(2013) 07 DEL CK 0452

Delhi High Court

Case No: OMP No. 341 of 2013

Connaught Plaza Restaurants Pvt. Ltd.	APPELLANT
Vs	
Mrs. Niamat Kaur	RESPONDENT

Date of Decision: July 1, 2013

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 11, 30, 34
- Companies Act, 1956 - Section 193
- Contract Act, 1872 - Section 2(b), 7
- Evidence Act, 1872 - Section 91
- Specific Relief Act, 1963 - Section 20, 20(2)
- Transfer of Property Act, 1882 - Section 107, 116

Citation: (2013) 3 ARBLR 19

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Neeraj Kishan Kaul, Mr. P. Nagesh, Mr. Ankit Jain, Mr. and Anand M. Mishra, for the Appellant; Harish Salve Mr. Sandeep Sethi Ms. Prathiba M. Singh, Ms. Surbhi Mehta and Ms. Radhika Chopra, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan Singh, J.

The respondent herein Mrs. Niamat Kaur is the owner of the premises bearing No. A-34, Khan Market, New Delhi admeasuring 2300 sq. feet comprising of the Ground, First and Second (Barsati) Floors (hereinafter referred to as ''said property'').

She had leased the said property to the petitioner under a registered lease agreement dated 12th February, 2001 (hereinafter referred to as ''the agreement'') for a period of 9 years by setting up and operation of McDonald''s restaurant who had already entered into a joint venture with McDonald''s India, a wholly owned

subsidiary of McDonald''s Corporation, USA for the purposes of running McDonald''s outlets in India.

Some of the relevant terms of the lease deed are:

i) As per clause 2 of the agreement the term of usage of the premises by respondent was to be for 9 years. It was mentioned therein that the usage of the said premises shall not create any tenancy/possessionary rights in perpetuity. Clause 3 provided that the petitioner is to pay to the respondent a sum of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) per month as rent payable by the 7th of each calendar month and to be increased after 5 years @ 25% over the last rent paid. Under clause 4, the respondent was entitled to receive a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) from the petitioner refundable interest free security deposit. It was mentioned that the said amount was to be refunded to the petitioner upon the termination of earlier determination of the lease on certain conditions.

ii) In accordance with clause 9(j), the respondent was to co-operate with the petitioner for enhancement of the utility services of the premises, if so required by the petitioner. In pursuance of the same, the respondent was to execute all the necessary documents for the said purpose and for obtaining the sanction for the building plans and other approvals and permits from any concerned authorities.

iii) Clause 12 of the agreement authorized the petitioner to make alterations, additions and improvements to the premises. The petitioner would have the right to remove any such improvements at any time during the term of the agreement or within 30 days after the termination of the agreement.

iv) Clause 14 of the agreement provided for renewal of the lease agreement. The said clause is being reproduced herein below:

Renewal. In case the "Second Party" desires to extend the terms of the "Agreement" beyond a total period of nine (9) years, it shall be on the mutually acceptable terms and conditions to be renegotiated afresh. In the event the "Second Party" and the "First Party" are unable to arrive, conclude and execute a fresh "Agreement", in writing, on mutually acceptable terms prior to the expiry of the (9) year period, the "Second Party" shall discontinue the use and occupation of the said Building and the "First Party" shall be entitled to enter upon the same without any objection on the part of the "Second Party.

v) Clause 21(c) provided that no waivers, alterations or modifications of the agreement shall be valid unless the same are in writing and are duly executed by both the parties. As per clause 23, all negotiations, considerations, representations and understandings between the parties are incorporated in the agreement and may be modified or altered only by an agreement in writing between the parties and no act or omission of any employee or agent or broker of the parties shall alter, change or modify any terms of this agreement.

vi) Clause 24 of the agreement contained the arbitration clause whereby the disputes between the parties, were to be referred to arbitration to be settled by a sole Arbitrator to be mutually appointed by both the parties.

2. As per the agreement, the possession of the premises was handed over to the petitioner on the same day of execution of the lease agreement. A letter of possession was issued by the respondent in favour of the petitioner stating that possession of the premises has been handed over on 12.02.2001, which is also acknowledged by the respondent. A letter of undertaking was also issued by the Managing Director of the respondent in favour of the claimant undertaking that on vacating and handing over vacant physical possession of the premises on termination of the lease, the petitioner shall transfer back to the respondent, the electric load of 5 kws as per agreement.

3. Disputes arose between the parties. This Court by order dated 29th March, 2010 passed in Arb. P. No. 205/2010 appointed Justice Ajit Prakash Shah (Retd.) as sole Arbitrator to adjudicate the dispute between the parties. The petitioner was paying the agreed rent.

4. The respondent filed her claims, inter alia, seeking possession of the said property as well as mesne profit/damages.

5. The petitioner/counter claimant filed its reply to the claims filed by the respondent who also filed a counter claim, inter alia seeking specific performance of the Letter of Intent dated 12th February, 2001 and in the alternative damages.

6. The reliefs sought by the petitioner in its counter claim before the Tribunal are:

(i) A decree of specific performance against the Claimant for directing the Claimant to comply with the terms of the letter dated 12.02.2001 and to execute and get registered a fresh lease deed in favour of the respondent for a further period of 9 years commencing from February, 2010 in respect of the subject premises.

(ii) In case the Tribunal comes to a conclusion that grounds for specific performance are not made out, the Tribunal be pleased to pass a decree of damages in its favour to the tune of Rs. 5,00,00,000/- (Rupees Five Crores Only).

(iii) Costs.

7. The petitioner had agreed to pay an amount of Rs. 5 lack as rent to the respondent, without prejudice, during the pendency of the arbitral proceedings. As per order dated 7th July, 2011, the learned Arbitrator directed the petitioner to pay the said amount w.e.f. February, 2010 which was paid by the petitioner and continue to pay, as alleged by the petitioner.

8. The proceedings were conducted by the Arbitrator under the provisions of the Act. After completion of evidence and hearing, the impugned award dated 8th January, 2013 was passed by the learned Arbitrator. The following orders were

passed by the Arbitral Tribunal on the reliefs claimed by the parties which are reproduced hereunder:

i) In the entire facts and circumstances, the prayer made by the Claimant for specific performance already stands rejected. Keeping in view the same, the counter claim made by the respondent for a sum of Rs. 5 crores, which is really made without giving any basis to the said amount, is also rejected.

ii) In the result, Claim No. 1 made by the Claimant is granted. The respondent is directed to hand over the vacant and peaceful possession of the subject premises to the Claimant within a period of two months from the date of the award.

iii) Claim No. 2 made by the Claimant is granted partially. The respondent is directed to pay to the Claimant Mesne Profits at the rate of Rs. 13 lakhs per month from the date of expiry of the lease deed, i.e. 11.02.2010 upto the actual date of the handing over the vacant and peaceful possession of the premises by the respondent. The respondent is also liable to pay interest at the rate of 15% per annum on the said amount from the date of award.

iv) The Claimant is liable to receive the aforesaid amount after deductions made by the respondent to the tune of Rs. 20 lakhs, which was paid as the security deposit and the payments of Rs. 5 lakhs per month which were being paid by the respondent to the Claimant in compliance with the earlier directions of the Tribunal.

v) The counter claim raised by the respondent is rejected.

vi) The parties are left to bear their own costs.

vii) The Claimant is directed to pay the applicable stamp duty within a period of 8 weeks from the date of the award.

9. The petitioner has filed the abovementioned petition u/s 34 of the Arbitration and Conciliation Act, 1996 (in short, called the "Act") for setting-aside the arbitration Award dated 8th January, 2013 passed by the learned Arbitrator.

