

**(2009) 11 DEL CK 0415**  
**In the Delhi High Court**  
**Case No : OMP No. 601 of 2009**

|                                                           |    |            |
|-----------------------------------------------------------|----|------------|
| Anukampa Solutions Private Limited                        | Vs | APPELLANT  |
| Uttar Pradesh State Road Transport Corporation and Others |    | RESPONDENT |

**Date of Decision :** 05-11-2009

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 9  
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 35  
Specific Relief Act, 1963 — Section 14(1), 41

**Citation :** (2009) 11 DEL CK 0415

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Akhil Sibal and Rohan Dheman, for the Appellant; Neeraj Kishan Kaul Garima Parshad and Neha Goyal, for the Respondent

**Final Decision :** Disposed Off

## Judgement

Valmiki J Mehta, J.—This is a petition u/s 9 of the Arbitration and Conciliation Act, 1996 whereby the petitioner has in effect prayed for the relief that the respondents be restrained from in any manner interfering with its operations of running a food plaza (single storyed medium size structure as the photographs shop) at Ajmeri Gate Inter State Bus Terminal, New Delhi. The land on which the food plaza now exists belongs to the Uttar Pradesh State Road Transport Corporation-the respondent No. 1. The other respondents are designated authorities of the respondent No. 1.

2. The facts of the case are that an agreement dated 23.11.2006 was entered into between the respondents and the petitioner whereby the petitioner within a period of four months from the date of the agreement had to construct a food plaza and run the same subject to various terms and conditions as set out in the subject agreement. I may, at this stage, note certain important Clauses of this agreement and which are:

(i) Clause 2, which requires construction within a period of four months subject

to any extension which may be granted by the respondents if the delay is found to be unavoidable.

(ii) Clause 6, pertaining to payment of licence fee @ Rs. 17,500/- per month after the expiry of the period of four months or completion of the facility for operation, whichever is earlier. I may note that a conjoint reading of Clauses 2 and 6 show that just because the extension is granted, will not mean that the payment of licence fee will not commence after the original stipulated period of four months.

(iii) Clause 16, as per which the title, interest and ownership with respect to the food plaza and the land allotted shall always remain vested with the respondents herein and the petitioner herein shall not be the owner of either the land or the superstructure or the fixtures and fitting therein.

(iv) Clause 19, as per which power is vested with the respondents to cancel/ revoke/terminate the agreement on account of the breach of stipulated terms and conditions by the petitioner herein,

(v) Clause 32, which requires that on completion of the licence period, the petitioner shall hand over vacant possession of the food plaza so constructed along with the fixtures and fitting as per the inventory within 24 hours.

(vi) Clauses 9, 10, 11, 15, 23, 28, 29 are various Clauses which show that overall supervision and control with respect to the food plaza shall remain vested with the respondents because by virtue of these clauses, the respondents were entitled not only to fix the rate list with respect to certain food items, it was also entitled to also see that the food plaza is not used for any undesirable purpose, hygiene standards and so on are maintained, the waiters are in uniform and are courteous, maintenance of general cleanliness and so on. These Clauses seem to have been incorporated as the food plaza was to cater to the general public coming at the Inter State Bus Terminal and which required reasonableness in running of the food plaza as the respondents are an arm of the State Government and its actions were also to be guided by public interest besides the profit motive.

3. A reading of the aforesaid Clauses of the subject agreement makes it more than amply clear that the relationship between the parties is one of the petitioner as a licensee of the respondent-licensor. The petitioner had no right, title and interest in the land or the constructed superstructure or the fixtures and fittings therein, all of which always vested with the respondents. The agreement was specifically terminable though of course on happening of contingencies of breach of the stipulation provided under the contract. As already stated there is no provision for any extension of time from payment of licence fee after the initial period of four months. The intention as reflected by the relevant Clauses of the contract was that respondents would earn revenue by receiving licence fee after about four months of entering into the subject contract.

4. Admittedly the petitioner could not complete the construction within either the original period of four months which expired on 23.3.2007 and even thereafter within the extended period of three months which expired on 23.6.2007. I may note that extension was requested by the petitioner because of its own default in proceeding with construction activities without obtaining approval of the plans. It has become clear from the record that since the construction activities which were being undertaken by the petitioner were without any sanction of the Municipal Authorities the same were therefore objected to by the respondent who issued a notice dated 14.6.2007 for stopping of the construction unless the necessary sanctioned plans are obtained from the Municipal Authorities. The sanction is obtained in this case admittedly only on 26.12.2008 i.e. more than one and half year after the extension expired on 23.6.2007. Considering that the original period of completion was four months, taking one and a half years for obtaining sanction is indeed a long delay. Thus, the delays in construction well beyond the four months was for reasons solely attributable to the petitioner.

