2026:AHC:229142-DB

Reserved on 27.10.2026
Delivered on 04.11.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 No. - 34 of 2024

Penguin Random House India Private Limited

…..Appellant(s)

Versus

Mindmill Software Limited

…..Respondent(s)

Counsel for Appellant(s)	:	Rahul Agarwal (Sr. Advocate), Vedant Agarwal
Counsel for Respondent(s)	:	Rakesh Pande (Sr. Advocate), Pranjal Mehrotra, Aditya Prakash Singh, Raghav Dev Garg, Sushil Shukla

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per: Kshitij Shailendra, J)

1. Heard Shri Rahul Agarwal, learned Senior Counsel assisted by Shri Vedant Agarwal for the appellant and Shri Rakesh Pande, learned Senior Counsel assisted by Shri Pranjal Mehrotra for the respondent.

2. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (‘the Act, 1996’) has been filed challenging the order dated 08.12.2023, whereby the Commercial Court, Gautam Budh Nagar has dismissed the objections filed by the appellant under Section

34 of the Act, 1996, thereby upholding the award dated 05.09.2012 passed by the sole Arbitrator. Another order under challenge is dated 09.02.2016 passed 10 years ago, whereby keys of the premises in dispute had been submitted/handed over by the appellant before the Commercial Court and prayer has been made to set aside the order dated 08.12.2023 and modify the order dated 09.02.2016 in respect of deemed handing over possession of the premises and also to set aside the award dated 05.09.2012 passed by the sole Arbitrator.

3. Brief facts of the case are that a lease agreement dated 28.03.2008 was executed in between the parties whereby the respondent agreed to let out a commercial premises to the appellant for a period of three years commencing w.e.f. 01.04.2008 on the stipulations contained in the deed. The same was an unregistered document executed on a stamp paper of Rs. 100/-. There is no dispute between the parties that the appellant came in possession over the premises in pursuance of the said deed, which shall, herein-after, be referred to as ‘2008 lease’.

4. While the period of tenancy under the 2008 lease was continuing, another lease agreement dated 24.06.2009 (‘2009 lease’) in respect of same premises was executed *inter se* parties which was duly registered in the office of Sub-Registrar concerned. The 2009 lease prescribed 11 months’ period of tenancy commencing w.e.f. 24.06.2009 to 23.05.2010. The lease rent indicated in the deed was Rs. 5 lakh per month. Other stipulations contained in the 2009 lease deed, not being significant *qua* the controversy involved in the lis, except Clause 11 thereof, which shall herein-after be reproduced in this order, the Court need not make deliberations on them.

5. After the term of 2009 lease expired on 23.05.2010, the appellant did not handover possession of the property to the respondent and there is voluminous material on record to indicate that bills were raised by the respondent demanding payment of rent from the appellant at the rate of Rs. 5 lakh per month, which sums, from time to time, were paid by the appellant upto March, 2011. However, parties are at variance in so far as

the acceptance of sums for the period after 23.05.2010 is concerned, not with regard to the factum of demand raised and payment made but as to the nature of the sums. Whereas the appellant terms it as ‘rent’ as per indications made in the documents on record, the respondent, on the other hand, terms it ‘damages’ for unauthorized use and occupation after expiry of the period of lease.

6. The respondent appointed the sole Arbitrator on 01.04.2011 and the parties agreed to his jurisdiction to deal with the dispute. The dispute was as to non-vacation of the rented premises by the appellant as well as demand of rent/damages and its arrears etc. The respondent raised various claims before the Arbitrator, which can be summarized as under:-

(i) Regarding handing over actual, vacant and physical possession to the respondent.

(ii) Demand of Rs. 1,56,50,000/- as holding over charge/damages/*mesne* profits for unauthorized use and occupation at contractual rate of Rs. 50,000/- per day w.e.f. 24.05.2010 to 01.04.2011.

(iii) Damages at the same rate w.e.f. 02.04.2011 till delivery of possession to the respondent.