10. One of the main issues involved in the present litigation is, whether the petitioner is entitled to the specific performance of the alleged letter of intent dated 12th February, 2001 signed by the respondent on the same day after execution of the registered Lease Deed of the same date and what is its legal implication. The said letter of intent is being reproduced below:

To

M/s. Connaught Plaza Restaurants Pvt. Limited,

''Mohan Dey'' 15th Floor,

13, Tolstoy Marg,

New Delhi.

Sub: Letter of Intent

Sir,

This is in reference to the Lease Deed dated 12th of February, 2001, pertaining to the leasing out of the entire premises numbered as A-34, Khan Market, New Delhi comprising of the Ground, First and the Barsati floors.

In continuation of the lease, I, the undersigned hereby state that I or my legal heir, namely, Mr. Jasjiv Singh Anand shall not let out the aforesaid premises to any other party after the expiry of the above lease, i.e. on February 11, 2010 and agree to the running of the McDonald''s Family Restaurant at the said premises for a further period of 9 years on McDonalds exercising its option to extend the lease. A new lease for nine (9) years would then be signed at the same terms and conditions with an enhancement of 25% of the last paid lease rental notwithstanding the provisions of Article 14 of the Lease Agreement dated February 12, 2001. The amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) paid as security deposit for the new lease period. The lease rental for the new lease would be enhanced by 25% after 5 years of the commencement of new lease period.

Thanking you,

Yours faithfully,

Sd-xxx

MRS. NIAMAT KOUR ANAND

Witness

1. Mrs. Alka Daver

2. Mr. Manjeet Singh Rana

11. The case of the petitioner before the Arbitrator Tribunal was that all elements with regard to grant a relief for specific performance of the agreement contained in letter dated 12th February, 2001. The said letter of intent dated 12th February, 2001 established "concluded contract" as per understanding of the parties. The first by a registered lease deed dated 12th February, 2001 for a period of 9 years and the second, through an ''agreement to lease'' dated 12th February, 2001 for a further period of nine years. Hence, the petitioner was entitled to a decree for specific performance.

12. It was alleged by the petitioner that the initial understanding was for a period of 18 years as it is evident from evidence and conduct of the parties. The respondent in her statement has admitted that the letter dated 12th February, 2001 was signed on the same day when the lease deed was signed, in the presence of the very same witnesses. The original letter dated 12th February, 2001 was produced in evidence on 28th January, 2012 which was marked as Ex. CW1/R-1.

13. Mr. Neeraj Kishan Kaul, learned Senior counsel appearing on behalf of petitioner argues that in her cross examination, respondent admits her signature on this letter. According to her, the two witnesses to the document Ex. CW1/R-1 are known to her. One of them, Mr. Manjot Singh Rana is the husband of her grand-daughter. The other Ms. Alka Dawar was her lawyer. These witnesses were not examined by the respondent. The document itself is the primary proof of its contents. The executant has admitted her signature, though it was claimed by her that the signature has been obtained on blank papers under the belief that it was obtained for the purpose of taking some permission.

14. It is also argued by Mr. Kaul that respondent had been taking different stand from time to time by alleging about her signature appeared on the document Ex. CW14/R-1, thus, the burden of proof lies solely upon her to establish that the signature was obtained by the petitioner by fraud or misrepresentation. No witness was examined by the respondent in this regard, therefore, u/s 91 of the Evidence Act, once the terms of a contract have been reduced to the form of a document, no oral evidence of the contents of the same can be given.

15. Mr. Kaul admits that though said document does not include the essential terms of a lease but respondent agrees to enter into a lease deed. The said letter of intent was in fact an agreement to enter into another binding lease deed. It is not an offer (even plea of it being an offer has not been taken either in any of the evidence of the respondent or the claim statement). The term ''agree'' mentioned in Ex. CW1/R-1 indicates to convey the acceptance of renewal of the lease for a further period of 9 years as per option of extension referred in the clause. In the said letter it is mentioned that a new lease "would then be signed at the same terms and conditions", therefore, it is a concluded contract to enter into a future lease deed which also indicates provision for adjustment of security deposit and future rent with an enhancement of 25% of the last paid lease rental. The same is signed by two witnesses. Therefore, it cannot be called as an offer as held by the learned Arbitral Tribunal rather it is an acceptance of an offer made by the lessee and in view of all relevant terms are mentioned, the letter dated 12th February, 2001 would definitely constitute a promise to not to let the premises to anyone and a binding promise to renew the lease by entering into a proper lease deed at the end of 9 years.

16. Mr. Kaul argues that in an action for specific performance, the claimant has to prove (a) the existence of an agreement; (b) that it was legally enforceable and (c) the claimant was ready and willing to perform his part of the obligation. The petitioner before the learned Arbitrator in fact had proved that all the relevant ingredients as incorporated in the document, therefore, the said letter of intent being an agreement to lease is enforceable in law. The petitioner was/is always ready and willing to perform its obligations. The readiness and willingness on behalf of the petitioner show in its letters dated 30th March, 2009, 29th December, 2009 and 9th March, 2010. The same is affirmed by petitioner in the evidence of RW-2,

therefore, the petitioner was entitled to a decree for specific performance of agreement dated 12th February, 2001.

17. It is also argued by Mr. Kaul that with regard to the claim of mesne profit by the respondent, it was the duty of the respondent to prove the loss suffered being a rental value in the contemporaneously situated properties as the burden was lied upon her. But the respondent has failed to prove any loss who has only relied upon some reports of M/s. Cushman and Wakefield and certain internet documents. None of these reports have been proved by the respondent as per law who has relied upon an alleged rent estimation report (Ex. CW1/20). Mere reading of the said report would show that the same is without any basis and is completely unreliable. With regard to an alleged Memorandum of Understanding dated 23 March, 2010 (Ex. CW1/21) between the petitioner and M/s. Bestseller Retails Pvt. Ltd., the said MOU has not been signed by the respondent. It was signed by Sh. Jasjiv Singh Anand, who stated that he has been authorized to do so by the respondent. His authority has not been mentioned in the said MOU or has been placed on record. The said alleged MOU dated 23 March, 2010 has been executed by Sh. Sumit Suneja, for and on behalf of M/s. Bestseller Retail India Pvt. Ltd. No authority was placed when the document was filed before the learned sole Arbitrator. Therefore, the said MOU Ex. CW1/21 could not be relied upon.

18. Lastly, it is submitted by Mr. Kaul that under no circumstances, the award rendered by the sole Arbitrator on the claim of mesne profit is sustainable as the finding arrived on the aspect of mesne profit are contrary to law and evidence adduced by the respondent. It is totally immaterial if the petitioner has not adduced independent evidence to demolish the claim of the respondent as the burden of proof in order to claim mesne profit lied upon the respondent only. In the absence of evidence, the said claim ought not have been allowed to pay mesne profit at the rate of Rs. 13 lack per month from the date of expiry of lease deed i.e. 11th February, 2010, the respondent was entitled for her claim in this relief on the basis of the last paid rent. Reliance is placed on the decision in the case of National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association, .

19. Mr. Harish Salve, learned Senior counsel appearing on behalf of respondent has addressed his submissions for some time. He submits that all the contentions raised by the petitioner in the case were argued by the petitioner before the learned Arbitrator who has discussed each and every aspect of the matter and after hearing the argument of the parties, the learned Arbitrator has passed the detailed award, the finding arrived by him cannot be interfered unless the award passed which comes with in the ambit of the scope of interference under the provisions of Section 34 of the Act. Mr. Salve argued that after considering the evidence of the parties as well as the legal implication of letter of intent, the Arbitrator has taken a plausible view in his award. The same is not perverse. It cannot be substituted while sitting in this jurisdiction u/s 34 of the Act.

