



2025:DHC:846-DB



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

Date of decision: 11.02.2025

+ **FAO (COMM) 37/2025 & CM APPL. 6442-45/2025**

P LAKSHMI AND ORSAppellants

Through: Mr.Prateek Dwivedi,
Mr.Yasharth Kant, Mr.Suryash
Kishan Rozdan, Ms.Sonal,
Adv.

versus

M/S JUBILANT FOODWORKS LTD AND ANR.

.....Respondents

Through: Mr.Gyanesh Bhardwaj, Adv.
for R-1.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR**

NAVIN CHAWLA, J. (Oral)

CM APPL. 6443/2025 - exp.

1. Allowed, subject to all just exemptions.

CM APPL. 6444/2025 & CM APPL. 6445/2025 -delay.

2. These applications have been filed by the learned counsel for the appellants seeking condonation of delay in filing and re-filing of the appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act').

3. With consent of the learned counsel for the respondent, the delay is condoned. The applications are allowed.

FAO(COMM) 37/2025 & CM APPL. 6442/2025



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4. This appeal has been filed by the appellant challenging the Order dated 12.08.2024 passed by the learned District Judge (Commercial Court-07) (Digital), South-East District, Saket Court, New Delhi in OMP(COMM) 31/2022, titled '**P. Lakshmi & Ors. v. M/s Jubilant Foodworks Ltd and Anr.**', dismissing the application filed by the appellant herein under Section 34 of the A&C Act.

5. The appellant had filed above application challenging the Arbitral Award dated 30.11.2019 passed by the learned Sole Arbitrator directing the appellant to pay to the respondent, Rs. 34,06,787/- on account of loss towards fixtures and fittings, Rs. 82,68,877/- towards expenses for relocation of restaurant, Rs. 15,76,184/- towards security deposit, and Rs. 2,62,512/- towards arbitration fee, for the alleged breach of the Lease Agreement dated 16.09.2009 executed between the parties.

6. The learned counsel for the appellant submits that the cause of action for invoking the arbitration had arisen in favour of the respondent when, on 05.07.2012, the respondent was dispossessed from the lease premises on basis of proceedings initiated by the Syndicate Bank under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, 'SARFAESI Act'). He submits that any correspondence exchanged thereafter between the appellant and the respondent cannot extend the period of limitation. In support of his plea, he placed reliance on the Judgment of the Supreme Court in **M/s B and T AG v. Ministry of Defence**, (2024) 5 SCC 358.



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7. He submits that the learned Sole Arbitrator has erred in holding that the period of limitation can extend only on the basis of the correspondence exchanged between the parties. He submits that the learned District Judge has also erred in holding that the arbitration had been invoked by the respondent within the period of limitation as the appellant could not have taken advantage of its own wrong. He submits that this concept has no relevance in determining the period of limitation. He submits that the period of limitation shall commence from the first date when the cause of action arose, that is, when the respondent was evicted from the lease premises.

8. We have considered the submission of the learned counsel for the appellant, however, find no force in the same.

9. In the present case, the parties, that is, the appellant and the respondent had entered into a Lease Agreement dated 16.09.2009, whereby the appellant had given on lease, property bearing shop No. 3, 4 and 5, situated at 8-1-329/1, My Homes Rainbow Apartments, Survey No. 15(P), Orange Block, Tolichowk, Shakipet Village, Hyderabad to the respondent. The lease was for the period of 15 years commencing from 25.09.2009 to 24.09.2024.

10. Admittedly, the appellant had taken a credit facility from the Syndicate Bank, Tolichowk Branch, Hyderabad, which took possession of the leased premises from the respondent on 05.07.2012. The respondent served legal notices dated 10.09.2012, 20.03.2014 and 30.12.2014 to the appellant, calling upon the appellant to pay damages and losses suffered by it in terms of the investment made and loss of



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business, alleging breach of terms of the lease deed. The respondent also challenged the notice issued by the Syndicate Bank before the Debt Recovery Tribunal ('DRT'). The appellants also challenged the said notice in form of Securitization Application No. 316/2012. On dismissal of the applications, the Syndicate Bank issued a notice dated 20.10.2014 to the respondent asking it to remove its remaining movables that were lying in the leased premises and granted time till 05.11.2014 to the respondent to comply. It is on receipt of the said notice, that the respondent issued another notice dated 30.12.2014 to the appellant seeking indemnification of the damages suffered by it due to closure of its leased premises. The respondent also invoked the Arbitration Agreement contained in Clause 8.2 of the Lease Deed *vide* a notice dated 08.09.2015.