5. At this stage, I may note two letters dated 15.6.2009 and 2.7.2009, which have been written by the respondents to the petitioner whereby in terms of the first letter temporary permission was granted to the petitioner to run the food plaza and by the second letter a continued permission (not temporary) was given to run the food plaza. The last line of the letter dated 2.7.2009 addressed by the respondent to the petitioner makes it clear that the extension was not a conditional one and the permission is a general permission.

6. Relying on the aforesaid two letters dated 15.6.2009 and 2.07.2009, the Counsel for the petitioner Mr. Akhil Sibbal has very strenuously and emphatically contended that, that by virtue of issue of these two letters, all breaches of the petitioner prior thereto, whether they be with regard to the period of construction or non-payment of license fee, or any other breaches in terms of the agreement stood condoned by the respondents.

7. Mr. Sibbal has also canvassed that both in equity and in law, the petitioner having constructed the food plaza and since the same is presently running, even if may be only from last two months or so instead of from 23.6.2007, the reliefs which have been prayed in this petition may be granted to the petitioner inasmuch as at this stage the court should not undertake a mini trial by deciding whether or not the termination is justified. He further contended that whether or not breaches have been committed and whether or not termination is justified, would be issues which would be taken up in the substantive arbitration proceedings which would be initiated between the parties.

8. In response, Mr. Neeraj Kishan Kaul, Senior Advocate on behalf of the respondents has urged the following contentions:

(i) the letters dated 15.6.2009 and 2.7.2009 cannot be and should not be interpreted to mean that each and every breach whether it is of payment of license fee or submission of the rate list of the food items for approval or

submission of the list of fixture and fittings which ultimately were to fall to the ownership of the respondents can be said to have been waived.

(ii) It was further contended on behalf of the respondents that the contract in this case is determinable by virtue of Clause 19 on account of the breaches committed by the petitioner. In this regard, Mr. Neeraj Kishan Kaul has referred to Section 14(1)(c) of the Specific Relief Act, 1963 which says that a contract which in its nature is determinable cannot be specifically enforced and since such a contract cannot be specifically enforced then by virtue of Section 41(e) of the Specific Relief Act, no injunction can be granted the effect of which is to enforce specific performance. Reliance has been placed on *Rajasthan Breweries Ltd. Vs. The Stroh Brewery Company*, and *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, to canvass that the determinable nature of the contract disentitles the relief of specific performance or injunction even when the contract is determinable not at all will but it encompasses determination on the contingencies of the breaches having been committed.

(iii) Mr. Neeraj Kishan Kaul has further contended that, the fact that overall control and supervision on day to day issues, in view of the public interest element of the contract, being whether of hygiene or cleanliness, whether or not carrying on undesirable activities or certain standards being maintained or courteous behaviour to customers having to be maintained and all other such Clauses in the agreement would show that if injunction is granted and specific performance is allowed, the contract would run into such numerous and minute details which the Court will not be able to supervise on a day to day basis and consequently in terms of Section 14(1)(b) of the Specific Relief Act even assuming the respondents are guilty of breach of contract even then no specific performance is allowable and consequently no injunction can be granted and at best the entitlement of the petitioner is to claim damages. To buttress this argument, Mr. Neeraj Kishan Kaul, relied upon Section 14(1)(a) which says that where the breach can be compensated by damages, specific performance and injunction ought not to be granted by the Courts.

(iv) Mr. Neeraj Kishan Kaul has finally relied upon the termination letter dated 24.9.2009 issued by the respondents against the petitioner in which three specific breaches have been stated viz of non-payment of licence fee, non submission of the rate list of the food items for approval and not giving the details of the fixtures and fittings in the food plaza. Mr. Neeraj KishanKaul has very emphatically stated that the respondents have not received the two letters dated 16.9.2009 and 19.9.2009 which the petitioner claims to have written to the respondents. Mr. Akhil Sibbal on the contrary has stated that one letter dated 19.9.2009 was sent by speed post AD.

