CASE NO.:
Appeal (civil) 2016 of 2006

PETITIONER:
Bharat Sewa Sansthan

RESPONDENT:
U. P. Electronics Corporation Limited

DATE OF JUDGMENT: 29/08/2007

BENCH:
H.K. Sema & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2016 OF 2006

Lokeshwar Singh Panta, J.

1. Bharat Sewa Sansthan has filed this appeal challenging the final judgment and order dated 14.09.2004 of the learned Single Judge of the High Court of Judicature at Allahabad, Lucknow Bench, in Writ Petition No. 3388/2004(MS) by which the order of the learned Additional District Judge (Special Judge, E.C. Act) Lucknow, dismissing the application filed by the U.P. Electronics Corporation Limited [hereinafter referred to as the 'respondent-Corporation'] under Section 8 of the Arbitration and Conciliation Act, 1996, has been set aside with direction to the learned Additional District Judge to refer the matter to arbitration and both the parties are directed to appoint their Arbitrator as per the arbitration clause in the lease agreement.

2. Background facts in a nutshell are as follows: Bharat Sewa Sansthan [hereinafter referred to as the 'appellant-Sansthan] is a charitable society registered under the Societies Registration Act. The main object of the appellant-Sansthan is to work for the social, economic, educational and cultural upliftment of the people. The appellant-Sansthan is the sole and exclusive owner of multi-storeyed building known as "Chandra Bhanu Gupta Smarak Nav Chetna Kendra" located at No. 10, Ashok Marg in the city of Lucknow (U.P.). On 11.11.1980, the respondent-Corporation took for office accommodation an area measuring 14,925 square feet on the first floor of the multi-storeyed building of the appellant-Sansthan on monthly rent of Rs. 47,760/- @ Rs. 3.20p per square foot, which comprised (a) basic rent @ Rs. 2/- per square foot amounting to Rs. 29,850/- and (b) the balance amount of Rs. 17,910/- @ Rs. 1.20p per square foot towards the ancillary services provided for the said accommodation in the form of elevators (lifts), a designated area for parking of vehicles, lights for public and common passages and sewerages etc. under a lease granted by the appellant-Sansthan to the respondent-Corporation on 01.12.1980.

3. It is the case of the appellant-Sansthan that in the month of June, 1981 the respondent-Corporation expressed its requirement to the appellant-Sansthan for some additional accommodation on the first floor of the building adjoining to the accommodation which the respondent-Corporation had earlier occupied for setting up a Marketing Office and a

Registered Office of M/s Uptron India Limited, which is the subsidiary of the respondent-Corporation. M/s Uptron India Limited was established for the manufacturing of electronic equipments and components, such as the television, computer, capacitors, process control, EPABX systems etc. It was mutually agreed between the appellant-Sansthan and the respondent-Corporation that additional accommodation measuring 3000 sq. ft. in area shall be leased out to the respondent-Corporation w.e.f. 25.06.1981 on a monthly rent of Rs. 9,750/- i.e. @ Rs. 3.20 per sq. ft., which comprised of (a) basic rent @ RS. 2/- per sq. ft. amounting to Rs. 6000/- and (b) balance amount of Rs. 3750/- @ Rs. 1.20p. per sq. ft. towards such ancillary charges as has been included in the case of the lease in respect of the first portion of the accommodation let out to the respondent-Corporation.

4. It is further the case of the appellant-Sansthan that the tenancy of both the portions of the accommodation let out to the respondent-Corporation had continued without any interruption from the respective dates of commencement of lease, subject to periodical escalation of the rent including other charges on the basis of mutual agreement with the result that the consolidated monthly rent of the two portions of the accommodation let out to the respondent-Corporation had risen to Rs. 79,083.75p. (Rupees Seventy nine thousand and eighty three and seventy five paise only) well before 29.07.1999, on which day the lease was determined. The appellant-Sansthan on 10.03.2000 filed Suit No. 16/2000 for eviction and recovery of arrears of rent against the respondent-Corporation in the Court of learned Additional District Judge (Special Judge, E.C. Act) at Lucknow. In the said suit, the respondent-Corporation presented two applications before the Trial Court before filing of the written statement. The first application being C-12 was moved under Section 8(1) of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") and the second application No.C-17 was filed under Order XI Rule 14 of the Civil Procedure Code for summoning of the original lease deeds from the appellant-Sansthan.

