Laskhmi Rauschenbach vs Valuesource Technologies (P) Ltd on 19 April, 2013

Author: Vinod K.Sharma

Bench: Vinod K.Sharma

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 19/04/2013
THE HON BLE MR. JUSTICE VINOD K.SHARMA
O.P.No.11 of 2010

LASKHMI RAUSCHENBACH
REP BY HER POWER OF ATTORNEY
MR.ANAND SASIDHARAN,
T57A, 32ND CROSS ROAD,
BESANT NAGAR, CHENNAI - 600 090 ... Petitioner
-vs-

1. VALUESOURCE TECHNOLOGIES (P) LTD.,
REP BY ITS DIRECTOR MR.CHRISTIAN LIPPENS,
64A, C.P.RAMASAMY ROAD, ALWARPET,
CHENNAI - 600 018.

2. HONOURABLE MR.JUSTICE J.KANAKARAJ,
ARBITRATOR,
NO.7 RAMANUJAM ROAD, CHENNAI - 600 041 .. Respondents

Prayer:- Original Petition is filed to to set aside the award dated 27.08.2009 under Sec

For Petitioner : Mr.M.K.Kabir, S.C.,
For Mr.A.Dhiravia Nathan

For R1 : Mr.Raj Kishore

For R2 (Arbitrator): No Representation

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O R D E R

The petitioner has challenged the Award dated 27.08.2009 passed by the Hon'ble Mr.Justice J.Kanakaraj, Judge (Retd.), Sole Arbitrator.

2. The petitioner entered into agreement for lease with respect to the property bearing Door No.1, Swathi Ceebros Residential Complex, Raja Rangasamy Avenue, Yekediar Enclave, Valmiki Nagar, Chennai.

3. The petitioner is the owner of the residential house having a built up area of 2665 sq.ft. together with fixtures and fittings as shown in the annexure to the agreement. The lease was for the period of 11 months with option to renew it for a like period. The rent was fixed at Rs.52,500/- (Rupees Fifty Two Thousand Five Hundred only) per month and the respondent no.1 also deposited a security deposit of Rs.5,25,000/- (Rupees Five Lakhs and Twenty Five Thousand only) as interest free deposit.

4. It is submitted, that it was the responsibility of respondent no.1 to maintain the fixtures and fittings and the amenities provided in the rent premises in good condition. As per the terms of agreement, the respondent no.1 had agreed to deliver the vacant possession with fittings and fixtures in a good and sound repair. The 1st respondent was also made responsible for damages and breakages etc. Under Clause 5, the petitioner was to deduct such amount towards damages. The tenant was supposed to hand over the vacant possession of the premises in a good and tenable condition.

5. On 11.08.2005, the 1st respondent issued a letter stating that it will be vacating the premises on 31.08.2005, by handing over the vacant possession. On 01.09.2005, the Power Agent of the petitioner went to take possession, but it was noticed, that there was some damages to the property as also buildings, fixtures and fittings. The respondent no.1 was therefore asked to rectify the damages and hand over the vacant possession after carrying out the rectification work.

6. It is submitted, that the rectification was completed only in the month of January, 2006. The petitioner also complained about the damages caused to the building. The case of petitioner therefore was that respondent no.1 had undertaken to deliver vacant possession of the premises with fittings and fixtures in a good condition.

7. It is submitted, that the rectification was carried out till January, 2006, and the possession of premises was handed over on 27.01.2006, that too with incomplete rectification, therefore, the petitioner deducted a sum of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) for overstay calculated at the contractual rent of Rs.52,500/- (Rupees Fifty Two Thousand and Five Hundred only) per month, and sum of Rs.1,00,000/- (Rupees One Lakh only) for remaining rectification work, and returned the balance amount of Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand only) to the respondent no.1.

8. On account of deduction by petitioner, the respondent no.1 filed O.P.No.120 of 2008 for appointment of an Arbitrator. The 2nd respondent was appointed as the Sole Arbitrator, who vide Award dated 28.08.2009 directed the petitioner to refund Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) to the 1st respondent while upholding retention of Rs.1,00,000/- (Rupees One Lakh only).