11. The learned counsel for the appellant, as has been recorded hereinabove, has contended that the cause of action invoking arbitration had arisen in favour of the respondent with the possession notice dated 05.07.2012 issued by the Syndicate Bank. He submits that as the arbitration was invoked only on 08.09.2015, the same was beyond the period of limitation as prescribed in Article 137 of The Schedule to the Limitation Act, 1963. He submits that mere issuance of the notices in between, would not be sufficient to extend the period of limitation. He further submits that the period of limitation for invoking the arbitration is same as for filing of the suit where the parties do not exercise their rights for invoking arbitration agreement between them or where there is no arbitration clause.



12. While there can be no cavil to the proposition of law that mere issuance of notices would not extend the period of limitation, in the present case, however, what is also relevant is that after the issuance of the notice by the Syndicate Bank, the appellant and the respondent both challenged the said notice before the DRT by filing independent proceedings. They came to be dismissed only in 2014, whereafter the Syndicate Bank issued another notice dated 20.10.2014 calling upon the respondent to remove all its goods from the leased premises. The cause of action, therefore, arose in favour of the respondent only on issuance of the said notice and when in compliance thereto, the respondent vacated the leased premises. The learned Arbitrator, in the Award dated 30.11.2019, has also taken note of the above position by observing as under:-

“The claimant was issued notice dated 20/10/2014 (Ex. CW-1/12) by the Syndicate Bank to remove its remaining movables lying in the premises. In terms of the said notice, the Syndicate Bank decided to proceed with the sale of the premises to recover its outstanding loan amount and the claimant was granted time upto 05/11/2014 to remove its movables to avoid disposal of the same by the Bank. It is on receipt of the said notice that the claimant issued a notice dated 30/12/2014 (Ex. CW-1/5 colly.) to the respondents to indemnify it as had been agreed under the lease deed. The respondents, however, according to the claimant in terms of the reply dated 12/01/2015 (Ex. CW-1/6 colly.) concocted a false story stating that the claimant itself was liable for its grievances as it cooperated with the Syndicate Bank in handing over the possession of the premises.



The above facts and circumstances evidently show that the claimant had not been dormant in agitating its claim for protecting itself from being evicted from the demised premises. It had indeed filed securitization application No.316/2012 before the learned Debt Recovery Tribunal at Hyderabad seeking its protection from being evicted being a tenant of the demised premises. The said application was, however, dismissed by holding that the mortgage created in favour of the secured creditor in February, 2008 was earlier to the lease deed entered into between the parties on 16/09/2009.

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“The case law, which has been noticed, would show that when the parties are in negotiations with respect to claims of the other, the same would not by itself furnish a cause of action to a party to invoke arbitration. The principle that is borne out is that the parties are not precluded from carrying out negotiations for the settlement of their dispute without resorting to arbitration proceedings. It is only when there is complete denial on the part of one of the parties to the claim or claims of the other that would furnish a cause of action on the party raising the claim to seek arbitration. Therefore, it cannot per se be said that on mere vacating of the demised premises by the claimant on 05/07/2012 the period of limitation for invoking the appointment of an arbitrator started. The claimant admittedly did issue notices on 10/09/2012, 12/03/2014 and 30/12/2014 (Ex. CW-1/5 colly.) seeking indemnification of the damages suffered by it due to the breach of the terms and conditions of the lease deed which had been committed by the respondents. The respondents replied to the notices on 16/10/2012 and 12/01/2015 (Ex. CW-1/6 colly.). In terms of the reply dated 16/10/2012 the respondents through their learned counsel denied all the



allegations made on behalf of the claimant. It was stated that the respondents were not liable to pay any damages or any amount as claimed by the claimant in its notice as addressee No.5 of the notice of the claimant i.e. the Syndicate Bank had taken possession under the guise of the order of the Hon'ble Chief Metropolitan Magistrate, Hyderabad illegally and without the knowledge of the respondents. It was also stated that the respondents were contesting the case against Syndicate Bank to get back the possession of the property i.e. the demised premises and they also reserved their right to claim damages, costs etc. against the Syndicate Bank. In terms of the reply notice dated 12/01/2015, it was inter alia submitted on behalf of the respondents that the claimant having determined the lease and handing over possession of the leased premises, it would not be entitled to enter the premises again under the lease deed and would be liable to pay damages and other expenses like maintenance charges, electricity bills to the respondents.