5. Learned Additional District Judge (Special Judge, E.C. Act), Lucknow, had rejected both the above-said applications. Being aggrieved, the respondent-Corporation has assailed the order of the Trial Court by way of Writ Petition before the High Court. The learned Single Judge of the High Court allowed the writ petition and held that the learned Trial Court has wrongly rejected the application under Section 8 of the Arbitration Act as the subject-matter of the suit is arbitral with further direction to the learned Additional District Judge (Special Judge, E.C. Act), Lucknow, to refer the matter to arbitration and both the parties may appoint their Arbitrator as per the arbitration clause in the lease agreement.

6. Feeling aggrieved, the appellant-Sansthan has filed this appeal, by special leave, challenging the correctness and validity of the impugned judgment and order of the learned Single Judge of the High Court.

7. When the matter came up before the Court on 24.03.2006, this Court passed the following orders:-

"I.A. No. 2 of 2005 is allowed.

Leave granted.

Since this appeal pertains to a charitable institution and appears to be an urgent matter, the appeal shall be placed on Board for expeditious final hearing on 11th July, 2006."

8. It appears from the record that the appeal was called on for hearing on 11.07.2006, when the following order came to be passed:-

"The case was argued at length by Mr. Shanti Bhushan, learned Senior Counsel for the appellant. We also heard reply on certain preliminary issues from Mr. Manoj Swarup, learned counsel for the respondents. We also permit Mr. Manoj Swarup to file additional documents in this appeal.

In the meanwhile, the respondent \026 U.P. Electronics Corporation Limited shall handover peaceful vacant possession of the area which was under the occupation of M/s. Uptron Limited, sub-lessee of respondent No. 1 herein, within one week from today. This Court will decide the arrears of rent payable by Uptron Limited at the next hearing. In the meantime, U.P. Electronics Corporation Limited shall pay entire arrears of rent for the portion in their occupation at the admitted rate.

Since some details are required, we direct both the parties to file a memo of calculation before this Court so that this Court will be in a position to pass a detailed order. Treat this matter as part-heard.

Post this matter at 2.00 p.m. on 12th July, 2006."

9. On 12.07.2006, this Court passed a detailed order, which reads as follows:-

"After hearing both the parties, we passed the following order on 11th July, 2006.

"The case was argued at length by Mr. Shanti Bhushan, learned Senior Counsel for the appellant. We also heard reply on certain preliminary issues from Mr. Manoj Swarup, learned counsel for the respondent. We also permit Mr. Manoj Swarup to file additional documents in this appeal.

In the meanwhile, the respondent U. P. Electronics Corporation Ltd. shall handover peaceful vacant possession of the area which was under the occupation of M/s UPTRON LTD., sub-lessee of respondent No.1 herein, within one week from today. This Court will decide the arrears of rent payable by the UPTRON Ltd. at the next hearing. In the meantime, U. P. Electronics Corporation Ltd., shall pay entire arrears of rent for the portion in their occupation at the admitted rate.

Since some details are required, we direct both the parties to file a memo of calculation before this Court so that this Court will be in a position to pass a detailed order. Treat this matter as part-heard.

Post this matter at 2.00 PM on 12th July, 2006."

