



2025:DHC:5045



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

% Judgment delivered on: 30.06.2025

+ **FAO 515/2019 and CM APPL. 55292/2019**

**NISHA MANGLA & ORS** .....Appellants

versus

**TVS LOGISTRICS SEVICES LTD** .....Respondent

**Advocates who appeared in this case**

For the Appellants : Ms. Kirti Mewar, Ms. Kirti  
Sharma, Mr. Ajay Lulla,  
Advocates.

For the Respondent : Mr. Jitendra Singh Bhasin, Mr.  
Manoj R. Sinha, Mr. Nishant  
Shokeen, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

**INTRODCUTION:**

1. The Appellants have filed the present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act'), being aggrieved by the order and judgment dated 30.09.2019 ('**Impugned Order**') passed by the ADJ, South, Saket District Court, New Delhi ('**District Court**'), whereby the Petition under Section 34 of the Act, filed by the Appellants, against the Arbitration Award dated 27.04.2015 passed by the learned Sole Arbitrator ('**Award**') was dismissed.

2. The Petition under Section 34 of the Act was filed by the Appellants on the ground that the arbitration clause was contained in an



agreement, which was neither registered nor properly stamped and, hence, the arbitration clause was inadmissible in evidence and the learned Arbitral Tribunal had no jurisdiction to pass the Award. However, the learned District Court rejected the argument on the ground that the same was not raised by the Appellants at the time of hearing of the Petition under Section 11 of Act. The learned District Court also rejected the other factual and legal objections raised by the Appellants in the Impugned Order.

**BACKGROUND:**

3. The Appellants are the absolute owners of the premises admeasuring about 47,500 sq. ft. carpet area being and situated at Khewat/Khata No. 147/159, Mustali No. 9, Killa No. 12/2 (3-16), 13(8-0), 14/1(0-8), 17/2(0-8), 18(8-0), 19/1(3-16), 19/3(0-2), 22/2(1-9), 23(8-0), 24/1/1(0-8), Mustatil No. 21 Killa No. 3/1 (3-15) on land admeasuring 38 kanal 2 Maria, Village Samparka, Tehsil Farukh Nagar, District Gurgaon, Haryana ('Licensed Premises').

4. The Respondent entered into a Leave & License Agreement dated 28.06.2007 ('Agreement') with the Appellants with respect to the Licensed Premises for the purpose of their commercial activities. The Respondent took the Licensed Premises for warehousing purposes for a period of 9 (nine) years, that is, from 01.08.2007 till 31.07.2016, which was further extendable by a mutual agreement between the Parties. The Respondent was liable to pay a monthly rent at ₹14.50 per sq. ft., and the monthly rent was to increase by 5% on completion of every one year, over the last paid rent.



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5. As per the Agreement, the Respondent was required to pay an interest free security deposit equivalent to 6 (six) months' rent in advance ('**Security Deposit**') along with the rent for the 1<sup>st</sup> (first) month. The Respondent was required to regularly and punctually pay the electricity bills for the actual use of electricity in the Licensed Premises and handover the original copy of the said bills to the Appellants.

6. As per the Agreement, the Respondent deposited an amount of ₹41,32,500/- towards Security Deposit and ₹ 7,73,875/- towards 1 (one) month rent. Although, the Agreement was executed on 28.06.2007, the Respondent failed to take possession of the Licensed Premises till 30.09.2007. The Respondent kept on delaying the takeover of possession on some pretext or the other, and took over possession of the Licensed Premises only on 01.10.2007. On Respondent's plea, the Appellants agreed to implement the Agreement from October, 2007. The Respondent started paying the rent from October, 2007 onwards. As there was a lock-in period for 3 (three) years, the lock-in period was to expire on 30.09.2010.

7. A Notice dated 01.04.2010 was issued by the Respondent to the Appellants terminating the Agreement and stating that the vacant possession of the Licensed Premises shall be handed over on 01.07.2010. Reply to the said Notice was sent by the Appellants on 27.04.2010 apprising the Respondent that the lock-in period will be over on 30.09.2010. The Respondent sent a Rejoinder Letter on 04.05.2010 stating that the lock-in period started on 28.06.2007 and would end on 27.06.2010.

8. The Appellants then sent a Legal Notice dated 24.05.2010 to the Respondent calling upon the Respondent to pay rent for the months of



August and September 2007 if the Agreement became effective from 01.08.2007. The Appellants sent a second Legal Notice dated 08.06.2010 calling upon the Respondent to clear the electricity dues, which was followed by a third Legal Notice dated 21.06.2010 calling upon the Respondent to pay arrears of enhanced rent from February 2009 to April 2010 and obtain a No Dues Certificate from the Electricity Department.