8. The award is challenged, on the grounds;

i)That it is contrary to the evidence led before the Hon'ble Arbitrator and is opposed to the Substantive Law, therefore is against public policy;

ii)That it was not open to the Hon'ble Arbitrator to traverse beyond the conditions stipulated in the agreement and hold from 01.09.2005, the claimant was neither a tenant, nor a trespasser, therefore was under permissive occupation for doing repairs and this presupposes a concept of symbolic delivery of possession where under Clauses 12 and 5 of the Agreement, handed over vacant possession means the actual possession with all fittings and fixtures in good conditions, therefore, the Award is contrary to the contractual agreement between the parties, thus not sustainable in law;

iii)That the Hon'ble Arbitrator failed to take note, that under Section 108(m) of the Transfer of Property Act, the lessee is liable to maintain the property in good condition and further under Sub-Clause (q) is bound to put the lessor into possession of the property on determination of the lease, therefore, the respondent no.1 was not only responsible for maintaining the property in good condition, but was bound to hand over the physical possession of the property;

iv)That it was not open to the Hon'ble Arbitrator to order refund of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only), on the ground, that the occupation being permissive for carrying out repairs on guess work and further holding, that the petitioner was entitled to only Rs.1,00,000/- (Rupees One Lakh only);

v)That the finding of the Hon'ble Arbitrator is contrary to the Substantive Law of India;

vi)That under the agreement and under statute, the delivery of possession contemplates actual vacant delivery in a tenantable condition. Therefore there cannot be a symbolic delivery in law. Once it was not disputed, that the building was under repair, then as per the admission by respondent no.1 itself, that the repair work was carried on upto December, 2005, the rent was payable till actual delivery of possession. The deduction of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) was for rent due and payable;

vii)That the Hon'ble Arbitrator's finding, that the handing over of the keys for carrying out repair works will constitute permission to carry out repairs, as the landlord's refusal to take delivery was not in accordance with law, is opposed to the Substantive Law in India.

9. This petition is opposed by the respondent no.1, by submitting that respondent no.1 handed over the possession to the petitioner on 31.08.2005, i.e. the last day of the 11 months' lease period. The lease was not extended either by implication or otherwise, therefore, there can be no deemed extension beyond the lease period.

10. It was contended, that the Hon'ble Arbitrator, on appreciation of evidence, held that vacant possession was handed over to the petitioner, as one set of keys given was handed over by the petitioner's agent, who permitted the respondent no.1 to carry out repairs. The repairs were carried

out by spending Rs.75,000/- (Rupees Seventy Five Thousand only), inspite of this, the petitioner still deducted additional sum of Rs.1,00,000/- (Rupees One Lakhs only) towards damages.

11. It is the case of respondent no.1, that admittedly the Power Agent of petitioner inspected the premises on 1st September, 2005 and handed over one set of keys to the 1st respondent to enable the 1st respondent to carry out repairs, therefore it cannot be said, that the vacant possession was not handed over on 31.08.2005.

12. The case of respondent no.1 was, that it cannot also be said, that the respondent no.1 overstayed for five more months to entitle the petitioner to deduct five months' rent.

13. The Hon'ble Arbitrator therefore has rightly held, that respondent no.1 was entitled to refund of Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only), was wrongly deducted by petitioner.

14. It may be noticed here, that the facts are not in dispute. It is admitted case of parties, that respondent no.1 offered to vacate the premises on expiry of lease period, i.e. 31.08.2005. It is also not in dispute, that on 01.09.2005, on inspection, it was found, that there was certain damage to the property, and it was on the asking of the representative of petitioner, that respondent no.1 agreed to carry out repairs, which were completed on January, 2006.

15. In view of the dispute raised between the parties, the Hon'ble Arbitrator framed the following issues:

> 1.Whether the Lease dated 1.10.2004 validly terminated with effect from 31.08.05?
>
> 2.Whether vacant possession of the premises handed over to the Respondents on 31.08.05?
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> 3.Whether the keys of the premises handed over to the Respondents on 31.08.2005?
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> 4.Whether the Respondents gave back the keys on 01.09.2005 to the Claimant asking him to repair the damaged flooring and the defective air conditioners and water heater?
>
> 5.Did the Claimant give vacant possession of the premises on 31.08.2005 in accordance with the Rental Agreement dated 01.10.2004?
>
> 6.Did the Respondent (The Principal) inspect the premises in the second fortnight of December 2005 and did she request the claimant to carry out further repairs to the flooring and fixtures?
>
> 7.Was vacant possession of the premises handed over to the Respondents only on 27.01.2006 as contended by the Respondents?