As directed Mr. Manoj Swarup, learned counsel for the respondent-Corporation placed before us a Fax Message from U.P. Electronics Corporation Limited in regard to the total rent payable to the appellant upto 30.06.2006. The Fax Message reads thus:

"U.P. ELECTRONICS CORPORATION LTD.
Total rent payable to BSS upto 30.06.2006
Financial
year
Rent
UIL
UPLC
TDS Paid
1
2
3
4
5
Upto
31.3.2001
2001-2002
3556068.75

948285.00
2367966.75

558742.50
1188104.00

389542.50
218145.00

85700.00
2002-2003
948285.00
558742.50
389542.50
85700.00
2003-2004
948285.00
558742.50
389542.50
85700.00
2004-2005
948285.00
558742.50
389542.50
85700.00
2005-2006
948285.00
558742.50
389542.50
85700.00
1.04.06-
30.6.06
133335.00
0
133335.00
0
TOTAL
8430830.75
5161682.25

3269155.50
646650.00

From 1.4.2006 to 30.6.2006 @ Rs. 44445/- per month
(50% proposed to be retained)

UPLC Liability \026 Rs.2622505.50 (payable as per area occupied and approved by the Management)

UPLC	UIL
Rent of Front Portion 64923.75 x 12 = Area 14925@ Rs.4.35 per sq. ft.	
779085.2	
389542.50	389542.50
Rent of Rear Portion 14100 x 12 = Area 3000 @ Rs. 4.72 per sq. ft. (exclusively in the use of UPTRON)	
169200	
-	169200.00
Total Rent per annum	
948285.00	
389542.50	558742.50

According to the learned counsel for the appellant, there is some discrepancy in regard to the calculation of rent payable as per the agreement. We, therefore, as an interim measure, without going into the correctness of the statement now placed before us, direct the U.P. Electronics Corporation Limited to pay a sum of Rs. 32,69.155.50 to the appellant herein within four weeks from today. The U.P. Electronics Corporation Limited has also deducted the tax in a sum of Rs. 6,46,650/-. Thus, as per the fax message, the rent is calculated upto 30.6.2006. We, therefore, direct U.P. Electronics Corporation Limited to pay rent from 1st July, 2006 to the appellant herein for the actual area in their occupation as per the terms of the agreement.
The rent shall be paid on or before 10th of every succeeding month without any default. The respondent shall hand over peaceful vacant possession to the appellant herein within one week from today the portion in the occupation of UPTRON India Limited, a sub-lessee of respondent No.1 herein, which according to respondent no. 1 is 60% of the total area namely, 17,925 sq. ft. This Court will decide the arrears of rent payable by the UPTRON India Limited at the time of final hearing.

It is also stated by the learned counsel for the appellant that U.P. Electronics Corporation Limited has not paid the electricity charges and water and sewerage taxes to the authorities concerned in full. The U.P. Electronics Corporation Limited is directed to pay the entire arrears to the authorities concerned within four week from today.

This order is passed as an interim measure without prejudice to the rights and contentions of both the parties. It is open to both the parties to file additional documents.

Treat this matter as part-heard. Post after six weeks for reporting compliance of the aforesaid directions. Pendency of this appeal before this Court will not prevent the parties from settling the matter amicably."

10. The appeal was listed for hearing on 08.09.2006, when further following order was recorded:-
"Learned senior counsel for the appellant has placed before us a fresh calculation memo with the Statement of Accounts duly stamped by a Chartered Accountant. Mr. Krishnamani, learned senior counsel appearing for the respondent seeks time to respond to the Memo of Calculation filed now. Three weeks' time is granted for the purpose. The respondent is directed to file reply to this Calculation Memo within the said time. Parties will discuss further in regard to the possession and re-adjustment of the areas and file reply thereto.

Further directions will be made on the next adjourned date of hearing."

11. On 7.11.2006, upon hearing the counsel on both sides, this Court made the following order:-
"Memo of Understanding between the parties to this appeal filed in this Court, pursuant to this Court's order dated 8.9.2006, is taken on record. A rough sketch plan is also attached to the Memo of Settlement. Clause (c) of the Memo says that the respondent, namely, U.P. Electronics Corporation Limited will vacate the portion marked in pink as per the map within two weeks from date of Memo of Understanding i.e. 10.10.2006. It is now represented by Mr. Prashant Bhushan, learned counsel for the appellant that in spite of the undertaking under clause (c) of Memo of Settlement, the U.P. Electronics Corporation Limited have not vacated the entire portion marked in pink and also constructed wall separating the pink and green marked portion. Since the undertaking has not been complied by M/s. U.P. Electronics Corporation Limited further time is given to them to comply with the undertaking by three weeks from day. The clause (c) of the Memorandum shall be complied with in full and the entire portion shall be handed over to the appellant within that time and also the construction of the wall shall be completed in time.

