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

Date of decision: 21.11.2024

+ FAO(OS) (COMM) 136/2023

IMAGING SOLUTIONS PVT. LTD.

.....Appellant

Through: Mr. Viraj Datar, Sr. Advocate with
Mr. Varun Kumar, Advocates

versus

HUGHES COMMUNICATIONS INDIA LTD.Respondent

Through: Mr. Dharwesh Mishra, Mr. Prateek
Gupta and Mr. Raghav Tiwari,
Advocates

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+ FAO(OS) (COMM) 144/2023

HUGHES COMMUNICATIONS INDIA PRIVATE LIMITED

.....Appellant

Through: Mr. Dharwesh Mishra, Mr. Prateek
Gupta and Mr. Raghav Tiwari,
Advocates

versus

IMAGING SOLUTIONS PRIVATE LIMITEDRespondent

Through: Mr. Viraj Datar, Sr. Advocate with
Mr. Varun Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. These two appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 [the "Act"] seek to assail two identical orders passed by the learned Single Judge. These orders, one passed in OMP (COMM). No.506/2018 which has been assailed by way of FAO(OS) (COMM)



136/2023 and the other passed in OMP (COMM). No.28/2019 assailed by way of FAO(OS) (COMM) 144/2023 are both dated 26.04.2023.

2. At the outset, we may note that since both the appeals arise out of similar orders rejecting the challenge to the same Arbitral Award dated 04.10.2018 on almost identical grounds, we are with the consent of the parties, taking up the two appeals together for consideration. Further, for the sake of convenience we are referring to the parties as per the nomenclature used in the Arbitral Award. We may, therefore, also note that while the appellant in FAO(OS) (COMM) 144/2023 was the claimant in the arbitration proceedings, the appellant in FAO(OS) (COMM) 136/2023 was the respondent before the learned Arbitrator.

3. We may now refer to the brief factual matrix as is necessary for the adjudication of the present appeal. The parties entered into an agreement on 23.03.2001, which as per the claimant's case, was an agreement to sell in respect of property being Plot No.1, Sector 18, Electronics City, Gurugram, Haryana, ad measuring 1200 sq. mts. It was however, the respondent's claim that the said agreement was not an agreement to sell but a lease agreement. As disputes arose between the parties, the claimant invoked arbitration and the matter was consequently referred to a Sole Arbitrator pursuant to order dated 07.12.2012 passed by the Apex Court. Vide an Arbitral Award dated 04.10.2018, the claimant's prayer for Specific Performance of agreement to sell/ lease deed dated 23.03.2001 was rejected by the learned Arbitrator but the claimant was instead awarded compensation.

4. Being aggrieved, the claimant preferred an application under Section 34 of the Act with a grievance that the relief for Specific Performance of the agreement to sell/ lease deed dated 23.03.2001 ought to have been allowed



by the learned Arbitrator. On the other hand, the respondent moved a similar application under Section 34 of the Act to assail the award contending therein, that since no prayer for compensation had ever been made by the claimant, the learned Arbitrator could not have awarded any compensation to it. It is these two applications, one filed by the claimant and the other filed by the respondent, which have been rejected by the two impugned orders dated 26.04.2023, which as noted hereinabove, have been assailed by way of the present appeals on almost similar grounds.

5. In support of the appeal FAO(OS) (COMM) 136/2023, learned Sr. Counsel for the respondent contends that the impugned order is liable to be set aside as the said order except for noting the legal position regarding the limited scope of challenge to an Arbitral Award, does not deal with any of the grounds raised by the respondent. He submits that even though the learned Single Judge had formulated two issues which were arising for its consideration in the context of the grounds raised by the respondent, the impugned order is absolutely silent regarding the detailed submissions made in respect of these issues. The learned Single Judge has, however, simply proceeded to reject the respondent's application by observing that the scope of interference in an application under Section 34 of the Act is very limited and, therefore, no interference with findings arrived at by the learned Arbitrator was warranted. The learned counsel for the claimant has not been able to seriously dispute these pleas raised by the respondent.