8.Whether the Respondents were justified in deducting Rs.1 lakh towards estimated damages for completing the repairs of 7 items mentioned in the letter dated 27.01.2006?

9.Whether the Respondents were justified in deducting Rs.2,75,000/- as Rent for the months of September to December 2005 and January 2006?

10.Whether the claimant is justified in claiming interest @ 24% per annum on the claim amount from 31.08.2005 till date of payment?

11.To what relief/s are the parties entitled to?

16. The issues were answered as under:

6. Issues 1 to 6: These issued can be taken together because they are inter connected. Learned Counsel for the respondents very much relies on clauses 6,7,8,12 and 14 of the Rental Agreement Ex.C-1. These clauses related to the responsibility of the tenant to keep the premises, fittings and fixtures in good repair and condition. In particular he relies on clause 12 which is as follows:

"The LESSEE further agrees to deliver vacant possession of teh said premises at the end of the term of the agreement or sooner on determination of the said terms together with all the LESSOR's fittings and fixtures in such good repair order and conditions as is consistent with the covenants and conditions on the part of LESSEE contained herein"

7. The argument of Learned Counsel for the claimant is that by letter dt.11.8.09 they had categorically refused to extend the lease beyond 31.8.05, that they will vacate the premises on 31.8.05 and also demanding payment of Rs.5,25,000/- being the advance amount. The stand of the respondents is that on 1.9.09 the Power Agent of the respondent inspected the premises and found extensive damages to the flooring and some of the fittings and he asked the tenant to repair the damages and for that purpose gave the keys of the premises. The tenant did accept some damages to the flooring and agreed to repair the same.

8. It is good at this stage to look into section 108 of the Transfer of Property Act, 1882 to understand the legal obligations of the 'Lessor' and 'Lessee'. First of all we must remember that the provisions of Section 108 apply only in the absence of a contract to the contrary. Sub clause (m) of Section 108 casts an obligation on the part of the Lessee to keep the property in good condition and restore it in good condition to the land lord on termination of lease. The fact remains that the Lease came to an end by 31.08.05. It was open to the respondents to take possession of the property and assess the damages, if any, and claim the cost of repair from the tenant or deduct the same from the deposit. Clause 5 of the agreement provides for such deduction by way of damages. Now in this case, the parties did not follow this provision of the agreement. It appears to me that this was the only proper course for the land lady or her agent to have adopted. This is what the contract provides. Instead the

tenant was asked to do the repairs and rectify the damages and for that purpose the keys were given back to the tenant. This is an admitted fact. The parties did not agree upon any time or any rent or damages for the period during which the premises was subject to repair and rectification. Therefore if the Rental Agreement is to be strictly followed the land lady has to blame herself for not taking possession of the premises on 1.9.05 and claiming the damages caused to the building and fixtures either separately or by deduction from the deposit.

9. There are no documents from 31.8.05 till 27.1.06 to prove what actually happened between the parties. There is no oral evidence either. There is an allegation by the claimant that during the second fort night of December 2005, the principal (Land Lady herself) came and inspected the premises and was not satisfied with the repair work. This is not disputed in the defence statement. Further, according to the claimant, the Power Agent requested the claimant to keep the keys of the demised premises, "in order to enable the claimant to have access to the demised premises to carry out the repairs". In the defence statement, it is stated that the agent called upon the claimant to rectify the damages and hand over the vacant possession. But it is an admitted fact, that one set of keys were handed over to the Power Agent on 1.9.05. Neither the statute nor the agreement Ex.C-1 casts an obligation on the Lessee to do the repairs and then only hand over vacant possession, even though the period of lease had come to an end. It is interesting to notice that when the Principal inspected the premises in Dec. 2005 and even in the respondent's letter dated 27.1.06, the respondent confirms taking possession on 27.01.06 subject to the 7 items of repair mentioned in the letter dated 27.1.2006. It is for rectifying the said 7 items that the sum of Rs.1,00,000/- is withheld from the deposits. If so, what prevented the Power Agent from taking possession on 31.8.05 subject to the repairs and damages and deducting an amount as repair charges. If that had been done the question of rent or damages for use and occupation after 1.9.05 could have been avoided. I take this view because the lease came to an end by efflux of time and by notice dt. 11.8.05 and there is no valid extension of lease. This is also not a case of holding over. Therefore the tenant cannot be made liable to pay the rent after 1.8.05.