20. Mr. Sandeep Sethi, learned Senior counsel, who is also appearing on behalf of the respondent has made his submissions which are outlined as under:-

i) Mr. Sethi submits that it has been the consistent stand of the respondent that the letter dated 12th February, 2001 was obtained by the petitioner under misrepresentation. It is a dubious nature of the said document which does not show any communications, exchanged between the parties and is completely contradictory to the terms and conditions of the registered lease agreement as well as the conduct of the parties in holding meetings for negotiating. It is argued by Mr. Sethi that merely because the respondent admits her signature on the LOI, the said document cannot be held to constitute as a binding contract between the parties. The same could not have been executed and signed by one party for the purpose of extension of period in terms of Clauses 22 and 23 of the lease agreement and it has not been provide as the petitioner has failed to summon the persons who have attested their signatures as witnesses to the same. Therefore, it has been rightly rejected by the Arbitral Tribunal. The petitioner has failed to explain, why said letter of intent would be signed by the respondent containing the terms, some of which are contrary when the parties had executed a lease agreement on the same date itself. If the parties consented to an agreement on the terms contained in the said letter, there was no problem in incorporating the same in the lease agreement which was admittedly executed between the parties prior to the said letter. Therefore, the said Letter of Intent is invalid and unenforceable.

ii) Mr. Sethi argued that assuming the Letter is valid and was issued by the respondent, the offer made by the respondent is not an absolute one inasmuch as it is contingent upon the happening of an event, i.e. valid exercise of the option of extension of the lease by the petitioner. However, in the present case, the option of extension was beyond time, i.e. after the expiry of the lease and before the offer made the same stood withdrawn by the respondent by way of its leter dated 10th October, 2009 wherein the respondent called upon the petitioner to act in accordance with Article 14 of the Lease Agreement and renegotiate the terms and conditions for a fresh lease agreement to be executed. The said letter dated 10th October, 2009 being in consonance with the lease agreement essentially revokes the offer, if any, made by the respondent vide the letter of intent dated 12th February, 2001.

iii) It is submitted by Mr. Sethi that on record there exists no document or oral evidence has been adduced by the petitioner to show that the offer made by the respondent was accepted by it before 10th October, 2009. In fact, the withdrawal of the offer by way of respondent''s letter dated 10th October, 2009, was duly accepted by the petitioner otherwise the question of participating in renegotiation and discussions by the petitioner did not arise. The rejection of the offer of the respondent, participation of the petitioner in the meeting held on 3 November, 2009 and the petitioner''s letters dated 30th November, 2009 and 29th December, 2009,

shows that the petitioner was not ready and willing to perform its part of the contract. In such a situation, where the petitioner has failed to prove willingness and readiness in respect of the contract, the discretionary relief of specific performance could not have been granted.

iv) It is also submitted by Mr. Sethi that the burden to prove the said consensus lies on the petitioner. The offer must be unequivocal and the acceptance must be absolute and must correspond with the terms of offer. The said letter of intent must have shown that the two minds are ad idem in respect of the property in question and in the absence thereof it cannot be held that any valid agreement existed between the parties. For a binding contract to be established the offer must be unequivocal and the intention of the offeree to accept the offer must be expressed without leaving any room for doubt as to the fact of the acceptance of the said offer. This was not present in the instant case.

v) Mr. Sethi further argued that it has been the consistent stand of the respondent that she never leased or intended to lease the premises for a period of more than 9 years as alleged in para 19 of the claim as well as in her evidence particularly answer to Question No. 53 in her cross-examination. This intention was also reflected in the conduct of the petitioner who participated in the meetings with the respondent for renewal/renegotiations qua the lease in 2009 and did not rely on any such letter of intent in its letter dated 30th November, 2009 and 29th December, 2009 addressed to the respondent. It is further submitted that when the letter of intent dated 12th February, 2001 was relied upon by the petitioner in its subsequent communications after the expiry of the lease, the respondent recalled having signed some papers in good faith, given to her by the petitioner on the pretext of obtaining permissions/sanctions from various authorities. In any case she never intended to lease the premises for a period of more than 9 years. It appears that her signatures were obtained through misrepresentation and fraud. She is an old lady not aware of the ways and means of business. The said document is a unilerated document not signed by the petitioner. It does not impose any obligation on the petitioner. At the best, it was an offer which can be revocable at the behest of the respondent.

21. Learned counsel for both parties have referred various decisions in support of their respective submissions. Before discussing the same, it is become necessary to refer certain paras of the award wherein the learned Arbitrator has discussed the facts, evidence and submissions of the parties on the aspect of main issue, i.e. letter of intent (Ex. CW1/R-1). Paras 75 to 94 of the Award are extracted as under:

Alleged Letter of Intent does not inspire confidence:

75. The Tribunal has given anxious thought to the oral submissions made by the learned counsel for the parties. At the outset, it must be mentioned that the registered lease deed dated 12th February, 2001 was for a period of 9 years and thereafter, the respondent was liable to vacate the premises and hand over

possession thereof to the Claimant unless, the lease stood renewed as per clause 14 of the lease deed. The Claimant is an old widow and she has stated in her evidence that she had never intended that the premises in question be let out for a period of 18 years. The Claimant has claimed that she has signed certain letters under a bona fide belief that the same were only required by the respondent for the purpose of obtaining certain sanctions. Her evidence with respect to the same is not even shaken in her cross-examination.

76. The respondent has failed to offer any cogent explanation to why it agreed to a unilateral letter from the claimant which was not only disadvantageous to it with respect to the term of the lease and renewal, but was also contradictory to the terms of the registered lease deed.

77. The respondent is a very large company and as per the evidence of Mr. Vikram Bakshi, the Managing Director of the Respondent, it is running 117 restaurants across North, East and Central India. The respondent has a separate department called the real estate department which specifically looks after buying and leasing of such properties for carrying out leases for these restaurants. This department enters into hundreds of transactions and also enters into hundred of lease deeds and other agreements in pursuance of such transactions. The respondent is a seasoned business organization and therefore it is not conceivable that the respondent was simply satisfied with a letter from the claimant which was contradictory to the terms of the lease agreement, especially clause 14 of the lease agreement which provides for renewal of the lease.

78. Mr. Vikram Bakshi has stated in his evidence (Question No. 33) for the first time that the said arrangement was entered into an there was a request from the claimant that the 18 year period be not incorporated in the agreement as it would amount to paying a stamp duty on the sale deed. However, no such case was put to the claimant when she was cross-examined. Nor was this submission ever made by the respondent in any of its pleadings.

79. The alleged letter of intent dated 12th February, 2001 also does not find mention in any of the contemporaneous documents or correspondences. The said letter of intent was nowhere mentioned in the registered lease agreement dated 12th February, 2001 executed between the parties. Even in the negotiations that took place between the parties for renewal of the lease in 2009, including the meeting on 3 November, 2009, there is not even a whisper about this purported letter of intent and the same is evidenced by the correspondence exchanged by the parties in this regard. In fact, had there been such a letter of intent, there was no requirement for the parties to hold any further meetings for renewal of the lease.

80. Even in its letters dated 30th November, 2009 and 29th December, 2009, the respondent has not made any reference to any purported letter of intent and the respondent has, in both these letters, only claimed that the date of commencement

of lease is December, 2001 instead of February, 2001.

81. The respondent has only relied on this alleged letter dated 12th February, 2001 for the first time after the expiry of the lease by way of its letter dated 9th March, 2010. It is re-iterated that the claimant has made her deposition about the circumstances under which the letter dated 12th February, 2001 came to be signed by her and in her cross-examination, this version is not shaken.

82. The respondent has also failed to explain as to why this letter surfaced so late in the day, much after the negotiations for renewal of the lease was clearly not materializing.

