

(2008) 12 DEL CK 0138

Delhi High Court

Case No: OMP No. 9 of 2007

Mr. Arun Kumar Jain and
Another

APPELLANT

Vs

DDA

RESPONDENT

Date of Decision: Dec. 18, 2008

Acts Referred:

- Arbitration Act, 1940 - Section 2, 34
- Arbitration and Conciliation Act, 1996 - Section 34, 42
- Court Fees Act, 1870 - Section 7
- Suits Valuation Act, 1887 - Section 7, 8, 9

Hon'ble Judges: Hima Kohli, J

Bench: Single Bench

Advocate: Rahul Gupta, for the Appellant; Rajiv Bansal and Prashant Mehra, for the Respondent

Judgement

Hima Kohli, J.

The present petition is filed by the petitioners u/s 34 of the Arbitration & Conciliation Act, 1996 (in short "the Act") against an award dated 21.11.2006 made by the Sole Arbitrator in respect of the disputes arising between the parties.

2. In a nutshell, the facts of the case are that the petitioners herein filed a suit in this Court in the year 1986, against the DDA praying inter alia for permanent injunction for restraining the DDA from cancelling the Perpetual Sub-Lease Deed dated 12.9.1983 of premises bearing No. D-1083, New Friends Colony, New Delhi-110065. The DDA entered appearance in the aforesaid suit and filed an application u/s 34 of the Arbitration Act, 1940 seeking stay of the proceedings in the suit on the ground that the suit was not maintainable as there was an arbitration clause governing the parties. During the pendency of the aforesaid suit, as the pecuniary jurisdiction of this Court was enhanced to above Rs. 20.00 lacs, the suit was transferred to the

District Court.

3. Vide order dated 27.10.2001, the learned Additional District Judge, Delhi, decided the application filed by the DDA seeking stay of the suit proceedings by holding that there was an arbitration clause governing the parties and as there were disputes between the parties, the same would be resolved by sending the matter to the Arbitrator. As a result, the suit instituted by the petitioners was disposed of with directions to the DDA to appoint a Sole Arbitrator in accordance with the terms and conditions of Clause 8 of the Lease Deed of the premises, subject matter of the suit. Pursuant thereto, the parties appeared before the learned Arbitrator. The respondent/DDA filed its claims for payment of Rs. 18,61,630/- against the petitioners herein. The break-up of the aforesaid amount as claimed by the respondents is as below:

Details of claims/liabilities against the property No. D-1083, New Friends

S. No.	Description of Dues	Amt. Due	Amt. Paid	Difference (+) Excess (-) Outstar
1.	50% UEI as already demanded vide this office letter dated 2.7.86	Rs. 4,40,393.00	Nil	(-)Rs. 4403
2.	Int. on above amt.@18% p.a. w.e.f. 1.8.86 to 3.3.01 & @ 12.5% p.a. w.e.f. 1.4.01 to 30.11.2005. (It may be noted clearly, that the interest on belated payment shall be recovered till the date of payment to this effect.	Rs. 1419533.00	Nil	(-) Rs. 14195
3.	Conversion charges	Rs. 2,39,275.00	Rs. 255520/-	(+) Rs. 16,245.0
4.	Ground Rent	Rs. 5659.00	Rs. 2314.77	(-)Rs. 3,34

(Subject to
payment of int. till
the dt. Of payment)

5.	E.G.R.	Rs. 7761.00	Nil	(-)Rs. 7,761.00
6.	Composition fee	Rs. 6844.00	Nil	(-)Rs. 6,844.00
Total of Outstanding Dues				Rs. 18,61,633.00

4. In the written statement, filed by the petitioners to the statement of claims filed by the respondent/DDA, the petitioners stated that they were not liable to pay any amount to the respondent/DDA towards claims No. 1 & 2 on account of unearned increase, interest thereon and conversion charges and that they were only liable to pay the amounts claimed under claims No. 4, 5 & 6. Subsequently, at the time of filing written submissions, the petitioners reiterated their stand as taken in the written statement and requested the learned Arbitrator to dismiss the claims of the respondent/DDA towards unearned increase and to issue directions to the DDA to convert the property from lease hold to free hold, in favour of the petitioners.

5. The arbitral proceedings culminated in an award dated 21.11.2006, whereunder the learned Arbitrator came to a conclusion that the claim of the respondent/DDA regarding unearned increase and interest thereon was justified and that the petitioners herein were not entitled for conversion of the property from lease hold to free hold, unless they made the payment of unearned increase and interest thereon as raised by the DDA. The learned Arbitrator upheld the claims of the respondents/DDA. Aggrieved by the said award, the petitioners have preferred the present petition.