(iv) Award of interest at the rate of Rs. 24,000/- per annum on the above sums.

(v) Award of Rs. 6,83,70,000/- towards loss of profits/opportunity cost for having been deprived of gainfully leasing out the demised premises to a third party.

(vi) A sum of Rs. 20 lakh for loss of goodwill and reputation.

(vii) All cost of litigation including fees of lawyers and arbitral tribunal including expenses.

(viii) A sum of Rs. 2,00,000/- per day w.e.f. 01.04.2011 till handing over of possession towards business loss caused due to non-payment of money by the appellant

(ix) Any other damages which may be quantified at a subsequent stage.

7. The claims were contested by the appellant by filing documents on record especially emails exchanged between the parties indicating attempts made and inclination of the appellant to vacate the premises on or around 31.03.2011 and taking various other pleas including the plea based upon applicability of Section 116 of the Transfer of Property Act, 1882 ('T.P. Act'), i.e. holding over the premises on account of 'deemed renewal' of lease due to receipt of rent by the respondent.

8. The Arbitrator passed the award dated 05.09.2012, the operative portion whereof reads as under:-

"346. The Respondent is directed by the undersigned to remove all the fittings and fixtures and installation made by it in the demised premises, from the demised premises within 30 days of the announcement of this award.

347. The Claimant will be entitled to Rs. 1,56,00,000.00 less Rs. 51,29,032.00 from the Respondent i.e., @ Rs. 50,000.00 per day w.e.f. 24.05.2010 till 31.03.2011. The amount comes to Rs. 1,04,70,968.00.

348. During the period taken in arbitration proceedings till such time as fixtures and fittings are actually not removed, the Claimant is entitled to be paid Rs. 50,000.00 per day. This period will stop the day on which fittings and fixtures are removed by the Respondent and the vacant possession of the demised premises is handed over to the Claimant.

349. For the period 24.05.2010 till 31.03.2011, the Claimant will be entitled to simple interest @ 12% per annum on the principal sum of Rs. 1,04,70,968.00 from the Respondent. For this period of 312 number of days, the Claimant shall thus be entitled to interest of Rs. 10,74,063.00.

350. With effect from 01.04.2011 date of appointment of arbitrator to 05.09.2012-date of announcement of award, for 421 number of days @ Rs. 50,000.00 per day, the Claimant is entitled to Rs. 2,10,50,000.00. On this principal sum, the Claimant would be entitled to simple interest @ 12% per annum till 05.09.2012, i.e., to a sum of Rs. 29,13,550.00 towards interest.

> 351. The period after 05.09.2012 till the Respondent actually removes fittings and fixtures from the demised premises and hands over vacant possession of the demised premises to the Claimant is a period which cannot be determined at this point of time and the amount which the claimant is entitled to is not possible to calculate. No specific interest is being provided for by the undersigned for this period. If, however, the Respondent still does not remove the fittings and fixtures within 30 days of the announcement of the award, i.e., within 30 days from 05.09.2012, for the period after 05.09.2012 till the Respondent actually removes fittings and fixtures from the demised premises and hands over vacant possession of the demised premises to the Claimant, the Claimant will be entitled to simple interest @ 12% per annum w.e.f. 06.09.2012.
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> 352. The Respondent will be entitled to have the sum of Rs. 30,00,000.00 retained by the Claimant as Security Deposit, adjusted from the amounts due from it to the Claimant under this Award, upon handing over of vacant possession of demised premises to the Claimant. Claimant is bound to adjust towards other dues under this award, the Security Deposit amount of Rs. 30,00,000.00 to the Respondent when the Respondent hands over of vacant possession of the demised premises after completely removing all installations, fittings and fixtures from the inside of the demised premises.
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> 353. The Claimant is directed by the undersigned to remit the amount of the refunded stamp duty to the Respondent, within 7 days of the refund of excess stamp being made by the concerned authority to the Claimant."

