supreme Court in ***Ghaziabad Development Authority (supra)*** relied upon by the appellant, was rendered in a completely different set of facts. There the authority had failed to hand over the possession of plots to the prospective purchasers due to unavoidable circumstances. Further, it was neither a case of a private builder nor did the prospective purchasers face any criminal prosecution for the actions of the authority. Whereas, in the present case, the award of damages of Rs.25 lacs to the respondent has recorded a categorical finding, based on the evidence on record, that the claimant has suffered mental tension, agony and harassment, besides loss of reputation in society due to criminal prosecution initiated against him. Therefore, the impugned judgment does not advance the case of the appellant.

29. There is no merit in the appeal. The appeal along with the pending applications, if any, is dismissed.

VIKAS MAHAJAN, J.

NAJMI WAZIRI, J.

DECEMBER 13, 2022/dss

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