Therefore, admittedly there was exchange of correspondence between the parties through their learned counsel. Besides, the claimant also made efforts to get the possession of the demised premises restored to it by filing Securitization Application No.316/2012 before the learned Debt Recovery Tribunal at Hyderabad. The same was, however, dismissed on 12/07/2013 (Ex. CW-1/11). The claimant thereafter through its Lawyers' notice dated 08/09/2015 (Ex. CW-1/14) invoked arbitration and proposed the appointment of a former learned Judge of the Hon'ble Delhi High Court as an arbitrator. It called upon the respondents to concur to the said appointment within 30 days from the receipt of the said notice. The respondents as per their e-mail dated 24/09/2015 (Ex. CW-1/15) acknowledged the receipt of the



claimant's notice dated 08/09/2015 but disagreed to the appointment of an arbitrator. It was denied that there was any arbitrable dispute to be referred to the arbitrator in terms of clause 8.2 of the lease deed. It was stated by the respondents in the reply that since the claimant had unilaterally determined the lease, it had no claim against the respondents and hence the lease deed including the arbitration clause ceased to exist. Besides, the proposal for the appointment of a sole arbitrator was not acceptable to the respondents and they had no faith in the sole arbitrator appointed by the claimant.

In the circumstances, it is to be noticed that negotiations did take place between the parties and it is primarily when the respondents vide their reply notices dated 16/10/2012 and 12/01/2015 denied their liability to pay the damages; besides, the claimant also failed to get back possession of the demised premises by filing a securitization application before the learned Debt Recovery Tribunal that it invoked arbitration by notice dated 08/09/2015. The respondents, however, in terms of their reply dated 24/09/2015 (Ex. CW-1/15) to the notice of the claimant dated 08/09/2015 (Ex. CW-1/14) completely disagreed for arbitration that the dispute arose and the petition for appointment of an arbitrator was filed before the Hon'ble High Court on 28/03/2017. In the said circumstances, it cannot be said that the claims made by the claimant are barred by limitation as the arbitration was not invoked within the period of three years from the date the demised premises were vacated by the claimant. In fact, even from the initial denial by the respondents of their liability to pay damages by their reply notice dated 16/10/2012, the arbitration which was invoked by the claimant on 08/09/2015 cannot be said to be barred by limitation as



the petition for appointment of an arbitrator was filed before the Hon'ble High Court on 28/03/2017. In the facts and circumstances of the present case, it is to be held that the claims that have been raised by the claimant are within the period of limitation.”

13. While the learned counsel for the appellant is correct in his submission that mere exchange of correspondence or notice would not extend the period of limitation, at the same time, as noted hereinabove, the respondent had challenged the notice issued by the Syndicate Bank and it is only on the culmination of the said proceedings and on receipt of the final vacation notice dated 20.10.2014, that the cause of action to claim damages from the appellant finally ripened for the respondent. The Judgment of the Supreme Court in *M/s B and T AG* (supra), therefore, cannot come to the aid of the appellant herein.

14. The learned District Judge has also taken note of the said position in law while rejecting the application filed by the appellant under Section 34 of the A&C Act, noting as under:-

“42. In core of the dispute lies the breach of the lease agreement dated 16.09.2009. It is a bipartite agreement and Syndicate Bank is not a party to the said agreement. The dispossession at the hands of Syndicate Bank would not be a sufficient cause to construe that the respondent will never gain possession as the objector were well within their domain to bring corrections to the order of default which could have led the status quo ante to 05.07.2012. It is needed to be taken into account that the respondents made efforts by calling upon the objector and as stated specifically on refusal of objections



took recourse to addressing the breach by seeking enforcement. It is also needed to be taken note that while keeping the property mortgaged, gave no right to objector to commit default in payment to bank from it secured loan for its own benefit. The objector by no virtue or strength could have imagined the consequences of their default against the advantage drawn by them be suffered by a third party alien to any such arrangement. The pleas raised during the arguments, are suggestive of sheer brazenness with which the element of trust under the agreement is ignored. The objector cannot be permitted to take advantage of its own wrongs.

43. Moreover, the objector while raising the above plea conveniently claimed the proceedings of formal nature undertaken by respondent as 'correspondence'. The objector ignored that respondent filed the plea before DRT which does not fall in category of exchange of letters. Moreover, after the efforts for impleadment were rejected, the respondent was called upon to vacate fully by removing its articles in 2014 by bank, which was on strength of Court's order and authority and cannot be brushed off as mere exchange of letters and reminders. In which case, the law relied upon is not applicable to facts in hand."

15. It is settled law that the *cause of action* is a bundle of facts. Limitation is therefore, a mixed question of law and facts. Arbitrator is the final adjudicator of the facts and law and unless the appellant is able to make out a case within the limited exception as provided in Section 34 of the A&C Act and enunciated by the Supreme Court in a catena of judgments, the Arbitral Award cannot be interfered with only because the Court may form a different opinion on the given facts.



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16. Judging by the limited scope of jurisdiction that this Court exercises, we do not find any infirmity in the Impugned Award or the Impugned Order passed by the learned District Judge.

17. Accordingly, the appeal is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 11, 2025

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Click here to check corrigendum, if any