9. The appellant challenged the award by filing objections under Section 34 of the Act, 1996, which have been rejected by the Commercial Court by the order impugned dated 08.12.2023.

10. Learned counsel for the appellant has made following submissions:-

(i) The award is non-speaking and except reproducing the award, the grounds of objections raised under Section 34 of the Act, 1996 and making reference of various decisions in relation to exercise of powers under Section 34, merits of the challenge to the award have not at all been examined and, therefore, the order passed by the Commercial Court is unsustainable.

(ii) Imposition of damages is in ignorance of statutory provisions of Sections 73 and 74 of the Contract Act, 1872 and though the provisions use words 'reasonable compensation', damages awarded by the Arbitrator being too excessive, the same should

have been interfered with, however, despite the submissions made on that line, the Commercial Court has not dealt with the said aspect of the matter.

(iii) Imposition of damages at the rate of Rs. 50,000/- per day by invoking Clause 11 of the 2009 lease is wholly unjustified, inasmuch as the said clause has not been read by the Commercial Court in its entirety and, even otherwise, the same would have no application in view of the fact that the respondent continued to raise demand of rent at the rate of Rs. 5 lakh per month as agreed between the parties despite the period of 2009 lease having expired on 23.05.2010 and, hence, the appellant would get benefit of Section 116 of the T.P. Act and the lease would be deemed to have been renewed negating the applicability of Clause 11 of the lease deed.

(iv) Various emails exchanged *inter se* parties reveal that though the appellant made all attempts to vacate the premises in March, 2011, correspondence pertaining whereto started in December, 2010 and also handed over keys to the representative of the respondent on the premises itself but the latter returned the same to the appellant citing unwarranted reasons and by making an issue of removal of fixtures and fittings etc and, therefore, once the respondent failed to take possession with no fault lying with the appellant towards delivery of possession in March, 2011, no damages whatsoever could have been imposed.

(v) The arbitration proceedings started immediately w.e.f. 01.04.2011 and throughout the said proceedings as well as pendency of the matter before the Commercial Court, the respondent remained adamant not to take possession and, under compelling circumstances, the appellant had to surrender keys of the premises before the Commercial Court on 09.02.2016. The conduct of the parties has not been examined by the Commercial Court.

(vi) The respondent not only received rent from the appellant month to month, it also permitted and, in fact, provided all aid and assistance in enjoyment of various amenities qua the rented premises by the appellant, i.e. carrying out alterations/modifications/improvements in the premises and also maintenance of air conditioners etc. and, therefore, the conduct of the respondent disentitles it to claim damages for the period w.e.f. 24.05.2010.

11. In support of his submissions, learned counsel for the appellant has placed reliance on **Kailash Nath Associates Vs. Delhi Development Authority and another: (2015) 4 SCC 136, M. Lachia Setty and Sons Ltd. Vs. Coffee Board, Bangalore: (1980) 4 SCC 636, Murlidhar Chiranjilal Vs. Harishchandra Dwarkadas and another: AIR 1962 SC 366** and judgment of Full Bench of this Court in **Shiv Nath, minor u/g Sahu Girdhar Lal Vs. Ram Bharosey Lal: AIR 1969 All 333 (FB)**.

12. On the other hand, learned counsel for the respondent has supported the order impugned by making submissions that though the Commercial Court has reproduced various portions of the award as well as the grounds of objections raised by the appellant under Section 34 of the Act, 1996, cogent findings have been recorded in paragraphs 44, 45, 46, 47, 48, 49, 50, 51 and 52 of the order, whereby the view taken by the Arbitrator has not been found to be erroneous but based upon the appreciation of facts, evidence and interpretation of agreement between the parties.