10. Reliance is placed by Learned Counsel for the Respondent on the judgment of the Madras High Court reported in AIR 1962 Madras 439. In that case, the lease was for 5 years viz., faslis 1354, 1355, 1356, 1357 and 1358. The tenant pleaded surrender of the land to the owner during the last 2 fasliz viz., 1357 & 1358. In a suit for rent for faslis 1357 and 1358 (O.S.No.257/47) the owner sought for receiver to take possession of the lands to prevent the lands becoming fallow. The tenant pleaded surrender of lands and dispossession by the receiver by way of defence. The High Court rejected the case of surrender and held possession by receiver will not relieve the tenant from his liability to pay rent because the lease period was not over. This case will not apply to the case before us because faslis 1357 and 1358 are within the period of lease. In our case the lease has come to an end on 31.8.05 and the question is only about handing over vacant possession. It is true that clause 12 of the agreement Ex-C-1, possession of the premises should be handed over in the same condition as it was given to the tenant subject to normal wear and tear. But if damages are caused to the premise and the same is not in the same good condition the remedy of the landlady is to assess the damages and either claim it separately or deduct the same from the deposit as per clause 5 of the agreement.

11. It is equally indisputable that there were damages to the flooring of the house and certain fittings like air conditioners and solar water heaters. It is not as if that these fittings were brand new when the agreement was entered in to on 1.10.04. There is no independent assessment by a competent valuer. The claimant says that he had expended about Rs.75000/- by way of repairing the flooring and fittings. The land lady in the letter dt.27.1.2006 still claims a sum of Rs.1 lakh as repair charges. The bills under Ex.C-8 do not prove anything. The claimant says that he undertook the polishing of marbles in December 2005 only at the request of the Principal.

12. It appears to me that there was no good understanding between the Power Agent and the principal, on the respondent's side. When the lease came to an end on 31.8.2005 and the power Agent had given the keys back to the tenant for undertaking repairs, why should the Principal come as late as in Dec 2005 and why should a letter be written on 27.1.06 agreeing to take possession with the defects is not understandable. As rightly contended by the Counsel for Claimant if the principal had chosen to come a few months later is the tenant liable to pay rent till then? What the principal did on 27.1.06, the agent could have done on 1.9.05 itself.

13. One is left to decide the question in a fair and equitable manner. The premises was not used by the tenant or the land lord between 1.9.05 and 27.1.06. It is beyond one's imagination that the repairs like replacing a few marble tiles and repairing the air conditioners and water heater could have taken such a long time. No party can be made to suffer for no fault on his or her part. On an over all assessment of the evidence I hold issues 1 to 6 as follows:

1)That there was valid termination of the lease with effect from 31.8.05.

2)Vacant possession was handed over to the Power Agent, but by mutual agreement one set of keys were taken back by the tenant for doing the repairs.

3)Damages had been caused to the premises by the tenant, and the fittings and fixtures were are also not in working condition/

4)There is no proof regarding the extent of damages

5)Though the premises was not handed over in the same good condition, the landlady did not act as per clause 5 of the agreement but acted in a different manner by mutual arrangement between the tenant and the power agent.

14. Issues No.7&8:

On Issue No.8, I hold that the respondents are not justified in deducting Rs.2,75,000/- as rent from September to December 2005 and January 2006, because it was the Power Agent who gave back the keys to the tenant to do the repairs. The claimant, after 1.9.05, is neither a tenant nor a trespasser. He was only in permissive occupation for doing repairs. On issue No.7 I hold that there were damages to the flooring as well as the air conditioner and solar water heater. According to the