When the matter came up for hearing on 8.9.2006, the learned senior counsel appearing for the respondent had sought some time to respond to the Memo of Calculation filed and that three weeks' time was granted for the purpose. So far no response has been filed to the Memo of Calculation. The respondent is directed to file the response to Memo of Calculation within two weeks from today.

Call after four weeks for reporting compliance."

12. Again on 26.02.2007, the following order came to be passed:-
"Mr. Prashant Bhushan, learned counsel for the appellant placed before us a Statement in respect of the amount due in regard to 60% area occupied b y the respondent and their subsidiaries upto June, 2006. A

copy of the said Statement has also been furnished to the learned counsel for the respondent. Post after two weeks for filing response by the respondent."

13. In terms of the above extracted interim orders passed by this Court on a number of hearings, the appellant-Sansthan submitted its statement of accounts in which a total sum of Rs. 95,09,467.50 has been claimed as arrears of rent for the Front Block and the Tower Block, measuring 17,925 sq. ft. of area, out of which a sum of Rs.32,69,155.50 in terms of interim order dated 12.07.2006 passed by this Court has been paid to the appellant-Sansthan by the respondent-Corporation for 40% area in its occupation. In addition to the arrears of rent from July 1997 to June 2006, the appellant-Sansthan has claimed a sum of Rs.6,46,645.00 in regard to TDS Certificates. Further, a sum of Rs.13,38,492.43 has been claimed on account of water & sewerage tax from July 1997 to June 2006. The appellant-Sansthan has also claimed a sum of Rs.40,95,867/- on account of interest at the rate of 12% p.a. on the arrears of rent in relation to 15,925 sq. ft. area which was let out to the respondent-Corporation in the year 1980.

14. In response to the order of this Court, the respondent-Corporation has filed affidavit dated 18.11.2006 along with details of calculations of arrears of rent of 40% area; arrears of rent of 60% area and also details of calculation of amount for water & sewerage tax. The stand of the respondent-Corporation in the affidavit is that in pursuance to the interim order of this Court dated 12.07.2006, a sum of Rs.32,69,155.50 towards arrears of rent (Rs.25,95,310.50 as rent and Rs.6,73,845.00 as TDS] for the 40% portion, which was actually occupied by the respondent-Corporation, has been paid to the appellant-Sansthan. The respondent-Corporation stated that as per its statement of calculation and after deduction of the amount already paid in pursuance to the interim order of this Court, the amount payable in respect of the portion which was under occupation of M/s Uptron India Limited and the possession thereof has already been handed over to the appellant-Sansthan (subject to the adjustment made in the MOU dated 10.10.2006) comes to Rs.75,47,368.50 which is more than what has been calculated and indicated by the appellant-Sansthan in paragraph 6 of its affidavit dated 06.09.2006 and an amount of Rs.6,46,645.00 is taken into account twice and shown as paid in excess.

15. It is also submitted that during the pendency of this case and in compliance of order dated 12.07.2006, another sum of Rs.3,97,161.00 was also paid to the appellant-Sansthan. Thus, the total payment made by the respondent-Corporation to the appellant-Sansthan towards water & sewerage tax comes to Rs.5,95,238.80 for the area which is in possession of the respondent-Corporation. The respondent-Corporation contended that as per the calculation sheet annexed with the affidavit-in-reply, the balance amount comes to Rs.24,558.20 towards water & sewerage tax for the portion in possession of respondent-Corporation, which is also tendered to the appellant-Sansthan by Cheque No.275979 dated 12.10.2006 of Andhra Bank, Lucknow. The balance amount of Rs.9,26,763.00 towards water & sewerage tax is due in regard to the portion vacated by M/s Uptron India Limited and the possession of that area has already been handed over to the appellant-Sansthan.