13. Further submission has been made that if two views are possible based upon the material available on record and one view has been taken by the Arbitrator, there is no scope of interference with the award under Section 34 of the Act, 1996 and even this Court, sitting in appeal under Section 37 of the Act, 1996, may not re-appreciate the findings of fact arrived at by the Arbitrator that have rightly not been interfered with by the Commercial Court, inasmuch as the scope of interference under

either of the provisions is not to re-appreciate the entire evidence on record and to take a different view in the matter. Reliance, in this regard, has been placed on **Somdatt Builders-NCC-NEC (JV) Vs. National Highways Authority of India and others: (2025) 6 SCC 757** and **Bombay Slum Redevelopment Corporation Private Limited Vs. Samir Narain Bhojwani: (2024) 7 SCC 218**.

14. It has further been submitted that the damages imposed/compensation awarded by the Arbitrator cannot be said to be arbitrary and Section 116 of the T.P. Act has no application in the facts and circumstances of the present case, wherein Clause 11 of the 2009 lease clearly contained the provisions for ‘over-holding’ by providing that if the lessee remains in possession of the premises after expiry of the agreement without written permission of lessor, the damages/*mesne* profits would be payable at the rate of Rs. 50,000/- per day and there being no written permission of lessor (the respondent) permitting the lessee (the appellant) to remain in possession of the property after 23.05.2010, the Arbitrator was right in awarding damages at the rate of Rs. 50,000/- per day.

15. Placing reliance on **Gayatri Balasamy Vs. ISG Novasoft Technologies Limited: (2025) 7 SCC 1**, it has been alternatively submitted that in case this Court arrives at a conclusion that damages have been wrongly computed, the award may be modified as permitted by the Hon’ble Supreme Court in the said judgment by severing the invalid portion of the award, if any, from its valid portion and computational error, if any, may be corrected by this Court.

16. We have considered the submissions made and have perused the material available on record.

17. Since damages have been imposed at the rate of Rs. 50,000/- per day and all consequential computations in the award have been made as per Clause 11 of the 2009 lease, it would first be appropriate to reproduce the said clause, which reads as under:-

> **“11. OVERHOLDING:**
>
> If the LESSEE remains in possession of the said Specified Premises after the expiry of this Agreement, without the written permission of LESSOR, not being a result of a breach on the Lessor’s part, then in that event the LESSOR shall forfeit all amounts received by them from the Lessee and the LESSEE shall be liable to pay damages/mesne profits @ Rs. 50,000 (Rupees Fifty Thousand only) per day. In addition to the LESSOR’s right to claim damages/mesne profits the lessor is fully empowered to take over possession of the Specified Premises and discontinue all maintenance, electricity to the Specified Premises including the right of the LESSEE to ingress and egress. The LESSOR shall resume the making space. All costs including cost of litigation/lawyers fees etc to get the Specified Premises vacated by the LESSEE shall be borne and paid by the LESSEE. LESSEE agrees there is no tacit renewal or extension of this Agreement in any way, notwithstanding any statutory provisions or any legal presumption to the contrary. LESSEE hereby waives any such statutory provision giving right to any renewal or extension or over hold.”

18. A perusal of Clause 11 indicates that payment of damages/*mesne* profits at the rate of Rs. 50,000/- is not an absolute clause but is dependent upon certain contingencies, such as whether or not there is a written permission of lessor as regards the lessee remaining in possession after expiry of the period stipulated in the agreement and as to whether such continuance is or is not as a result of breach on the part of lessor. Further stipulations regarding lessor’s right to claim damages/mesne profits and discontinue maintenance, electricity and/or resumption of parking spaces vis-a-vis tacit renewal or extension of the agreement, also being of significance, the same cannot be given a go-by and it was required to be seen as to whether the Clause has been rightly interpreted by the Arbitrator.