6. Learned counsel for the claimant who is the appellant in FAO(OS) (COMM) 144/2023 has in fact made similar submissions in respect of the order passed in OMP (COMM). No.28/2019, wherein the claimant's challenge to the Arbitral Award has been rejected. He has also, therefore,



prayed that the impugned order be set aside and the claimant's application under Section 34 of the Act be remanded to the learned Single Judge for fresh adjudication.

7. Having considered the submissions of the learned counsel for the parties and perused the record, we find that not only are the parties *ad idem* regarding the factual matrix but have also raised identical grounds to challenge the two impugned orders vide which their respective applications have been rejected under Section 34 of the Act. Both parties, we find, have urged that the impugned orders have been passed without any consideration of the relevant material or for that matter the issues which were framed by the Court itself for consideration. It would, therefore, be apposite to note the issues formulated by the learned Single Judge in these two matters.

8. The issues framed by the learned Single Judge in the application preferred by the claimant, i.e. OMP (COMM). No.28/2019 have been noted in para 51 of the impugned judgment, the same read as under:

“51. Upon perusal of the pleadings and hearing the parties at length, this Court opines that the controversy between the parties qua the impugned Award may be narrowed down to adjudicate the following issues:

- i. Whether the Learned Sole Arbitrator went beyond its jurisdiction by holding that the Agreement dated 23rd March 2001 is a Determinable Agreement.*
- ii. Whether the impugned Award is patently illegal and in conflict with the Public Policy of India.”*

9. Similarly, the issues framed by the learned Single Judge in the application preferred by the respondent, i.e. OMP (COMM). No.506/2018 are noted in para 54 of the impugned judgment, the same read as under:

“54. Upon perusal of the pleadings and hearing the parties at length, this Court opines that the controversy between- the parties qua the impugned Award may be narrowed gown to adjudicate the following issues:

- I. Whether the Learned Arbitrator went beyond the scope of*



Contract and awarded INR 7.5 Crores as compensation in favour of the respondent with Interest @ 12%.

II. Whether the impugned Award is patently illegal and conflict with Public Policy of India.”

10. From the aforesaid, we find that the issues as would arise in an application under Section 34 of the Act were appropriately formulated by the learned Single Judge. However, since it is the plea of both sides that these issues have not been appropriately answered vide the impugned orders, we have, with the assistance of the learned counsel, carefully gone through these orders. We note that the impugned orders in both the appeals run into at least 75 paragraphs each but except for noticing the legal position and referring to the decisions of the Apex Court regarding the limited scope of interference with an Arbitral Award under Section 34 of the Act, there is absolutely no discussion or evaluation regarding the findings of the Arbitral Award which were challenged by both parties on a number of grounds.

11. Even though, for the sake of brevity, we are not referring to the extracts of the impugned orders, we find that the learned counsel for the parties are correct in urging that none of the two impugned orders show any meaningful consideration of either the findings in the award or of the grounds raised by any of the parties. The learned Single Judge appears to have been swayed only by the principle that interference with an Arbitral Award should be minimum. While there can be no quarrel with this proposition that the Arbitral Award should not be interfered with lightly, the same does not imply that applications filed under the provisions of Section 34 of the Act which lays down specific grounds under which an Arbitral Award can be challenged, ought to be rejected only on the premise that the approach of the Court should be not to interfere with the award.



12. In the present case, we find that even though both the claimant as also the respondent had, in their respective applications under Section 34 of the Act, raised grounds of patent illegality amongst the other grounds, the learned Single Judge has brushed aside these legal objections without either referring to the findings in the award or assigning any reasons for not accepting these grounds. We are, therefore, constrained to hold that the impugned orders rejecting the applications filed by both the parties, having been passed without dealing with any of the grounds raised by the parties are unsustainable in law.

13. In these circumstances, we have no other option but to set aside the impugned orders in both the appeals and remand the matters back to the learned Single Judge for afresh adjudication of the two applications i.e., OMP (COMM). No.28/2019 filed by the claimant and OMP (COMM). No.506/2018 filed by the respondent.

14. The appeals are, accordingly, allowed by setting aside the two impugned orders dated 26.04.2023 and remanding the matters back to the learned Single Judge for fresh adjudication of the applications on merits, which will now be listed before the Roster Bench on 10.12.2024.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 21, 2024/So