83. Therefore, the letter dated 12th February, 2001 is clearly of a dubious nature and does not inspire confidence. The said letter cannot be held to be proved merely because the claimant has failed to summon the witnesses who have attested the signatures. In fact, nothing prevented the respondent from summoning such witnesses, which the respondent has failed to do.

Letter of Intent is merely an offer and not an agreement:

84. Assuming that the said letter was signed by the claimant, even then the said letter, can at best only amount to an offer. Upon a plain reading of this letter, it can be seen that the claimant had only agreed to the running of McDonald''s restaurant at the premises in question for a further period of 9 years, subject to the respondent exercising its option to extend the lease. Therefore, a new lease was required to be signed upon the terms and conditions mentioned in the said letter.

85. The respondent has stated in its reply as well as the counter claim that the letter of intent records an undertaking by the claimant to give the premises for a further period of 9 years on the contingency of the respondent exercising its option for extension of lease. It is not the case of the respondent that the letter of intent itself is a valid and binding agreement. In fact, a perusal of the pleadings will show that the respondent also admits that the letter dated 12th February, 2001 is only an offer by the claimant and not a concluded contract arrived at between the parties. The relevant portion of the reply and the counter claim are reproduced below:

Reply:

E - In the said negotiations, the claimant specifically agreed to give the suit property to the respondent/counter claimant, on rent, for a minimum period of 18 years. However, the claimant represented that the initial lease agreement between the parties would be for a period of 9 years and that the lease in favour of the respondent/

counter claimant would be extended for a further period of 9 years after the expiry of the initial period of 9 years.

H - That after the execution of the Lease Agreement dated 12.02.2001, and on the same date, the claimant also issued a letter dated 12.02.2001 to the respondent/counter claimant. Vide the said letter, the claimant agreed to the running of the respondent/counter claimant''s restaurant at the premises for a further period of 09 years on the respondent/counter claimant exercising its option to extend the lease after the expiry of the initial lease period of 9 years as provided under the Lease Agreement dated 12.02.2001.

I - That accordingly vide letter dated 9th March, 2010, the respondent/counter claimant exercised its option of renewal of the Lease in its favour and called upon the claimant to execute and get registered a fresh lease deed in respect of the suit property for a further period of 9 years after the expiry of the term as provided under the lease dated 12.02.2001.

R - After the meeting, several letters were exchanged including notices and replies between the respondent/ counter claimant and the claimant and the respective counsels. The respondent/counter claimant, vide letter dated 9.3.2010, informed the claimant that it is exercising its option of extension of the lease for a further period of nine years and called upon the claimant to execute the lease deed for further period of nine years in accordance with the letter of the claimant dated 12.02.2001. However, the claimant did not come forward to execute any fresh lease deed and on the contrary filed an application u/s 11 of the Arbitration and Conciliation Act, 1996 seeking to refer the alleged dispute between the respondent/counter claimant and the claimant to arbitration.

S - The respondent/counter claimant has already expressed its readiness and willingness to continue in the demise premises by its letter dated 9.3.2010, exercising its option to renew the lease for a further period of nine years.

Counter claim:

19. - After the meeting, several letters were exchanged including notices and replies between the respondent/ counter claimant and the claimant and the respective counsels. The respondent/counter claimant, vide letter dated 9.3.2010, informed the claimant that it is exercising its option of extension of the lease for a further period of nine years and called upon the claimant to execute the lease deed for the period of nine years in accordance with the letter of the claimant dated 12.02.2001.

20. - The respondent/counter claimant has already expressed its readiness and willingness to continue in the demise premises by its letter dated 9.3.2010, exercising its option to renew the lease for a further period of nine years.

(Emphasis supplied)

86. Even considering the aforesaid submission of the respondent is correct that it exercised its option of renewal of the lease, then also, it is to be seen that the offer contained in the letter of interest was to be clearly accepted by the respondent for it

to be concluded into a valid and binding contract.

87. The claimant''s counsel argued and in my opinion, correctly that the test for determining whether the letter of intent is in the nature of an agreement or is a mere offer is whether the letter of intent could be held to be binding on the respondent in the event that the respondent refused to exercise its option of extending the lease for a further period of 9 years. In such a case, the respondent would not be bound to continue with the lease for a further period of 9 years and the claimant would have no right to enforce the letter of intent dated 12.02.2001.

88. Most importantly, at no point of time during the term of the lease did not respondent exercise or accept the purported letter of intent dated 12.02.2001. The respondent has made a reference to this letter for the first time in its letter dated 10.03.2010, i.e. after the expiry of the lease. Prior to that, the alleged letter of intent dated 12.02.2001 was conspicuous by its absence in all the earlier documents and communications. Thus, with the lease deed coming to an end on 11.02.2010, the said letter of intent dated 12.02.2001 also came to an end with the efflux of time.

No concluded contract between the parties:

89. The position of law is very clear in order for a court to grant a prayer for specific performance of a contract, viz. the court must come to a categorical finding that there was a concluded enforceable contract between the parties. The burden to prove such a consensus clearly lay on the respondent in the present case. The offer must be unequivocal and the acceptance must be absolute and must correspond with the terms of the offer. The agreement/contract should categorically show that the two minds are ad idem as to the subject matter of the contract, it cannot be held that any valid agreement existed between the parties. The said position has been expressly laid down in the decision of Mayawanti Vs. Kaushalya Devi, .

90. An acceptance is a final and unqualified expression assent to the terms of an offer. Section 2(b) of the Indian Contract Act defines acceptance as assent to the proposal by the person to whom the proposal has been made. Furthermore, as per section 7 of the Indian Contract Act, an unqualified, unconditional acceptance of the offer creates a contract when communicated to the offerer.

91. In the present case, even if assuming that the letter of intent is valid and was issued by the claimant, the offer made by the claimant is not an absolute one inasmuch as it is contingent upon the happening of an event, i.e. the exercise of option of extension of lease by the respondent. However, admittedly, the option of extension was not exercised by the respondent in time, in fact, before the offer made by the claimant could be accepted by the respondent, the same stood withdrawn by the claimant by way of its letter dated 10.10.2009 wherein the claimant called upon the respondent to act in accordance with Article 14 of the lease deed and renegotiate the terms and conditions for a fresh lease deed to be executed.

92. The respondent has failed to show any oral or documentary evidence that the offer made by the claimant stood accepted by it before 10.10.2009 i.e. before the offer stood withdrawn by the claimant. In fact, the withdrawal of the offer by the claimant''s letter dated 10.10.2009 has been duly accepted by the respondent, inasmuch as it actively participated in the renegotiation and discussions for execution of a fresh lease deed with the claimant on 03.11.2009. The same is evident from the letter of the claimant dated 06.11.2009. Thereafter, the respondent vide letter dated 30.11.2009 categorically stated that "....as mentioned to you during our ongoing discussions, we are open to renegotiate the terms for a fresh lease agreement with effect from January, 2011." Thus, the withdrawal of the offer was clearly accepted by the respondent who thereafter agreed to renegotiate the terms for entering into a fresh lease deed. Even in the subsequent letter dated 29.12.2010, the lawyer for the respondent has only raised the contention that the lease would expire in December, 2010 and not February, 2010.

93. Clearly, till 09.03.2010, there was no offer in existence and therefore, the exercise of option by the respondent by way of its letter dated 09.03.2010 which is subsequent to the expiry of the lease deed is of no consequence. It is categorically mentioned in clause 14 of the lease deed that the lease cannot be renewed after the expiry of the 9 year period.

94. In view of the above, clearly there was no concluded contract between the parties beyond the lease period for 9 years and upon the expiry of the said period of 9 years, the respondent was bound to hand over the vacant and peaceful possession of the premises to the claimant. Clearly therefore, the occupation/possession of the respondent of the premises after the period of lease, i.e. after 11.02.2010 has become illegal.