19. Section 116 of the T.P. Act, emphatically pressed into service, embodies the concept of holding over and the same reads as under:-

> “**116. Effect of holding over.**— If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative **accepts rent** from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, **in the absence of an agreement to the contrary,** renewed from year to year, or **from month to month**, according to the purpose for which the property is leased, as specified in section 106.”
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> (emphasis by Court)

20. The principle of holding over envisaged under Section 116 of the T.P. Act, was elaborately dealt with by a Full Bench of this Court in the case of **Shiv Nath** (supra) and it was held that words '**in the absence of an agreement to the contract'**, appearing in Section 116 cannot be taken as referring only to the existence of an agreement so as to the terms of holding over; rather they also refer to the existence of an agreement to the contrary regarding the period of notice provided in Section 106 of the Act. It was further held that the said expression does not imply that a special term in the original lease makes the doctrine of holding over inapplicable altogether and the only effect of such a special term in the original lease is that one has to read that special term in the renewed lease.

21. It would now be appropriate to refer to Sections 73 and 74 of the Contract Act which are reproduced as under:-

> "**73. Compensation for loss or damage caused by breach of contract.**- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
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> **Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.**
>
> **Compensation for failure to discharge obligation resembling those created by contract.**— When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.
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> Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.
>
> **74. Compensation for breach of contract where penalty stipulated for.**- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract **reasonable compensation not exceeding**

the amount so named or, as the case may be, the penalty stipulated for.

....."

(emphasis by Court)

22. The Hon'ble Supreme Court, in the case of **Kailash Nath Associates** (supra), after dealing with the provisions of Sections 73 of 74 of the Contract Act, has held that sum payable by way of damages arising out of breach of contract may be only '**reasonable compensation'** and **not exceeding the amount/pre-estimated damages fixed by the parties** and that 'reasonable compensation' will be fixed on well known principles that are found *inter alia* in Section 73 of the Contract Act.

23. In the case of **Murlidhar Chiranjilal** (supra), the Hon'ble Supreme examined the principle on which damages are calculated and it was held that the principle imposes on a plaintiff complaining breach of contract, a duty of taking all reasonable steps to mitigate the loss consequent upon the breach and debars him from claiming any part of the damage, which is due to his neglect to take such steps.

24. In the case of **M. Lachia Setty** (supra), the Hon'ble Supreme Court has held that there is an obligation to mitigate or minimise the loss arising from the failure and the principle of mitigation is a concept that has to be borne in mind by the Court while awarding damages and, further, the non defaulting party is not expected to take steps which would injure innocent persons. It was further observed that the question in each case would be one of the reasonableness of action taken by the non-defaulting party.

25. For deciding the issue of compensation/damages/*mesne* profits, it has to be seen as to whether, in the facts and circumstances of the present case, Clause 11 of the 2009 lease, in light of the provisions of 'deemed renewal' of lease and 'holding over', as per Section 116 of the T.P. Act, is applicable and, if yes, to what extent. Further, as to whether, in light of

Sections 73 and 74 of the Contract Act, the indication made in Clause 11 of 2009 that a sum of Rs. 50,000/- per day would be the rate at which damages would be required to be paid by the appellant in case it remains in possession after the term of lease is over, was conclusive and binding upon the Arbitrator. The reason is that in Section 74 of the Contract Act, the words used are '**not exceeding the amount so named'**, that is to say that the figure of Rs. 50,000/- can be taken only as the '**outer limit**' of the damages, if imposable in the facts of the case and not the figure itself on which the sum could be computed.

26. If we now peruse the order passed by the Commercial Court, it would reveal that the order runs in 53 paragraphs comprised in 159 pages. Paragraphs 1 to 14 contain brief narration of facts, paragraph 15 reproduces issues framed by the Arbitrator, paragraphs 16 and 17 refer to factum of recording of evidence, i.e. examination-in-chief and cross examination of witness and also passing of the award by the Arbitrator, paragraph 18 reproduces paragraph-122 of the award which contains indication of headings like statement of claim, its reply, counter and rejoinder affidavits, oral testimony and filing of written arguments and case laws etc.

