

CASE NO.

31



YEAR : 2004 **DATE OF DECISION** : 10/02/2005

CASE NAME : FIRST APPEAL FROM ORDER (ORIGINAL SIDE)

DECIDED BY : Hon'ble Mr/Mrs Justice **B A KHAN & ANIL KUMAR**

PETITIONER / PLAINTIFF NAME : INTRAPORT LTD & OTHERS

RESPONDENT / DEFENDANT NAME : MURLI MANOHAR LEASING & FINANCE CO PVT LTD & ANOTHER

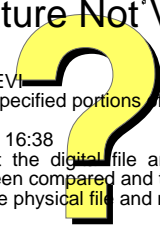
PETITIONER'S / PLAINTIFF'S ADV : M DUTTA

RESPONDENT'S / DEFENDANT ADV : NONE

Signature Not Verified

MOHINI DEVI
I agree to specified portions of this document

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Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.



IN THE HIGH COURT OF DELHI AT NEW DELHI

INDEX SHEETCAUSE TITLE..... F.A. (OS) 31/14 OF 201

NAME OF THE

PARTIES..... M/s. INTRA PORT 24/7


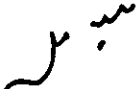
VERSUS


M/s. Murlidhar Manohar Leasing

PART A & B

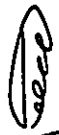

	Order sheet	1 to 15	
	F/D—	—	
	Appeal with Annexes	I to 155	
	B. Part		
	Office N.Hing + P/A with other misc papers	1-2	
	1. The case is fit for consignment and that no proceedings are pending either in High Court of Delhi or in the Supreme Court of India, in terms of rules as provided in Ch.5 (c) of the High Court Rules & Orders Vol-V, as no communication has been received in this respect.		
	2. It is also certified that all the relevant papers including office notes pertaining to payments and return of E.C. / Bank Orders, etc or other documents have been returned to our Party 'B' and have been placed at the end of Part 'A'.		
	3. No Public Bank Guarantee is lying in the present case.		
	25/11/12 366264/2	25/11/12	
	Per: Assistant I.D. No.....	A.O.J. (C-II) I.D. No.....1316	
	Assistant Registrar (Civil)/Dy.Registrar (App.)		
	I.D. No.....		



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Sr. No.	Date	Orders
		<p data-bbox="416 305 597 338">%25-02-2004</p> <p data-bbox="548 378 1052 411">Present : Mr. M. Dutta for appellants.</p> <p data-bbox="416 451 905 484"><u>+FAO(OS) 31/04 & CMs 2576-77/04</u></p> <p data-bbox="416 488 433 510">*</p> <p data-bbox="611 561 1158 595">Adjourned on appellants counsel's request.</p> <p data-bbox="616 634 924 668">List on 1st March, 2004.</p> <div data-bbox="1060 698 1385 887"> (B.A. KHAN) JUDGE</div> <div data-bbox="1021 902 1316 1063"> (MUKUL MUDGAL) JUDGE</div> <p data-bbox="416 1114 672 1181">25th February, 2004 ak</p>

Sr. No.	Date	Orders
		<p>01.3.2004</p> <p>Present: Mr.Manish Jha for the appellant.</p> <p><u>FAO(OS) 31/2004 and CMs 2576-77 /2004</u></p> <p>Hon'ble D.B. did not assemble.</p> <p>List on 10th March, 2004.</p> <p>March 01, 2004 CM/da</p> <p>By order  Court Master.</p>

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Sr. No.	Date	Orders
		<p data-bbox="567 224 1369 268">IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p data-bbox="403 336 1117 380">+ FAO(OS) 31/2004 and CMs 2276-77/2004</p> <p data-bbox="567 448 1394 526">M/S INTRAPORT LTD. & ORS. Petitioner Through Mr. Ragvesh Singh, Advocate.</p> <p data-bbox="898 560 982 593">versus</p> <p data-bbox="567 660 1360 750">M/S MURLI MANOHAR LEASING & FI Respondent Through</p> <p data-bbox="562 817 1201 929">CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p data-bbox="394 1041 428 1075">%</p> <p data-bbox="1050 1008 1201 1086"><u>ORDER</u> 10.03.2004</p> <p data-bbox="562 1120 982 1153">Adjournment slip is circulated.</p> <p data-bbox="562 1198 873 1232">List on 16th March 2004.</p> <div data-bbox="991 1220 1318 1411"> B.A. KHAN, J</div> <div data-bbox="1050 1400 1360 1545"> MUKUL MUDGAL, J</div> <p data-bbox="554 1534 798 1612">MARCH 10, 2004 da /CM</p>

Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 31/2004</p> <p>M/S INTRAPORT LTD. & ORS. Petitioner Through <u>Mr.B.Balaji</u> for counsel for appellant.</p> <p>versus</p> <p>M/S MURLI MANOHAR LEASING & FI Respondent</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p><u>ORDER</u> 16.03.2004</p> <p>Adjourned for non-availability of appellant's counsel.</p> <p>List on 25.3.2004.</p> <div style="text-align: right;">  B.A. KHAN, J  MUKUL MUDGAL, J </div> <p>MARCH 16, 2004 mg</p>

Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 31/2004</p> <p>M/S INTRAPORT LTD. & ORS. Petitioner Through: Mr.Manmohan Singh, Sr.Advocate with Mr.M.K.Jha.</p> <p>versus</p> <p>M/S MURLI MANOHAR LEASING & FI Respondent</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p style="text-align: center;"><u>ORDER</u> 12.04.2004</p> <p>%</p> <p>Adjoined on counsel's request to check up whether ^{violates} inception of provision of Specific Relief Act as claimed by him would tantamount to contravention of Public Policy within the meaning of Section 34 of Arbitration Act.</p> <p>List on 20.5.2004.</p> <p style="text-align: right;">B.A. KHAN, J</p> <p style="text-align: right;"> MUKUL MUDGAL, J</p> <p>APRIL 12, 2004 'k'</p>

Sr. No.

Orders

20.5.2004

Present: None.

FAO (OS) 31/2004

Hon'ble D.B. did not assemble.



List on 6.7.2004.

MAY 20, 2004

B.O.

COURT MASTER


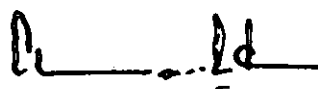
Pl. nec previous order,

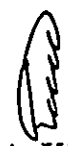
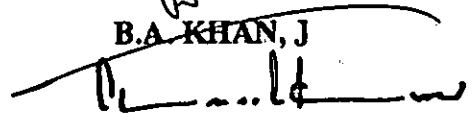
Sr. No.	Date	Orders
		<p>• IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 31/2004</p> <p>M/S.INTRAPORT LTD. & ORS. Petitioner Through Mr. Manmohan, Sr. Advocate with Mr. Arvind Sharma, Advocate.</p> <p>versus</p> <p>M/S.MURLI MANOHAR LEASING & FIN. Respondent Through</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE MUKUL MUDGAL</p> <p>ORDER 27.05.2004</p> <p>%</p> <p>Adjourned on appellant counsel's request to obtain instructions whether appellant was willing to deposit the awarded amount for seeking further consideration of the appeal.</p> <p>List on 24th August, 2004.</p> <div style="text-align: right;">  B.A. KHAN, J </div> <div style="text-align: right;">  MUKUL MUDGAL, J </div> <p>MAY 27, 2004 kcb</p> <p>- Appeal yet to be admitted - Appeal listed pursuant to order dt- 20/5/04 - Appeal also listed on 24/8/04</p>

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Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OS) 31/2004</p> <p>M/S.INTRAPORT LTD. & ORS. Petitioner Through Rakesh Gosain, Advocate</p> <p>versus</p> <p>M/S.MURLI MANOHAR LEASING & FIN. Respondent Through Nemo</p> <p>CORAM: HON'BLE MR. JUSTICE DALVEER BHANDARI HON'BLE MS. JUSTICE MANJU GOEL</p> <p><u>ORDER</u> 06.07.2004</p> <p>%</p> <p>List the appeal on the date already fixed, i.e., 24th August, 2004.</p> <div style="text-align: right;"> <p><i>Dalveer Bhandari</i> DALVEER BHANDARI, J</p> <p><i>Manju Goel</i> MANJU GOEL, J</p> </div> <p>JULY 06, 2004 rs</p>


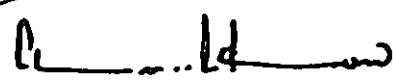
Sr. No.	Date	Orders
		<p>% 24-08-2004</p> <p>Present None.</p> <p>+ <u>FAO (OS) 31/2004</u></p> <p>*</p> <p>Division Bench could not assemble as Hon'ble Mr. Justice Vijender Jain is not holding Court today.</p> <p>Renotify on 5.10.2004.</p> <p>B.O.</p> <p><i>Bem'</i> (Court Master)</p> <p>August 24, 2004 SA</p> <p>- yet to be admitted. - Pl. see order dt. 12.4.2004</p>

Sr. No.	Date	Orders
		<p>% 05-10-2004</p> <p>Present: Mr.Arvind Sharma for the appellant.</p> <p>+ <u>FAO (OS) No. 31/2004</u></p> <p>* At the request of the counsel for the appellant, adjourned to 24.01.2005.</p> <div style="text-align: right;">  Vijender Jain, J. </div> <div style="text-align: right;">  Anil Kumar, J. </div> <p>October 05, 2004 sb</p> <p>FAO (OS) No.31/2004</p> <div style="text-align: right;"> Page 1 of 1 <u>Pl. see order 27-5-04</u> </div>