> claimant he had expanded Rs.75,000/- in repairing the damages. But there is no proof except a few unrelated bills. On 27.1.06 the respondent claims a further sum of Rs.1,00,000/- for repairing and rectifying the defects. Here again it is admitted there is no proof for this estimate of Rs.1,00,000/-. I am left with the only choice of making a fair guess as to the further amount that could be paid by way of damages to the repairs caused to the premises, fitting and fixtures. Having regard to the description of the fittings and the fixtures in Schedule B to Rx C-1, I feel that a sum of Rs.1,00,000/- could be allowed as expenses required to restore the premises to a tenantable and habitable building. Accordingly I permit a deduction of Rs.1,00,000/- for damages from the advance amount. Therefore I hold that the deduction of Rs.2,75,000/- as rent for the months of September to December 2005 and January 2006 by the respondent out of the advance deposit is not legal and that the deduction of Rs.1,00,000/- towards damages for repairs is just and legal.

15. Accordingly there will be an award in favour of the claimant for a sum of Rs.2,75,000/- to be paid by the respondent on or before 30.09.2009."

17. Learned Senior Counsel for the applicant vehemently contended, that the award passed by the Hon'ble Arbitrator cannot be sustained in law inasmuch as there was a positive finding recorded, that there was damage to the flooring of the house and certain fittings like Air Conditioners and solar water heaters, the repair of which was the responsibility of respondent no.1, before handing over the physical possession.

18. It was further contended, that a finding of fact recorded, that the Power Agent had given the key back to the tenant, for undertaking repairs and that it was only on 27.01.2006, that the possession was agreed to be taken over, therefore, it could not be said, that the actual physical possession was handed over at the end of lease period to deny further rent to petitioner.

19. It was also contention of learned Senior Counsel, that in view of the finding recorded, it was not open to the Hon'ble Arbitrator to award the amount by ignoring the Substantive Law, that possession has to be physical possession in good condition in view of Section 108 of the Transfer of Property Act, therefore, the Award can safely be said to be against substantive law, thus, opposed to the public policy, therefore, not sustainable in law.

20. In support of this contention, learned Senior Counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of McDermott International Inc. vs. Burn Standard Co. Ltd and others, (2006) 11 SCC 181, wherein the Hon'ble Supreme Court was pleased to lay down as under:

> 58. In Renusagar Power Co. Ltd. v. General Electric Co. [(1994) Supp 1 SCC 644], this Court laid down that the arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian Law, (b) the interests of India; or (c) justice or morality. A narrower meaning to the expression 'public policy' was given therein by confining judicial review of the arbitral award only on the aforementioned three grounds. An

apparent shift can, however, be noticed from the decision of this Court in Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (for short 'ONGC')[(2003) 5 SCC 705]. This Court therein referred to an earlier decision of this Court in Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156] wherein the applicability of the expression 'public policy' on the touchstone of Section 23 of the Indian Contract Act and Article 14 of the Constitution of India came to be considered. This Court therein was dealing with unequal bargaining power of the workmen and the employer and came to the conclusion that any term of the agreement which is patently arbitrary and/ or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Indian Contract Act. In ONGC (supra), this Court, apart from the three grounds stated in Renusagar (supra), added another ground thereto for exercise of the court's jurisdiction in setting aside the award if it is patently arbitrary.

59. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the Arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merit of the matter.

60. What would constitute public policy is a matter dependant upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular government."

21. Learned counsel for the 1st respondent on the other hand vehemently contended, that the Hon'ble Arbitrator interpreted the terms of the agreement, and held, that under Clause-5 of the agreement, it was open to the petitioner to make such deduction by way of damages. The parties were bound by the terms of the agreement and it was duty of the petitioner or her agent to take possession of property and make deduction for the damage caused to the property. It was not permissible under the clauses of agreement to direct respondent no.1 to carry out repairs. Therefore, it was rightly held, that no terms were agreed between the parties stipulating payment of rent till repairs are completed.

22. It was contended by the learned Counsel for the 1st respondent, that it was rightly held by the Hon'ble Arbitrator, that the landlady was to be blamed for not following the rental agreement by refusing to take possession of the premises on 01.09.2005.

23. The Hon'ble Arbitrator further rightly held, that there was no material placed on record as to what happened between 31.08.2005 and 27.01.2006, when in the month December, 2005, the landlady inspected the premises, but was not satisfied with the repair work.