27. Thereafter, paragraph-19 of the order states that the Arbitrator has discussed all the issues in detail from paragraph 123 of the award (pages 59 to 184 till paragraph 345), all of which were reproduced by the Commercial Court, that is to say that from page no. 6 to page no. 84 of the impugned order, there is only and only reproduction of paragraphs 123 to 345 of the award and nothing else. Then comes paragraph 20 of the impugned order, which reproduces operative part of the award contained in paragraphs 346 to 353; paragraph 21 indicates that petition has been filed under Section 34 of the Act which contains several grounds of challenge, paragraphs 22 and 23 refer to filing of reply and rejoinder reply and in paragraph 24, the Commercial Court has observed that counsel for the parties were heard and that they had also filed hard and soft copies of their written submissions.

28. The Commercial Court, then, quotes the entire written submissions from page nos. 86 to 142 and the narration is like ‘QUOTE ..... UNQUOTE’. Then comes paragraph 25 of the order which reproduces Section 34 of the Act of 1996 and in paragraphs 26, 27 and 28, reference of certain judgments has been given. In paragraph 29, Sections 12, 13 and 16 of the Act, 1996 have been reproduced. Paragraphs 30, 31, 32 and 33 indicate holding of proceedings in arbitration and in paragraph 34, ratio of judgment in a case has been reproduced.

29. In paragraph 35 of the order, the Commercial Court has observed that it has not found any proof furnished by the appellant with regard to partiality, *mala fide*, *bias*, fraud or corruption; in paragraph 36, it has been observed that the Commercial Court under Section 34 does not have the power to re-appreciate the evidence or sit as appellate court over the arbitral award and as regards the words ‘patent illegality’ added in Section 34 w.e.f. 23.10.2015, it has been observed in paragraphs 37 and 38 of the order that the award in the present case was passed on 05.09.2012 before the ground of ‘patent illegality’ was added to Section 34 and, therefore, the same would have no application in the present case. In the same paragraph, it has been observed that the Arbitrator has discussed the entire evidence, facts, pleadings and law pertaining to the controversy between the parties and that no discrepancy, perversity or illegality in such finding is found.

30. Thereafter, paragraph 39 of the order again reproduces certain portions of a judgment and in paragraph 40, it has been observed that it is the absolute discretion of the Arbitrator to take particular view on an issue and not to take the alternate view and that the Court under Section 34 cannot change or interfere with the finding of the Arbitrator until it is biased, unreasonable and absolutely non-plausible or adverse. Paragraphs 41, 42 and 43 of the order again refer to certain judgments.

31. The so called findings recorded by the Commercial Court, as argued by learned counsel for the respondent, are contained in

paragraphs 44, 45, 46, 47, 48, 49 and 50 of the order, which contain words like ‘there is no perversity, lack of appreciation of evidence in the award on the issues’; ..... ‘there seems no malafide in the conduct of the learned arbitrator’; ..... ‘the Arbitrator has applied his mind and given detailed reasons for coming to his conclusions’; ..... ‘the reasons seem to be fair’; ‘the findings of the Arbitrator are reasonable and do not suffer from any kind of illegality and perversity’; ..... 'the findings of the Arbitrator with regard to its jurisdiction, capacity and the decision of the Arbitrator on the application of the petitioner herein under Section 12 read with section 13 and 16 of the Arbitration Act, are in accordance with law and are upheld’ etc. etc.

32. In paragraph 51 of the order, the Commercial Court again referred to a judgment of Hon’ble Supreme Court and in paragraphs 52 and 53, it has been cursorily observed without making reference of any document that there was unwillingness on the part of the appellant to handover vacant possession of the rented premises in the manner agreed between the parties as per the 2009 lease and, therefore, there is no scope of interference in the award and the petition under Section 34 is liable to be dismissed.

33. We are constrained to express our disapproval to the manner in which the Commercial Court has decided the matter. The infirmity in the impugned judgment is not merely one of inadequate reasoning, it goes to the very root of the adjudicatory exercise undertaken by the Commercial Court. In an apparent endeavour to create an impression of comprehensive consideration of the material on record, the Commercial Court has rendered an order which fails to disclose any meaningful adjudication of the material issues arising for consideration.