9. The Appellants inspected the Leased Premises on 30.06.2010 and they found that half of the floor of the Licensed Premises had been badly damaged. Accordingly, the Appellants sent an email dated 30.06.2010 to the Respondent calling upon to repair to the damaged floor, arrears of the enhanced rent from February 2009 till April 2010, rent for the months of May and June 2010, rent for the lock-in period from July to September 2010 and the payment of electricity dues. The Appellants stated that total amount due any payable by the Respondent at that stage was ₹16,26,100/- after adjustment of the Security Deposit of ₹41,32,500/-

10. The Respondent failed to pay any dues as demanded by the Appellants and instead invoked the Arbitration Clause under the Agreement *vide* notice dated 22.09.2010. The Respondent approached this Court under Section 11 of the Act for appointment of the Sole Arbitrator and this Court *vide* order dated 16.11.2011, appointed the Sole Arbitrator to adjudicate the disputes between the Parties.

11. The Respondent filed the Statement of Claim before the learned Arbitral Tribunal with prayer to declare that the demands raised by the Appellants *vide* email dated 30.06.2010 were illegal and sought the refund of the remaining Security Deposit of ₹ 20,65,232/- with interest @ 18% per annum from 01.07.2010 till payment along with the costs of arbitration. The Respondent adjusted the rent of ₹ 7,57,791/- for the



month of July 2010 towards the repair works claimed to have been carried out the Respondent in the Licensed Premises.

12. The Appellants filed Statement of Defence denying the claim of the Respondent along with a counter claim seeking a declaration that the lock-in period started from October 2007 and ended on September 2010. They also sought ₹16,26,100/- after deducting the Security Deposit of ₹41,32,500/- as under:

<b>Payment Head</b>	<b>Amount</b>
Arrears of enhanced component of rent @ 5% from February, 2009 till April, 2010	₹ 6,91,919/-
Arrears of rent from May, 2010 to September, 2010 @ Rs. 7,59,100/- p.m.	₹ 37,95,000/-
Repair Charges for 23,750 sq. ft. @ Rs.50 per sq. ft.	₹ 11,87,500/-
Arrears of electricity charges	₹ 84,181/-
<b>Total Amount</b>	<b>₹ 57,58,600/-</b>
Less: Security Deposit	₹ 41,32,500/-
<b>Total Amount Payable</b>	<b>₹ 16,26,100/-</b>

13. The Respondent filed Rejoinder and Reply to the Counterclaim before the learned Arbitral Tribunal denying the averments in the Statement of Defence and specifically denied that the lock-in period was up to September 2010 or that the Respondent was liable for ₹16,26,100/- for the repair work or arrears of electricity charges. It was submitted by the Respondent that the Security Deposit was refundable at the time of the handing over the possession of the Licensed Premises or upon termination of the Agreement and as the Appellants had failed to refund, they were liable to refund the Security Deposit with interest @ 18% per annum.



14. The learned Arbitral Tribunal after considering the oral and documentary evidence passed the Award with the following findings:

- a. The actual physical possession of the Licensed Premises was handed over / taken over on 01.10.2007 although the Agreement was executed on 28.06.2007.
- b. The Agreement was compulsorily required to be registered under the Transfer of Property Act, 1882 and Registration Act, 1908.
- c. As the Agreement was not registered, it is hit by Section 49 of the Registration Act, 1908 and, therefore, it would not affect the Licensed Premises and cannot be received as evidence of the transaction contemplated under the Agreement affecting the Licensed Premises. Hence, the concept of lock-in period was not applicable, and the Respondent had option of terminating or vacating the Licensed Premises like a month-to-month tenancy. Accordingly, the date for vacating the Licensed Premises cannot be related to the lock-in period.
- d. The Parties by mutual discussion had reduced the rent and the Appellants accepted the same. Hence, the Appellants had no right to claim the enhancement of the rent.
- e. Since the Respondent had not paid the rent for May and June 2010, the Appellants were at liberty to adjust the same from the Security Deposit.
- f. In absence of any documentary evidence in support of amount spent for repairs, the Appellants were held entitled to deduct one month rent from the Security Deposit and the



Respondent was liable to pay the electricity charges till handing over the possession of the Licensed Premises.

- g. Accordingly, the Counterclaim of the Appellant was rejected and the Respondent was awarded refund of the remaining Security Deposit after deduction of rent for 3 (three) months of May, June and July 2010 amounting to ₹20,65,232.75/- along with interest @ 18% per annum from 01.08.2010 till date of realisation.

15. The Appellants challenged the Award before this Court filing objections under Section 34 of the Act by way of O.M.P 416/2015. This Court *vide* order dated 26.04.2016 transferred the matter to the District Court in view of the change in the pecuniary jurisdiction of this Court.