16. The Divisional Incharge (Personnel), working in the respondent-Corporation in his reply affidavit to calculation statement filed by the appellant-Sansthan on 26.02.2007, states that in terms of the order dated 12.07.2006 of this

Hon'ble Court, the entire amount is paid in respect of the portion in possession of the respondent-Corporation. The possession of 60% area which was previously in use and occupation of M/s Uptron India Limited, which is a Sick Industrial Company, has already been given to the appellant-Sansthan and the payment of rent for the said area is not covered under the directions of this Court. It is stated that the calculation chart submitted by the appellant-Sansthan showing the amount due and payable pertains to 60% portion for which rent was paid by M/s Uptron India Limited through the respondent-Corporation and the first part of the calculation chart filed by the appellant-Sansthan indicating total amount of Rs.66,74,131.50 due, is in respect of 60% portion of the leased area. It is also stated that the respondent-Corporation was always ready and willing to make payment of agreed rent for the portion under its occupation and, in fact, it had tendered the amount, which was not accepted by the appellant-Sansthan. It is also stated in the affidavit that Clause I(3) of the lease agreement as alleged by the appellant-Sansthan is not applicable in the present case and as such no interest at the rate of 12%, as claimed, is payable and the appellant-Sansthan has calculated the interest on total amount of rent payable in respect of total area including the one which was under use and occupation of M/s Uptron India Limited.

17. We have heard the learned counsel for the parties and examined the material on record.

18. Shri Shanti Bhushan, learned senior counsel appearing on behalf of the appellant-Sansthan, submitted that this Court in exercise of its jurisdiction under Article 142 of the Constitution of India for doing complete justice to the appellant-Sansthan is empowered to pass an order of payment of arrears towards water & sewerage tax and payment of interest at the rate of 12% p.a. on the arrears of rent in terms of the agreement. He submitted that sending the matter at this stage to the Arbitrator will prolong the agony of the appellant-Sansthan in getting its legitimate claims settled as per the calculation statement submitted before this Court in terms of its interim orders.

19. Per contra, Shri Manoj Swarup, learned counsel for the respondent-Corporation, submitted that the balance amount of arrears of rent, payment of water & sewerage tax and the amount of interest as claimed by the appellant-Sansthan in its calculation statement cannot be decided by this Court in the absence of any satisfactory and tangible evidence appearing on record of this appeal. He next submitted that in terms of the clause of the Agreement, this Court will be slow in exercise of its jurisdiction under Article 142 of the Constitution of India as the parties are governed by the procedure of the Arbitration Act, which is speedy and less expensive for effective adjudication of the dispute in issue.

20. We have carefully considered the respective contentions of the learned counsel for the parties.

21. It is not in dispute that on 11.11.1980 the respondent-Corporation took from the appellant-Sansthan an area measuring 14,925 sq. ft. on monthly rent under a lease agreement. In June 1981, the appellant-Sansthan let out additional accommodation measuring 3000 sq. ft. area on monthly rent for setting up Marketing Office of M/s Uptron India Limited, which is the subsidiary of the respondent-Corporation. The appellant-Sansthan filed suit for recovery of arrears of rent and ejectment of the respondent-Corporation from the demised premises. In the trial court, the respondent-Corporation preferred two applications, i.e. one under Section 8(1) of the Arbitration Act and second under Order XI Rule 14