Sr. No.	Date	* ^{Orders} IN THE HIGH COURT OF DELHI AT NEW DELHI
+	FAQ(OS) 31/2004	<p>M/S.INTRAPORT LTD. & ORS. Appellant. Through Mr.Abhishek Bhardwaj for counsel for appellant.</p>
		versus
		<p>M/S.MURLI MANOHAR LEASING & FIN. Respondent Through None.</p>
		<p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE ANIL KUMAR</p>
		<p><u>ORDER</u> 24.01.2005</p>
		<p>Adjourned for non-availability of appellant counsel. List on 10th February, 2005.</p>
		<p> B.A. KHAN, J  ANIL KUMAR, J</p>
		<p>JANUARY 24, 2005 da</p>
		<p><u>Pl. see order 27.5.04</u></p>

Sr. No.	Date	Orders
		<p>13</p> <p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ FAO(OSO 31/2004</p> <p>M/S.INTRAPORT LTD. & ORS. Appellant. Through: Mr.M. Dutta, Advocate.</p> <p>versus</p> <p>M/S.MURLI MANOHAR LEASING & FIN. Respondents Through: None.</p> <p>CORAM: HON'BLE MR. JUSTICE B.A. KHAN HON'BLE MR. JUSTICE ANIL KUMAR</p> <p><u>ORDER</u> 10.02.2005</p> <p>%</p> <p>Appellants' objections under Section 34 of Arbitration Act have been rejected by the impugned order dated 13.1.2004 passed in OMP No.6/2004 giving rise to this appeal.</p> <p>Parties entered into an Agreement to Sell dated 30.8.1996 under which appellants agreed to sell property No.A-1, Mangol Puri Industrial Area, New Delhi to first respondent. An advance sum of Rs.25 lakhs was paid by this respondent to appellants and the balance consideration amount was to be paid within 90 days which period was, however, mutually extended by the parties from time to time because title deeds were held up with some bank on account of some loan borrowed by appellants. Thereafter a dispute arose between the parties and ultimately an Arbitrator was appointed who passed an award dated 17.9.2003 under which Rs.25 lakhs paid by the first respondent to appellants was to be returned to this respondent with</p> <p>FAO(OSO 31/2004</p> <p>page 1 of 3</p>

Sr. No.	Date	Orders
		<p>18%.p.a. interest till the date of the filing of statement of claim. The award also awarded an additional amount by way of interest.</p> <p>Appellant filed OMP 6/2004 and took objections to the award under Section 34 of the new Arbitration Act, 1996. All these objections have been rejected by the learned Single Judge by impugned order dated 13.1.2004 holding:-</p> <p>“After going through the impugned Award, this Court finds that it does not suffer from any illegality or infirmity covered by Section 34 of the Act. The Arbitrators have ordered refund of the amount paid by respondent No.1 with interest and litigation costs. The agreement got frustrated mainly on account of inability of petitioner to get the property released from mortgage. The fault, therefore, was not on the part of respondent No.1, who had paid substantial amount as earnest money. It cannot be said that Award is patently illegal or so unfair or unreasonable that it shocks the conscience of the Court. The judgement of the Apex Court in the case of “Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.” reported in (2003) 5 SCC P-705 is of no help to the petitioner/objector inasmuch as there is nothing on record to show that the Arbitrators have taken an unreasonable view or have acted unfairly in passing the impugned Award. No illegality attached to the Award is pointed out. The mere fact that at the stage of the hearing of the aforesaid FAO the respondent No.1 could not deposit the balance consideration of the suit property does not establish that during the subsistence of the agreement also the respondent No.1 was not ready or willing to perform his part of the contract. The Arbitrators have not taken any erroneous view in regard to law or facts of the case before them and as such there are no grounds for interference by this Court in exercise of the powers under Section 34 of the Act. This Court, therefore, does not find good grounds for issuing notice of the objections to respondent No.1.</p> <p>It is needless to emphasis that the scope of allowing objections under Section 34 of the new Act is limited and that in view of the Supreme Court judgments on this and a judgment of this Court also, we find ourselves in agreement with the view taken</p> <p>FAO(OSO 31/2004</p>

Sr. No.	Date	Orders
		<p>by the learned Single Judge while rejecting appellants' objections under Section 34 which leads ^{yes} no scope for us to entertain this appeal</p> <p>Appeal is accordingly dismissed.</p> <div data-bbox="907 340 1394 691"><p>B.A. KHAN, J</p><p>ANIL KUMAR, J</p></div> <p>FEBRUARY 10, 2005</p> <p>sdp</p> <p>FAO(OSO 31/2004)</p>