16. *Vide* the Impugned Order, the learned District Court dismissed the objections under Section 34 of the Act preferred by the Appellants by arriving at a conclusion that the Award has been passed in a just and reasonable manner. Impugned Order observes that:

- a. No objection was raised with regard to non-stamping of the Agreement at the stage of the appointment of the Arbitrator under Section 11 of the Act.
- b. The Appellants did not challenge the jurisdiction of the learned Arbitral Tribunal during the arbitration proceedings on the ground that the Agreement was unstamped and hence the arbitration agreement cannot be acted upon.
- c. The Appellants wilfully participated in the arbitration proceedings and are estopped from challenging the jurisdiction of the learned Arbitral Tribunal after the Award has gone against the Appellants.



- d. The learned Arbitral Tribunal rightly observed that the Agreement was unregistered and, thus, could not have been looked into and the tenancy was month-to-month tenancy.
- e. The learned Arbitral Tribunal was correct in not extending the benefit of the lock-in period and, accordingly, the rent for the months of August and September 2010 was rightly denied.
- f. As regards the arrears of enhanced rent, there was an agreement between the parties to reduce the rent, and no demand was raised by the Appellants till notice of termination was served. Hence, the learned Arbitral Tribunal rightly observed that the Appellants were entitled to deduct the rent for months of May to July 2010 at the reduced rates as there was a novation of the Agreement.
- g. The payment of electricity raised by the Appellant was accepted by the learned Arbitral Tribunal as any electricity charges if not paid by the Respondent up to 30.06.2010 can be deducted from the Security Deposit.
- h. As regards the objection pertaining to repair of the Licensed Premises, the Appellants did not place any documents on record to prove the loss and, thus, the relief to recover damages was rightly denied by the learned Arbitral Tribunal.
- i. The learned Arbitral Tribunal rightly allowed the claim of the Respondent for refund of the Security Deposit after deduction of the claim towards unpaid rent raised by the Appellants.



- j. Scope of the Section 34 of the Act is limited, and the Award cannot be challenged unless it is wholly perverse.
- k. The Award is based upon the evidence, which cannot be re-appreciated as none of the findings was perverse. Accordingly, the Petition under Section 34 of the Act was dismissed and the Award was sustained.

17. Being aggrieved by the Impugned Order, the Appellants have preferred the present Appeal.

**SUBMISSIONS ON BEHALF OF THE APPELLANTS:**

18. Ms. Kirti Mewar, learned Counsel for the Appellants has submitted that the Agreement, which contains the arbitration clause was not stamped and as such the same was not enforceable.

19. The learned Counsel for the Appellants submitted that the Appellants sent a reply dated 27.04.2010 to the Respondent's Legal Notice dated 01.04.2010, whereby the Appellants clarified the position that the lock-in period of 3 (three) years started from October, 2007 and was to finish on 30.09.2010, and if the Respondent wished to vacate the premises before the expiry of 3 (three) years lock-in period, the Respondent was liable to pay the rent for the entire 3 (three) years. However, the Respondent failed to pay the rent for the month of July 2010 and for the remaining lock-in period of August and September 2010.

20. The learned Counsel for Appellants submitted that the damages caused to the Licensed Premises were not normal wear and tear and the Respondent was bound to get the same repaired. However, the Respondent failed to do so and the Appellants were constrained to get the said repairs done themselves as the Appellants were facing financial



losses as the Licensed Premises could not be rented out to any other person and the Respondent deprived the Appellant to earn the legal right to earn the rent.

21. The learned Counsel for the Appellants submitted that the Agreement was inadequately stamped as the stamp duty payable on the same is ₹3,03,781.86/-. The Appellants further submitted that as per Article 35 of the Stamp Act, as applicable to Haryana, the stamp duty was to be calculated on the average annual rent payable for the Licensed Premises. Accordingly, the average annual rent payable for the Agreement would be ₹1,01,26,061.60/-.

22. It was further submitted for the Appellant that the Award was perverse as the learned Arbitral Tribunal looked into the Agreement for collateral purposes. If the Agreement was inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and the use of document for the purpose of proving an important clause would not using it as a collateral purpose. For this submission, the decision in *K. B. Saha and Sons Private Limited vs. Development Consultant Limited* (2008) 8 SCC 564 was relied upon.

23. It was submitted that Clauses 6 and 8 of the Agreement, which provided about the repayment of Security Deposit and rate of interest of 18% could not have been relied upon by the learned Arbitral Tribunal even for collateral purposes.

24. In view of the above, it was prayed that the present Appeal be allowed or in the alternative, the rate of interest be reduced.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT:**

25. Mr. Jitendra Singh Bhasin, learned Counsel for the Respondent has submitted that the Respondent sent a reply dated 14.05.2010, thereby



denying that the lock-in period of 36 months started from 01.10.2007 and ended on 30.09.2010. The Respondent stated that the lock-in period started from the date of the Agreement, that is, 28.06.2007 and would end on 27.06.2010.