22. In nutshell, the learned Arbitrator after discussion the entire case of the parties has come to the conclusion that the registered lease deed dated 12th February, 2001 was for a period of 9 years. The letter dated 12 February, 2001 is merely an offer and the same cannot be relied upon. It has been held that the said letter therefore does not inspire confidence to believe that the respondent intended to do a lease for further period of 9 years. Assuming that said letter was signed by the petitioner. It was merely an offer and at no point of time during the term of lease the petitioner exercise or assert the purported letter of intent who made a reference in its letter dated 10th March, 2010 after the expiry of the lease.

The petitioner has failed to show any oral or documentary evidence that the offer made by the respondent stood accepted before the offer stood withdrawn by the respondent. As there was no offer in existence and exercise of option by the petitioner subsequent to the expiry of the lease deed i.e. on 9th March, 2010 is of no consequence in terms of 14 of the lease deed thus lease cannot be renewed after the expiry of nine years. Therefore, there was no conclusion contract between the parties.

23. Learned sole Arbitrator has discussed the letter of intent from various angles and arrived his conclusion that (i) the alleged letter of intent does not inspire confidence; (ii) it is merely an offer and not an agreement to enforce; and (iii) and there was not a concluded enforceable contract between the parties even if the said letter is signed by the respondent. Learned Arbitrator has given detailed reasons by dealing with every aspect of the matter before coming to the conclusion that even if assuming that the letter of intent is valid and was issued by the respondent, the same is not an absolute one inasmuch as it is contingent upon the happening of event i.e. the exercise of option of extension was not exercised by the respondent in time.

24. Apart from other arguments, Mr. Sandeep Sethi, learned Senior counsel argued that admittedly, the said letter of intent is not signed by the petitioner. The same is even otherwise not enforceable in view of the Clauses 21 (c) and 23 of the registered lease deed dated 12th February, 2001. The signature appeared in the said document has no consequence. He relied upon the said clauses mentioned, the same reads as under:

Clause 21(c) provided that no waivers, alterations or modifications of the agreement shall be valid unless the same are in writing and are duly executed by both the parties. As per clause 23, all negotiations, considerations, representations and understandings between the parties are incorporated in the agreement and may be modified or altered only by an agreement in writing between the parties and no act or omission of any employee or agent or broker of the parties shall alter, change or modify any terms of this agreement.

23. Authority to Sign: No employee or agent of the "Second Party" (other than an authorized officer) has authority to execute "Agreement" or any other warranty, representation, "Agreement" or undertaking. The submission of this document for examination and negotiation does not constitute an offer to enter into an "Agreement" and this document will become effective and biding only upon execution and delivery by the "First Party" and the authorized officer of the "Second Party". All negotiations, considerations, representations and understandings between the parties are incorporated in this "Agreement" and may be modified or altered only by an "Agreement" in writing between the parties, and no act or omission of any employee or agent of the parties or any broker, if any, shall alter, change or modify any of the provisions of this "Agreement". The parties executing this "Agreement" on behalf of the "First Party" and the "Second Party" represent that they have authority and power to sign this "Agreement" on behalf of the "First Party" and the "Second Party.

25. It is argued by Mr. Sethi, learned Senior counsel that the alleged letter of intent in view of the said clauses even otherwise could not have been signed by the respondent alone for the purpose of specific condition stipulated under the renewal Clause 14 of the Lease Agreement read with Clauses 21 (c) & 23 of the same as in

these clauses, it is specifically mentioned that there would be no waiver, alteration or modification of the agreement unless the same inter alia are duly executed by both the parties. The said stipulation cannot be ignored under the law which was supposed to be complied strictly within the meaning of Section 116 of the Transfer of Property Act.

26. The following judgments are referred by the respondent: -

(i) Mayawanti Vs. Kaushalya Devi,

18. The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be certain and the parties must have been consensus ad idem. The burden of showing the stipulations and terms of the contract and that the minds were ad idem is, of course, on the plaintiff. If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all. Where there are negotiations, the court has to determine at what point, if at all, the parties have reached agreement. Negotiations thereafter would also be material if the agreement is rescinded.

19. The jurisdiction of the court in specific performance is discretionary. Fry in his Specific Performance (6th edn., p. 19) said:

There is an observation often made with regard to the jurisdiction in specific performance which remains to be noticed. It is said to be in the discretion of the court. The meaning of this proposition is not that the court may arbitrarily or capriciously perform one contract and refuse to perform another, but that the court has regard to the conduct of the plaintiff and to circumstances outside the contract itself, and that the mere fact of the existence of a valid contract is not conclusive in the plaintiffs favour. ''If the defendant'', said Plumer V.C., ''can show any circumstances dehors, independent of the writing, making it inequitable to interpose for the purpose of a specific performance, a Court of Equity, having satisfactory information upon that subject, will not interpose.

(ii) Shanti Prasad Devi and Another Vs. Shankar Mahto and Others,

18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lease even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in clause (7) read with clause (9) required fulfilment of two conditions: first, the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the

mediation of local mukhia or panchas of the village. The aforesaid renewal clauses (7) and (9) in the agreement of lease clearly fell within the expression "agreement to the contrary" used in Section 116 of the Transfer of Property Act. Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specified conditions.

19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of Section 116 of the Transfer of Property Act. In the face of specific clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of Section 116 of the Transfer of Property Act.

(iii) Bank of Baroda Vs. Vijay Mahipal and Co.

16. Having considered the rival submissions of the counsel for the parties and gone through the precedents cited at the bar, I have not the least bit of hesitation in holding that the construction sought to be placed by the appellant on Clause 5 of the lease deed is wholly untenable. The learned trial court has rightly construed the said clause to mean that by virtue of the lease deed itself, the respondent/plaintiff had the right to affirm or deny consent for the continuation of the lease or to execute or refuse to execute a fresh lease deed, and that no right exists in favour of the appellant/lessee unless the respondent/lessor in categorical terms conveys its consent regarding the continuation of the lease and agrees to execute a fresh lease deed. This is not a case where any exclusive right has been given to the appellant-lessee to opt for renewal of the lease deed even in the absence of the concurrence of the lessor. Rather, it is case where renewal of the lease has been viewed as matter of consensus to be arrived at between the parties. Clause 5 of the lease deed in the present case, in my opinion, secures the right of the lessee as well as the lessor, by giving to the lessee the right to opt for the renewal of the lease deed, and to the lessor the right to refuse consent to the aforesaid renewal. Any other construction placed upon the said clause can only lead to absurdity and would in fact amount to distortion of the clause itself.

17. It also cannot be lost sight of that the words ''renewal of the lease'' are a misnomer. Viewed from any angle, the renewal is in fact really execution of a fresh

lease and that too a registered one in terms of para-1 of Section 107 of the Transfer of Property Act. The Supreme Court in Delhi Development Authority Vs. Durga Chand Kaushish, elucidated as under:

A renewal of lease is really grant of a fresh lease. It is called "renewal" simply because it postulates the existence of a prior lease, which generally provides for renewal as of right. In all other aspects, it is really a fresh lease.

18. The renewal of the lease having been equated to a fresh lease deed, even otherwise, in my opinion, consensus ad item would be a sine qua non for renewal of the lease agreement between the parties. Thus, without the consent of the lessor, the lessee cannot be said to have opted for and obtained the renewal of the lease deed after it has expired by efflux of time, merely on account of renewal clause inserted in the lease deed providing for option of the lessee to renew the lease deed on an enhanced rate of rent.