6. Notice was issued on the present petition, vide order dated 8.1.2007. Appearance was entered on behalf of the respondents on 2.3.2007 and a reply was filed to the petition. A preliminary objection was raised in the reply filed by the respondents/DDA that this Court does not have the pecuniary jurisdiction to entertain the present petition on the ground that the same is barred u/s 42 read with Section 2(e) of the Act. Vide order dated 16.5.2008, the statement made on behalf of the respondents/DDA was recorded to the effect that the present petition is not maintainable in this Court and that the pecuniary jurisdiction is wanting inasmuch as under the award, a sum below Rs. 20.00 lacs has been awarded in favour of the respondents/DDA, which is below the pecuniary jurisdiction of this Court.

7. Counsel for the petitioners disputes the aforesaid stand taken on behalf of the respondent/DDA. He states that it is not just the amount awarded under the award

that has to be taken into consideration for deciding the pecuniary jurisdiction, but also the fact that the value of the suit property is far higher than the lower limit of the pecuniary jurisdiction fixed for this Court. He relies on the provisions of Section 2(e) of the Act which defines the word, "Court". He submits that the meaning of the word, "Court" is considered as being the principal Civil Court of original jurisdiction which includes the High Court in exercise of its ordinary civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of arbitration, if the same had been the subject matter of a suit. He, therefore, submits that as the provisions of Sections 8 & 9 of the Suits Valuation Act, 1987 read with Section 7(iv) of the Court Fees Act, 1870 give a right to the petitioner to place any valuation that he likes on the relief he seeks, the Court has no power to interfere in such a valuation, as assigned by the petitioner and a similar parity ought to be drawn in respect of proceedings u/s 34 of the Act. In this regard he relies on the following judgments:

1. [Sheila Devi and Others Vs. Kishan Lal Kalra and Others](#), ;
2. [Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal](#), ; and
3. [Jagannath Amin Vs. Seetharama \(dead\) by LRs. and Others](#), .

8. There is no quarrel with the aforesaid proposition as stated by the counsel for the petitioners that so far as suits are concerned, the question of valuation of the relief sought in a plaint, is left to the plaintiff who is dominus litis and ought to be ordinarily accepted by the Court. However, in the present case, one has to examine the pecuniary jurisdiction of this Court in the context of the claims made. The respondent/DDA has quantified its claim at Rs. 18,61,630/-. Pertinently, the learned Arbitrator has not awarded any interest on the aforesaid amount awarded in favour of the respondent/DDA. The contention of the learned Counsel for the petitioners is that it is a case where the claim of the petitioners for conversion of their property from lease hold to free hold is also to be taken into consideration for the purpose of valuation of the relief. It is stated that in this case, the relief sought is in respect of a property, which has a value above Rs. 20.00 lacs and as the option to value the relief is with the petitioners, the same is also liable to be taken note of while deciding the issue of pecuniary jurisdiction.

9. It is relevant to note that a perusal of the impugned award shows that had the claims made by the respondent/DDA for payment of the amounts claimed towards unearned increase so as to carry out the mutation in favour of the petitioners and for payment towards conversion charges of the suit property to free hold, been rejected, a natural consequence thereto would have been the entitlement of the petitioners to claim mutation and conversion of the property into free hold, in their favour, without paying unearned increase, interest thereon and conversion charges to the DDA. Hence the said relief as sought by the petitioners, cannot be treated as an independent claim and valued separately for the purposes of considering the pecuniary jurisdiction of this Court. No separate tangible relief can be stated to have

been sought by the petitioners before the learned Arbitrator, except for turning down the claims of the respondent/DDA as quantified by it. The value of the suit property has therefore, no relevance for the purpose of deciding the issue of pecuniary jurisdiction of this Court to entertain the present petition.

10. It is also relevant to note that as already recorded hereinabove, the petitioners had instituted a suit in the year 1986, for the relief of mandatory injunction and chosen to value it at a certain figure below Rs. 20.00 lacs. So, it has to be held that the petitioners had exercised their right to value the suit as they deemed fit at that stage. That in the year 1992, the respondent/DDA came out with a policy for conversion of lease hold properties into free hold, only means that the petitioners could have enlarged the relief sought in the suit by amending the same and/or valuing the same additionally. This was however not done, as a perusal of the record shows that the application filed by the respondent/DDA u/s 34 of the Arbitration Act, 1940 was pending disposal. In these circumstances, it would be futile for the petitioners to claim any benefit by seeking parity with a civil suit for the purposes of deciding the maintainability of the present petition in this Court.

11. This Court is therefore of the opinion that in view of the claims made before the learned Arbitrator and the relief granted in the impugned award, this Court does not have the pecuniary jurisdiction to entertain the present petition. Accordingly, it is directed that the present petition be transferred by the Registry to the District Court for further proceedings.

12. The parties are directed to appear before the learned District Judge on 28th January, 2009 for further proceedings. Registry is directed to ensure that the file of this case is forwarded to the District Court well before the date fixed.