26. The Respondent submitted that there was no objection for appointment of the learned Sole Arbitrator as per the clause of the Agreement as it was agreed by the Parties that the Appellants had a right to deduct the arrears of rent and other charges such as damages from the Security Deposit by issuing a notice. The said notice was served by the Appellants on 21.06.2010.

27. The Appellants admitted that the Demand Draft of the balance amount of the Security Deposit will be handed over to the Respondent after receiving the No Dues Certificate from the electricity department by the Appellants. Even after taking the possession of the Licensed Premises, withholding the balance amount of Security Deposit after deducting the arrears of rent and electricity bill as well as damages by the Appellant was unlawful.

28. The Respondent submitted that the damages caused to the Licensed Premises were not normal wear and tear and the Appellants was bound to get the said repairs and however, failed to do so.

29. Hence, it was submitted that the present Appeal deserves to be dismissed.

### **ANALYSIS AND FINDINGS:**

30. It is settled position of law that the scope of the Appeal under Section 37 of the Act is very limited, and this Court cannot undertake independent assessment of the evidence and merits of the award. The



jurisdiction of this Court under Section 37 of the Act is circumscribed to the extent of only ascertaining whether the exercise of power under Section 34 of the Act has been to the extent of the scope of provision. The Appeal under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34 of the Act.

31. If the view taken in the award after consideration of the evidence and material placed on record is a possible and a reasonable view, the Petition under Section 34 of the Act ought to be dismissed. In such a case, the Appeal under Section 37 of the Act cannot re-appreciate the evidence to come to a contrary finding as the Appeal is against the order passed under Section 34 of the Act and not against the Award passed by the learned Sole Arbitrator.

32. It is well settled that the Court ought not to interfere with the arbitration award only because there is a possibility of an alternative view on facts or interpretation of contract. If the Award has taken a plausible view, and the Petition under Section 34 of the Act has been dismissed, the Appeal under Section 37 of the Act should not interfere with the Award and the order under Section 34 of the Act.

33. In this instant case, the learned Arbitral Tribunal was appointed by this Court under Section 11 of the Act in the Petition filed by the Respondent. The Appellants did not object to the said Petition on the ground that the Agreement, which contained the arbitration clause, was unstamped and, thus, could not have been acted upon.

34. The Appellants since participated in the proceedings wilfully and the jurisdiction of the learned Arbitral Tribunal was not challenged by the Appellants on the ground of non-stamping of the Agreement.



35. The learned Arbitral Tribunal has rightly held that notice of termination of Agreement was valid as lock-in period was applicable in view of Section 49 of the Registration Act, 1908.

36. The learned Arbitral Tribunal has also held that no enhanced rent was to be paid in view of the agreement between the parties for reduced rent after carefully considering the documentary and oral evidence. Hence, the Appellants were estopped from claiming arrears of enhanced rent from February 2009 because they themselves had agreed to reduce the rent. The Impugned Order has rightly observed that the Court under Section 34 of the Act has not powers to re-appreciate the evidence unless the finding the award is absolutely perverse or implausible.

37. The issue of payment of electricity dues raised by the Appellants was also accepted by the learned Arbitral Tribunal. Appellants have objected to the fact that obligation to produce original bills was put upon them while original bills were in possession of the Respondent. However, the same is not relevant as the Award allows the Appellants to deduct the amount of any unpaid electricity charges from the Security Deposit.

38. The Award is balanced as it allows the claim of the Respondent for refund of the Security Deposit after deduction of the claim towards unpaid rent raised by the Appellants. As the Respondents had fairly agreed to adjusting the rent for July 2010 from the Security Deposit towards repair charges, the Award rightly awarded refund of ₹20,65,232.75/- along with an interest @ 18% per annum from 01.08.2010.

39. The Impugned Order has rightly observed that the finding of fact cannot be challenged under Section 34 of the Act, unless it is wholly perverse. As each finding of fact in the Award was based upon evidence, the Petition was rightly dismissed by the learned District Court.



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40. In any event, the issue with regard to the stamping of the arbitration agreement has been conclusively settled in *In Re: Interplay between Agreements under Arbitration and Conciliation Act, 1996*: Neutral Citation: 2023 INSC 1066, where the Supreme Court had held that the Agreement that are not stamped are inadmissible in evidence and not rendered *void* or *void ab initio* or unenforceable. Non-stamping is a curable defect and any objection in relation to the stamping of the agreement fall within the arbitral tribunal. Hence, the learned Arbitral Tribunal had the jurisdiction to pass the Award.

41. Hence, there was no perversity in the Award and the Impugned Order has rightly dismissed the Petition under Section 34 of the Act.

42. In view of the aforesaid facts and circumstances, the present Appeal, and pending application, if any, stands dismissed in the above terms, with no order as to costs.

**TEJAS KARIA, J.**

**JUNE 30, 2025/ 'A'**