19. The lease in the present case was for a period of five years and, as held by the Supreme Court in the Burma Shell Oil Distributing case (supra), on a harmonious construction of Section 107 read with Section 116 of the Transfer of Property Act, on the expiry of the lease period, which in the instant case expired on 31.08.2008, in the absence of a registered instrument, it must be held that it was a case of holding over from month-to-month and that the lease stood terminated by the giving of a valid notice. Such notice was given to the lessee on 03.05.2008, asking the lessee to quit the demised premises and to hand over and deliver the vacant and peaceful possession of the demised premises, on the expiration of the lease ending on 31.08.2008.

(iv) Caltex (India) Ltd. Vs. Bhagwan Devi Marodia,

3. At common law stipulations as to time in a contract giving an option for renewal of a lease of land were considered to be of the essence of the contract even if they were not expressed to be so and were construed as conditions precedent. Equity followed the common law rule in respect of such contracts and did not regard the stipulation as to time as not of the essence of the bargain. As stated in Halsbury''s Laws of England, 3rd ed., vol. 3, art. 281, p. 165 : "An option for the renewal of a lease, or for the purchase or re-purchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse." This passage was quoted with approval by Danckwerts L. J. in Hare v. Nicoll, [1966] 2 Q.B. 131. A similar statement of law is to be found in Foa''s General Law of Landlord and Tenant, 8th ed., Article 453, p. 310, and in Hill and Redman''s Law of Landlord and Tenant, 14th ed., p. 54. The reason is that a renewal of a lease is a privilege and if the tenant wishes to claim the privilege he must do so strictly within the time limited for the purpose.

27. As per Article 2 of the Lease Agreement, the term for the use of the suit property was for a period of 9 years which was to be over on 11th February, 2010. The

petitioner has relied upon the letter of intent which was signed by the respondent on the same day after the execution of the lease deed. Let the matter be examined from the argument advanced by the petitioner.

Admittedly, the respondent issued a letter dated 10th October, 2009 to the petitioner reminding it that the Lease Agreement was going to expire on 11th February, 2010 and under Article 14 of the said Lease Agreement, in case the petitioner would like to extend the period of occupation of the said property, the same would be mutually acceptable on fresh negotiation. The reminder was also issued by the respondent by letter dated 6th November, 2009 by giving the offer to the petitioner for a monthly rent of Rs. 25,75,000/- coupled with 20% rent increase every three years as per the prevailing market rates. The petitioner issued a letter dated 30th November, 2009 though took its stand that the lease would come to an end in December, 2010 and not in the month of February, 2010 and asked the respondent not to be swayed and influenced with some fancy rates being offered by some brokers. It was specifically mentioned in the said letter by the petitioner that the petitioner is open to renegotiate the terms of a fresh lease agreement with effect from January, 2011.

27.1 The respondent thereafter through her Advocate issued a letter dated 16th December, 2009, informing the petitioner to vacate the suit premises on 12th February, 2010 and hand over the possession to the respondent, otherwise the said possession would be considered as unauthorized. The respondent also denied the contention of the petitioner that the lease is not expiring on 11th February, 2010 as alleged in the letter issued by the petitioner. The petitioner by letter dated 29th December, 2009 tried to give the justification that the restaurant was opened on 14th December, 2001, therefore, the respondent cannot take the possession of the premises till December, 2010, as the said possession cannot be considered till that time unauthorized.

27.2 It is the admitted position that these correspondences were exchanged between the parties before the expiry of lease period, i.e. 11th February, 2010. However, after the expiry of the said period, the respondent issued a fresh letter dated 3 March, 2010 intimating to the petitioner that the lease has expired on 11th February, 2010, however, the said property is not vacated by the petitioner who would be, therefore, liable to pay to the respondent mesne profits at the higher of the market rent or the rent demanded by her by letter dated 6th November, 2009, beyond the period 11th February, 2010.

27.3 By its letter dated 9th March, 2010, the petitioner referred the meeting held in the office of the respondent on 3 November, 2009 wherein the petitioner informed the respondent orally its intention to exercise its option to extend the terms of the agreement for a further period of 9 years which was agreed by the respondent in her letter dated 12th February, 2001. Copy of the same was attached along with this letter. It is obvious that on this particular date, the petitioner has relied upon the

letter of intent dated 12th February, 2001 claiming that the respondent had agreed to renew the lease for a further period of 9 years subject to the enhancement of 25% on the last paid lease rental. The reminder was also issued by the petitioner through its counsel Mr. P. Nagesh, Advocate on 10th March, 2010 on the same lines.
28.4 The respondent by her letter dated 28th April, 2010 issued through counsel, disputed the letter dated 12th February, 2001 sent by the petitioner to the respondent. It was alleged in the said letter that first time the said purported letter was referred to the respondent, allegedly, agreeing not to let the demised premises to any other person after the expiry of lease on 11th February, 2010, but agreed to extend the lease deed for a further period of 9 years. It was alleged in the letter that the said contention of the petitioner was an after-thought. The petitioner had already lost its right to exercise the option of renewal. Before the expiry of the lease period, the petitioner is showing first time its intent. It was also alleged in the said letter that in case, the alleged letter of intent is true, it purports to amend the terms of a registered lease and is thereby void and of no legal consequence. The said reliance is otherwise contrary to the terms of the registered lease and does not constitute a valid exercise of the renewal clause.
28. This can be examined from another point of view which is that assuming some contractual sanctity is given to the letter dated 12.02.2001, still the grant of specific relief is a discretion and not as a matter of the right. It is settled law that the specific performance is an equitable relief. Section 20 of the Specific Relief Act, 1963 preserves judicial discretion. The court is not bound to grant specific relief merely because it is lawful to do so. The motive behind the litigation is to be examined. The court while granting or refusing the relief has to consider whether it would be fair, just and equitable. In case, where any circumstances u/s 20(2) are established, the relief is to be declined. Section 20 shall be at the forefront in the mind of the Court, the relief sought under this section is not automatic as the court is required to see the totality of the circumstances which are to be assessed by the court in the light of facts and circumstances of each case. The conduct of the parties and their interest under the contract is also to be examined.

29. The "conduct of the parties" and ''circumstances'' are the main factors from the time of agreement till the final hearing of the Suit in order to exercise courts jurisdiction under the said provisions of the Act.

30. In view of correspondence exchanged between the parties before the expiry of nine years period of registered lease deed, it is evident that the petitioner had not exercised its option for extension of lease deed in view of document Ex. CW1/R-1. In fact, the option of the petitioner for extension of lease deed was beyond time, i.e. after the expiry of the lease. But before the offer was made by the petitioner, the same stood withdrawn by the respondent by way of her letter dated 10th October, 2009 wherein the respondent called upon the petitioner to act in accordance with Article 14 of the Lease Agreement and negotiate the terms and conditions for a

fresh lease agreement to be executed. There is also no evidence, oral or otherwise, adduced by the petitioner to show that the offer made by the respondent was accepted by the petitioner before 10th October, 2009. In fact, the withdrawal of the offer by the respondent''s letter dated 10th October, 2009 was implicitly accepted by the petitioner, otherwise the question of participation by the petitioner in renegotiation and discussion did not arise. The alleged meeting in the office of respondent on 3 November, 2009 was denied by the respondent.

31. Even otherwise, the grant of relief of specific performance is a discretionary relief which has been exercised by the learned Arbitrator by rejecting the argument on the letter of intent, coming to the conclusion that the said letter does not inspire confidence as it was merely an offer and was not concluded contract between the parties.

32. For the reasons stated above, this court finds that the view adopted by the learned arbitrator is a plausible one on the basis of the claims of the parties and the material available on the record. The said view is not required upseted merely on the saying of the petitioner when the intention of the parties gathered from the reading of the events sequentially speaks to the contrary.