CPC for summoning of the original lease deed from the appellant-Sansthan. The learned Additional District Judge (Special Judge, E.C. Act), Lucknow, has rejected both the applications. The High Court in writ petition filed by the respondent-Corporation against the order of the trial court, allowed the application of the respondent-Corporation filed under Section 8(1) of the Arbitration Act. It was the specific case of the respondent-Corporation before the High Court that the original agreements are in the possession of the appellant-Sansthan, whereas the stand of the appellant-Sansthan was that the original agreements are not in its possession. The respondent-Corporation placed on record of the trial court photocopies of the agreements along with an application under Section 8(1) of the Arbitration Act. The High Court, in our view, has rightly held that the photocopies of the lease agreements could be taken on record under Section 8 of the Arbitration Act for ascertaining the existence of arbitration clause. Thus, the dispute raised by the appellant-Sansthan against the respondent-Corporation in terms of the arbitration clause contained in the lease agreement is arbitral.

22. Now, the question pressed before us is whether we should, in exercise of our power and jurisdiction under Article 142 of the Constitution of India as submitted by Shri Shanti Bhushan, grant the payment of balance of arrears of rent, payment of balance arrears of water & sewerage tax and interest on the arrears of rent to the appellant-Sansthan, which amounts are disputed by the respondent-Corporation before us. The nature and ambit of the power of this Court under Article 142 of the Constitution of India, no doubt, is meant to do complete justice between the litigating parties, but at the same time this Court has to bear in mind that the power is conceived to meet the situations which cannot be effectively and appropriately tackled by the existing provisions of law. Human and equitable approach should be balanced to do complete justice to both the parties and not be tilted in favour of either party without ignoring the statutory provisions. This Court in exercise of its jurisdiction can grant appropriate relief where there is some manifest illegality, or where there is manifest want of jurisdiction, or where some palpable injustice is shown to have resulted to the parties.

23. In the light of above factual aspects, the claim relating to balance arrears of rent, balance arrears of water & sewerage tax and rate of interest on payment of arrears of rent raised by the appellant-Sansthan in its calculation statement filed before this Court is at variance with the calculation statement submitted by the respondent-Corporation. The respondent-Corporation has denied the payment of interest to the appellant-Sansthan. The above-said disputed claims can be appropriately tackled and adjudicated upon by the Arbitrator in terms of the arbitration clause. The main objectives of the Arbitration Act is to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration and to minimise the supervisory role of courts in the arbitral process and to permit an arbitral Tribunal to use mediation, conciliation or other procedures during the arbitral proceedings in settlement of disputes, etc. etc. This Court ordinarily will not be obliged to bypass the provisions of the Arbitration and Conciliation Act, 1996 in exercise of its power and jurisdiction under Article 142 of the Constitution of India.

24. In the backdrop of this case, we do not find it a fit case to grant relief to the appellant-Sansthan as claimed by it in its calculation statement which is vehemently disputed by the respondent-Corporation. Therefore, the contention of the appellant-Sansthan that this Court can grant the payment of

balance amount of arrears of rent and arrears of water & sewerage tax and interest on arrears of rent detailed in calculation statement submitted before this Court, does not merit acceptance.

25. Shri Shanti Bhushan, learned senior counsel, has fairly stated that in Civil Suit No.16/2000 the appellant-Sansthan has not claimed the arrears of rent and water & sewerage tax for the additional area of 2000 sq. ft., which was subsequently let out to the respondent-Corporation, as such the claim to that extent in terms of the calculation statement filed before this Court is not pressed in this appeal. He submitted that for claiming the relief for 2000 sq. ft. area, the appellant-Sansthan will take appropriate proceedings before the Court/Forum. We do not wish to express any views on this aspect of the matter in this appeal.

26. In this view of the matter, we do not find any perversity or infirmity in the order of the High Court to warrant any interference.

27. For the afore-stated reasons, the appeal deserves and it is accordingly dismissed. The order of the learned Single Judge dated 14.09.2004 passed in Writ Petition No.3388 (M/S) of 2004 shall stand affirmed. However, the parties are left to bear their own costs.

28. Before parting, we may make it clear that any observation made in this judgment shall not be construed as an expression of opinion on the merits of the case. The dispute raised by the parties shall be adjudicated upon by the Arbitrator(s) on its own merit in accordance with law.