34. It is a fundamental attribute of judicial adjudication that the quality and efficacy of a judgment is determined not by the number of pages it occupies but by the depth of judicial scrutiny, the precision of its reasoning and the manner in which it resolves the controversy brought before the Court. The exercise of jurisdiction under Section 34 of the

Act, 1996, necessarily demands a focused consideration of the objections raised against the award, an assessment of their sustainability within the permissible parameters of judicial intervention and a reasoned determination as to whether any ground for interference is made out and we are satisfied that the Commercial Court, in the present case, has failed to undertake the requisite judicial scrutiny of the arbitral award and, therefore, order passed by it is wholly unsustainable.

35. We find that the issues pertaining to the legality, sustainability and quantum of damages in light of Sections 73 and 74 of the Contract Act and having regard to the conduct of the parties as well as applicability of the doctrine of holding over embodied in Section 116 of the T. P. Act, have neither been examined nor adjudicated upon. Various letters and emails exchanged *inter se* parties, the demand of rent and its payment, inclination of the appellant to vacate the premises, handing over keys by the appellant's representative to the respondent's representative, return of the keys by the latter to the former, removal/non-removal of movable goods and leaving fixtures as it is etc. etc. were the issues requiring proper adjudication. The same formed subject matter of adjudication so as to arrive at a conclusion as to which of the two parties was at fault on part of the Arbitrator and whether such an exercise was undertaken, was required to be exercised by the Commercial Court.

36. On the scope of interference under Section 34 of the Act, 1996, the Hon'ble Supreme Court, in the case of **Somdatt Builders** (supra), has held that though the Court does not sit in appeal over an arbitral award, it may interfere on merits only on the limited grounds provided under Section 34(2) and it is only when arbitral awards shock the conscience of the court, the same can be set aside on the ground that it is against public policy of India or that patent illegality appears on the face of the award.

37. In the case of **Bombay Slum** (supra), circumstances of cases where remand in an appeal under Section 37 of the Act may be warranted, have been indicated. Reference in this regard can be made to para 29 of the judgment, which reads as under:-

> "29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:
>
> **(a) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;**
>
> (b) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and
>
> (c) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record."

38. This Court could have made comprehensive deliberations on various issues involved in the matter based upon the documents such as emails etc., however, once this Court finds that the Commercial Court has completely failed to read the record as well as the award and has cursorily dismissed the petition under Section 34 by making general observations, the present case, in our opinion, would fall within the category of '**exceptional cases'** indicated in paragraph 29 of the judgment in the case of **Bombay Slum** (supra) as the disposal of petition under Section 34, in our opinion, notwithstanding length of the order impugned, is only a '**summary disposal'**.

39. We could have also made observations regarding the award passed by the Arbitrator but once we are satisfied that in view of the decision in the case of **Bombay Slum** (supra), it is a fit case where the matter should be remanded to the Commercial Court for re-deciding the issues raised by the parties, we refrain ourselves from making any further observations as the same may prejudice case of either of the parties before the Commercial Court, after remand.

40. In view of the above discussion, the appeal is **allowed**.

41. The order dated 08.12.2023 passed by the Commercial Court in Arbitration Objection (Case) No. 7 of 2012 is hereby **set aside**.

42. The matter is remanded to the Commercial Court, Gautam Budh Nagar to decide the said case afresh in light of the observations made in

this judgment and in accordance with law, after providing opportunity of hearing to the parties, with utmost expedition.

43. This Court, by order dated 01.03.2024, had permitted the appellant to deposit decretal amount with the Commercial Court. Further stipulations were made regarding deposit and its renewal and also its non-disbursement to the respondent. Since the matter is to be re-decided by the Commercial Court, we provide that the amount deposited in pursuance of the order dated 01.03.2024 shall remain invested in the fixed deposit as per the same arrangement and it shall be subject to further orders to be passed by the Commercial Court.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

November 04, 2026
AKShukla/-

Digitally signed by :-
ANIL KUMAR SHUKLA
High Court of Judicature at Allahabad