33. It is well settled that the Court while exercising jurisdiction u/s 34 of the Arbitration and Conciliation Act, 1996 does not sit as a court of appeal to re-assess the material, evidence and the terms of the contract assessed and interpreted by the arbitrator. While exercising jurisdiction u/s 34, the Court is not to substitute its opinion with that of the Arbitrator. Even otherwise, where two views were possible on a question of law, the court would not be justified in interfering with the award of the arbitrator if the view taken recourse to by the Arbitrator is a possible view. Re-appraisal of evidence or re-interpretation of clauses of an agreement by the Court is also not permissible.

34. Applying the said principle of the law to the instant case, it is apparent that the impugned award nowhere falls with in the scope of interference under the provisions of section 34 of the Act. The said award is neither against the public policy nor the same has been passed contrary to any law in force. Rather, the view expressed by the learned arbitrator in his award is a plausible view.

35. The learned Arbitrator has rightly exercised his discretion in favour of the respondent who is an old widow. She has stated in her evidence specifically that she never intended to let out the premises for a period of 18 years and she might have signed the letter of intent under a bona fide mistake without knowing its implication. This is evident from the material available from the record which is that the petitioner has not relied upon the said letter uptil of the expiry of the lease which means the intention of the parties was not to continue the lease. The Managing Director of the petitioner on the other hand is running 117 restaurants across the country and has also separate business at real estate division and is

aware about the rules of buying and leasing properties for the purpose of restaurants. The respondent has not been cross examined by the petitioner''s counsel on the aspect of that she has signed some papers on bonafide belief and gave it to the petitioner. Therefore, the objections filed by the petitioner on this issue of specific performance are liable to be rejected. The impugned Award is upheld in this regard as the said view neither perverse nor the same suffers from any legal infirmity which can enable this court to intervene under the provisions of section 34 of the Act.

36. On the issue of mesne profit, Arbitral Tribunal holds that the respondent is entitled for mesne profit from the date of handing over the vacant possession of the said property. The counter claim of the petitioner was rejected. The main discussions and finding arrived by the Arbitral Tribunal on the issue of mesne profit are as follows:

i) Now comes to the issue of mesne profit. As per lease agreement dated 12th February, 2001 the possession was for a total period of 9 years. The petitioner was liable to hand over vacant and peaceful possession of the premises to the respondent immediately after expiry of the said period. The petitioner was put to notice by the respondent for handing over of possession of the premises who has failed to vacate the premises. Therefore, the respondent under the law is entitled to mesne profits at the rental value of the premises from the expiry of the lease, i.e. from 11th February, 2010 till the actual handing over of the vacant and peaceful possession of the premises.

ii) It is a settled position of law that after expiry of tenancy, the correct mesne profit is the prevalent market rental value of the property. The Apex Court has also held "prevailing market rent" as a principle to be followed while determining mesne profits; Dalhousie Properties Ltd. Vs. Surajmull Nagarmull, . The premises in question consist of three floors. It is located in the main Khan Market. The rental rates in the NCR region have increased particularly in the last one decade. The Khan Market is no doubt one of the most expensive markets in the NCR region. In order to her case, the respondent has placed on record a market beat report by Cushman and Wakefield India Pvt. Ltd. who is a renowned global real estate company. The said market beat report gives the rent for Khan Market for the 3rd and 4th quarter of 2010 as Rs. 1100 per sq. ft. The respondent obtained a rent estimation report dated 22nd February, 2011 from the said company for the premises in question. It gives the rent for the premises as Rs. 13-15 lack per month. The said rent estimation report refers to three instances of other premises in Khan Market of recent transactions.

iii) The respondent has also relied upon a report by Economic Times which mentions Khan Market as the world''s 24th most expensive street and also a report of the Times of India and articles which puts Khan Market as the world''s 21st most expensive street and has filed MOU dated 23rd March, 2010 entered into with M/s.

Bestseller Retail India Pvt. Ltd. for leasing out the present premises on a monthly rent of Rs. 15 lack. The same was under a bona fide belief that the petitioner would vacate the premises in accordance with the Lease Agreement dated 12th February, 2001. In view of MOU, M/s. Bestseller Retail India Pvt. Ltd. gave the security deposit equivalent to the rent for one month to the respondent which was encashed by the respondent. Mr. Sumit Suneja, the authorized representative of M/s. Bestseller Retail India Pvt. Ltd. who stated that the company has entered into several such MOUs for taking a number of premises on rent for their business. He also produced the minutes authorizing him to enter into MOUs with several parties, including the respondent.

iv) After considering the evidence of respondent as well as various objections raised by the learned counsel of the petitioner, the learned Arbitrator accepted the evidence of the respondent mainly on the reason that the tenant was identified by Cushman and Wakefield, which is a reputed and global real estate company. The respondent had no relation with M/s. Bestseller Retail India Pvt. Ltd. who is an established company and has many outlets in and around Delhi. M/s. Bestseller was identified professionally by Cushman and Wakefield and that Bestseller is genuinely interested in leasing the property. The learned Arbitral Tribunal accepted the submission of the respondent of the respondent that being an old lady, she does not have wherewithal to coordinate and ensure the presence of other witnesses. The reports/articles placed on record also mention the monthly rental value of the property to be 13-15 lack per month and keeping in view thereof, the learned Arbitrator was of the opinion that the respondent is entitled to mesne profits at the rate of Rs. 13 lack per month from the date of expiry of the lease deed i.e. 11th February, 2010 upto the actual date of the handing over the vacant and peaceful possession of the premises by the respondent. The counter claim made by the petitioner for a sum of Rs. 5 crores, which is really made without giving any basis to the said amount, was also rejected in view of rejection of the claim of the petitioner for specific performance.

37. As already mentioned in earlier part of my judgment, Mr. Neeraj Kishan Kaul, learned Senior counsel appearing on behalf of petitioner argued that the evidence produced by the respondent before the learned Arbitrator regarding the issue of mesne profits, cannot be looked into as, in fact, there is hardly any valid evidence in support of the said issue of mesne profits, for and on behalf of the respondent. It is submitted by him that the onus to prove the market rent of the area, so as to raise a claim for mesne profits was on the respondent but she has failed to discharge the said onus and is thus not entitled to any mesne profits as claimed. The documents referred by the respondent in support of her claim for mesne profits cannot be relied upon in order to adjudicate the issue of mesne profits. The learned Arbitrator has not at all discussed the objections raised by the petitioner wherein it was alleged that the entire evidence produced by the respondent i.e. MOU dated 23rd March, 2010 and rent estimate report dated 22nd February, 2011 by Cushman and

Wakefield are in admissible in evidence.

38. The objections raised by the petitioner were recorded by the learned Arbitral Tribunal in para 104 to 106 the same are reproduced here below:

104. The respondent has raised a few objections to the authenticity of the aforesaid MOU dated 23.03.2010 between the Claimant and M/s. Bestseller Retail India Pvt. Ltd. The respondent submitted that it is inconceivable that an entity would enter into an agreement with a landlord to take a property on rent in the future as and when it is vacated by the Claimant, knowing fully well that the tenant has already raised a claim that it is entitled to extension of lease in favour for a further period of 9 years.

105. It was further argued by the respondent that Mr. Suneja did not produce the original minute book allegedly maintained by M/s. Bestseller Retail India Pvt. Ltd. Rather, he has only produced loose pages as Minutes of the alleged meeting dated 30th January, 2012 and the same is in violation of Section 193 of the Companies Act, 1956. It is further submitted that the copy of the alleged minutes of the meeting dated 30.01.2012 would reveal that the agenda regarding the resolution in question is stated to be the last agenda of the said meeting. Further, just before the resolution in question, there is a short line towards the left hand margin and the respondent states that such line towards the left hand margin and the respondent states that such lines only appear when changes are made to a document in Microsoft World. Thus, the respondent has argued that the alleged minutes of the meeting 30.10.2010 have been fabricated to produce evidence in the matter.