24. It is the contention of learned counsel for the 1st respondent, that the Hon'ble Arbitrator has rightly held, that one set of keys was handed over to the Power Agent, whereas other set was with respondent no.1 only to carry out repairs. The vacant possession was handed over on 27.01.2006. The petitioner took possession by deducting a sum of Rs.1,00,000/- (Rupees One Lakh only) towards remaining repair works.

25. The Hon'ble Arbitrator further held, that the period of lease had come to an end by efflux of time and by also notice dated 11.08.2005. There was no extension of lease, nor it was the case of holding over, therefore, the tenant was not liable to pay rent after 31.08.2005.

26. The contention of learned counsel for the 1st respondent therefore was that the finding of fact recorded by the Hon'ble Arbitrator cannot be said to be perverse or against substantive law as contended.

27. Learned counsel also vehemently contended, that the Hon'ble Supreme Court in the case of McDermott International Inc. vs. Burn Standard Co. Ltd and others, (supra) held, that public policy dependant on the nature of transaction and nature of statute and for that purpose, the pleadings of parties and the materials brought on record is relevant to enable the Court to judge what is to be good in public interest, and what would otherwise be injurious to the public good, at the relevant point of time from the policy of a particular Government. It was thus contended, that there was no violation of substantive law.

28. On consideration, I find merit in the contention raised by the learned counsel for the respondent no.1. In this case, it is not in dispute, that lease was for the period of 11 months. It was also stipulated, that the tenant was to hand over the vacant possession of premises on expiry of the lease period. The provision was also made by parties for payment of damages for the damage to property or fixtures.

29. The Hon'ble Arbitrator therefore was right in coming to the conclusion, that it was not open to the petitioner to ask the tenant to repair the premises before handing over the vacant possession in violation of the agreed terms between the parties.

30. It is well settled law, that the Hon'ble Arbitrator, being creation of agreement, is bound by the terms of the agreement. The Arbitrator can interpret the agreement to settle the dispute. This is what has been done by the Hon'ble Arbitrator in this case. It is not the case of petitioner, that the tenant continued to remain in possession, as admittedly, only one set of keys were handed over to the respondent no.1 with the sole purpose of carrying out repairs, whereas one set was retained by the agent, therefore, by no stretch of imagination, it can be said, that the tenant continued to be in possession as contended, by the learned Senior Counsel for the petitioner.

31. Even if for the sake of argument, it is taken, that physical possession was not handed over, it was proved on record, that respondent no.1 also ceased to be in possession of the property for enjoying its own benefit. The permission was only to carry out repairs in the premises.

32. The Hon'ble Arbitrator therefore was right in holding, that it was not a case of extension of lease, nor it was the case of holding over, as there was a clear intention of the tenant not to continue the possession of the property. The possession of tenanted property was handed over to the landlady and it was the landlady, who did not take physical possession.

33. It is also not the case where there was any proof of damages suffered on account of non handing over of the physical possession. The stand of the petitioner was that respondent no.1 continued to be the tenant till actual possession was handed over. This cannot be read under Section 108 of the Transfer of Property Act, to hold that the findings by Hon'ble Arbitrator are contrary to Substantive Law.

34. The Hon'ble Supreme Court has authoritatively laid down, that the role of Courts under 1996 Act is only to ensure fairness, and the Courts can interfere only in case of fraud or bias by the Hon'ble Arbitrator or in case of violation of principles of natural justice etc. The Courts cannot correct the errors of the Arbitrators. It was also authoritatively laid down, that the supervisory role of the Courts should be at minimum level.

35. The findings recorded by the Hon'ble Arbitrator cannot be said to be against the fundamental policy of India law, the interests of India, justice or morality or patently illegal or arbitrary.

36. The view taken by the Hon'ble Arbitrator in the facts and circumstances also cannot be said to be perverse or not capable of being arrived at in view of the proved facts on record. Therefore, it can be said, that VINOD K.SHARMA, J., ar the petitioner has failed to make out any ground under Section 34 of the Arbitration and Conciliation Act to challenge the award.

37. Consequently, finding no merit in this petition, it is ordered to be dismissed. No costs.

.04.2013 Index: Yes / No Internet: Yes / No ar Pre-Delivery Order in