106. It is also the contention of the respondent that the minutes of the meeting dated 30.01.2010 authorize Mr. Suneja to enter into an agreement with the claimant only, whereas the MOU dated 23.03.2010 has not been executed by the claimant but by her son.

39. The fact of the matter is that the petitioner has not produced any evidence in order to demolish the evidence of the respondent. In the case of National Radio and Electronic Co. Ltd. Vs. Motion Pictures Association, wherein it is held that in the absence of any evidence on the issue of mesne profits for and on behalf of the claimant, the same could be awarded, if any, on the basis of last paid rent.

However, in the present case, the factual position is different wherein claimant/the respondent has produced the evidence in this regard, on the other hand no evidence was produced by the petitioner. In the case of M.C. Agrawal Huf Vs. Sahara India and Others, , it is held that the Court can always take judicial notice of rate of rent by placing reliance on the provisions of Sections 114 and 57 of the Indian Evidence Act, 1872. Therefore, it seems to me that the findings of Arbitral Tribunal appears to be reasonable in view of nature of the property and its location where the market rent was disclosed in the evidence, there is no cross examination on this aspect on behalf of the petitioner. There is no contrary evidence adduced by the

petitioner. It appears to the court that the petitioner was somehow aware of the rate of rent in the market, therefore, the award cannot be interfered with. The decisions referred by the petitioner are not applicable to the facts of the present case as in those cases, no evidence was produced by the claimant.

40. I agree with the argument of Mr. Sandeep Sethi, learned Senior counsel that Mr. Vikram Bakshi, Managing Director of the petitioner company is aware about the actual rent in the Khan Market. Even he lives in Jor Bagh. He is running 117 restaurants in prime areas of India. He has real estate business also. Therefore, it is not believable that the petitioner is not aware about the market rent of the Khan Market area. Mr. Sethi submits that in fact having knowledge about the market rent, therefore, the petitioner did not produce any evidence, otherwise, it was very easy for the petitioner to produce the evidence contrary to the statement made by the respondent''s witness.

41. The learned Arbitrator while exercising his discretion to my mind has given valid reasons after having considered the entire evidence. It is clear to me while exercising jurisdiction u/s 34 of the Act, the Court= cannot substitute its opinion with that of the Arbitrator particularly the facts and circumstances of the present case as this court is not sitting as a court of appeal to re-assess the material, evidence and terms of the contract. To my mind, the learned Arbitrator has taken his view which is quite plausible and it would not proper to interfere with the award of the Arbitrator on this aspect.

42. It is settled law that the scope for interference by the Court with an award passed by the arbitrator is very limited. The Court, while hearing objections against the arbitral award, is not sitting as a Court of appeal. In this context, following judgments are cited:

(i) In Puri Construction Pvt. Ltd. Vs. Union of India (UOI), , the Supreme Court held that a Court while examining the objections taken to an award is not required to examine the correctness of the claim on merits and the scope is very limited.

(ii) The Supreme Court in Indu Engineering and Textiles Ltd. Vs. Delhi Development Authority, , has held that:

(a) ''the award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate facts''.

(b) ''The fact that the decision of arbitrator is erroneous does not make the award bad on its face so as to permit it being set aside''.

(c) ''An arbitrator is a judge appointed by the parties and as such the award passed by him is not to be lightly interfered with''.

(d) ''Reasonableness of the reasons given by the arbitrator in making his award cannot be challenged''.

(iii) The Supreme Court in State of U.P. Vs. Allied Constructions, in para 4 held that -

(a) ''the Court is precluded from reappearing the evidence''.

(b) ''Once it is found that the view of the arbitrator is a plausible one, the Court will refrain itself from interfering''.

(iv) In Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another, , the Apex Court held in para 4 and 5 that -

If the Arbitrator has acted within the terms of his submission and has not violated any rules of natural justice, Courts should be slow indeed to set aside the award. The Arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence, the court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award of an arbitrator.

(v) In Hindustan Tea Co. Vs. K. Sashikant Co. and Another, , the Supreme Court in para 2 held as under:

Award is not open to challenge on the ground that Arbitrator has reached a wrong conclusion or has failed to appreciate the facts. Under the law, the Arbitrator is made the final arbiter of the dispute between the parties.

(vi) In Coimbatore District Podu Thozillar Samgam Vs. Balasubramania Foundry and Others, , the Apex Court in para 7 held as under:

Civil Courts cannot exercise appellate powers over the decision of the Arbitrator. Wrong or right, the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievances in the manner provided by the Arbitration agreement. Court cannot interfere with the award on the ground that the decision appeared to it to be erroneous. The civil courts do not exercise appellate powers over the decision of the arbitrator.

(vii) NTPC Limited Vs. Marathon Electric Motors India Ltd.,

17. The scope of judicial interference against the arbitral award which has time and again came up before the courts for consideration, wherein the view of the Courts including this Court are consistent that the Court while deciding Section 34 objection cannot culminate into the appellate Court to decide every legal and factual issue. It is only those errors of patent illegality, without jurisdiction or biasness or against the public policy where in the awards seems to be unsustainable, the Courts are empowered to interfere and not in all other cases to correct errors committed by the Arbitrator.

(viii) In M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro, , their Lordships of the Apex Court referring

to various other judgments of the Apex Court, have held that the Court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or not the Arbitrator has committed an error of law. The Court as a matter of fact, cannot substitute its own evaluation and come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties. (Emphasis Supplied).

(ix) It was further held by the Supreme Court in M/s. Arosan Enterprises Ltd. Vs. Union of India and Another, that the ''Courts have no right or authority to interdict an award on a factual issue''. It was held in para 37 and 38 thereof as under:

The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law...The Courts have no right or authority to interdict an award on a factual issue.

.....reappraisal of evidence by the Court is unknown to a proceeding u/s 30 of the Arbitration Act.

The umpire as a sole arbitrator was not bound to give a reasoned award and if in passing the award, he makes a mistake of law or of fact that is no ground for challenging the validity of the award.

The general rule is that, as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is good on its face, object to his decision, either upon the law or the facts.

(x) In Union of India Vs. Devidas Construction, , it was held that Arbitrator is free to decide the matter on his own interpretation of the terms of the agreement.

43. In view of settled law on this aspect and the finding arrived by the Arbitral Tribunal, it is evident beyond any doubt that the petitioner has failed to produce any contrary evidence to the claim made by the respondent who could depose before the Arbitral Tribunal that the market rent of the area is not Rs. 15 lack but actually the same is less than the claim made by the respondent. In the absence of evidence by the petitioner, the evidence of the respondent was rightly accepted by the learned Arbitrator. Conclusion

44. Consequently, the Award is upheld as far as rejection of the petitioner''s counter-claim is concerned. The petitioner is directed to handover the vacant possession of the suit property to the respondent within a period of eight weeks from the date of this order.

With regard to Award passed on mesne profits, I find no error on the findings but considering the overall facts and circumstances of entire matter and also by taking judicial notice of rate of rent prevalent in the market, it is clarified that instead of Rs. 13 lack per month, the petitioner is directed to pay to the respondent mense profits

at the rate of Rs. 11 lack from the date of expiry of the lease deed i.e. 11th February, 2010 upto the actual date of the handing over the vacant and peaceful possession of the premises as this court feels proper and reasonable rate of rent. The rate of interest is also reduced to 12% p.a. instead of 15% p.a. as awarded by the Arbitral Tribunal.

45. The objections of the petitioner are dismissed accordingly as this court finds no error having been committed by the learned Arbitrator. The petitioner is directed to deposit the decreetal amount in court within a period of six weeks from today. No costs.