9. An application u/s 9 of the Arbitration and Conciliation Act has to be disposed of on the principles of Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC). It is trite that for disposal of such an application, the court has to see the existence of a prima facie case, balance of convenience and irreparable

injury which will be caused to either of the parties. Keeping these principles in view and the law as applicable, I am of the opinion that this petition is clearly liable to fail and cannot succeed. The reasons for the same are:

(i) A person who is himself guilty of breach of contract cannot approach the court for any relief, much less for an equitable relief of injunction. As per clause-6 of the agreement the licence fee became payable after four months of execution of agreement on 23.11.2006 and admittedly licence fee (that too just Rs. 7000/-) was allegedly offered for the first time as late as two and a half years later in September, 2009. Even taking a benign interpretation of Clause 6 in favour of the petitioner, the payment of licence fee in any case became due from 23.06.2007 when the only extension granted expired. As stated above admittedly no licence fee was paid till at least September, 2009 when Rs. 7000/- is offered by the letter dated 19.9.2009. There is thus a clear breach of contract on the part of the petitioner and that too of a fundamental term of the contract. Further I may add that assuming for the sake of arguments if every breach committed earlier was condoned by the letter dated 2.7.2009 of the respondents it cannot have condoned future breaches. The licence fee therefore, became payable at least from July, 2009 and which again was not offered till 19.9.2009 and when a piffling figure of Rs. 7000/- is alleged to be sent. In fact, the petitioner ought to have sent the entire arrears with contractual interest thereon. There can be thus no doubt that the petitioner was in breach.

(ii) In the present case, not only the contract runs into minute details which the court cannot supervise on a day to day basis, the fact of the matter is that in such commercial contracts at the very best, the petitioner would have earned profits and which can surely can be quantified in terms of money for which claims can be filed before the Arbitrators assuming that the respondent is guilty of breach of contract and not the petitioner. The petitioner can also quantify in money terms the cost of construction of the single storeyed structure made by it.

(iii) The judgment of the Division Bench of this Court in the case of Rajasthan Breweries Ltd. (supra) is binding on me and clearly provides that even if, the contract is determinable on account of breach and the contract is not one which is determinable at will, even then, the provision of Section 41(e) of the Specific Relief Act would apply and injunction cannot be granted where a contract has been terminated on account of breaches committed by the defaulting party. To the same effect is the judgment in the case of Amritsar Gas Services (supra).

(iv) I am of the opinion that once a licensee, always a licensee. This principle has been clearly laid down in a Full Bench decision of this Court reported as Chandu Lal Vs. Municipal Corporation of Delhi, In fact, the Full Bench of this Court in this judgment has laid down that a licensee after his licence is terminated is not entitled to any interim injunction and in fact the licensor is entitled to use reasonable force to throw out the licensee from the licenced premises. I may also note at this stage that a Division Bench Judgement of this Court in the judgment reported as D.T.T.D.C. Vs. D.R. Mehra and Sons, declined an injunction which was

prayed for by a licensee by stating that a licensee after termination of the licence is not entitled to injunction and even if he is in possession such a relief cannot be granted to him and the Division Bench clearly stated that a licensee should not be allowed to urge the argument of due process of law because such issue will not arise if the licensee himself acts fairly and vacates the premises.

10. The issue of balance of convenience and irreparable injury in a case like this has necessarily to be seen from the perspective of the legal bar with respect to the grant of injunction because of Sections 14(1), (a), (b) & (c) read with Section 41 of the Specific Relief Act. If the law itself disentitles any injunction, then equities cannot have any say. That being the position and in view especially of the law with relation to termination of license, the balance of convenience is not in favour of the petitioner but in favour of the respondents as the petitioner will be compensated suitably by damages in case the respondent is found guilty of committing breach of contract. I may finally note that by looking at facts to arrive at a decision on an application for injunction u/s 9, it cannot be said that a Court conducts a mini trial. This Court is mandated to see the strength of the cases of the respective parties to arrive at a decision by virtue of Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., Mini trial would only be when highly disputed questions of facts are decided while deciding an application under Order XXXIX CPC, and which is not so in the present case in view of the basic facts as stated above being admitted or become apparent from the record. The contention of the petitioner of "mini trial" is thus not well founded.

11. In view of the aforesaid the present petition u/s 9 is dismissed with costs which are quantified at Rs. 1 lac and which shall be payable within two weeks from today failing which the same will carry interest @ 18% per annum. With the aforesaid observations, this petition is disposed of. The imposition of costs is in terms of the judgment of the Supreme Court reported as Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), para 37 thereof, whereby the Supreme Court has said that it is high time that instead of nominal costs, actual costs should be imposed. For awarding of costs, I have noted the financial capacity of the parties in this case and the claims and issues involved. As per Section 35 and Order 20A of the CPC costs have to necessarily follow the event.

At this stage, Mr. Neeraj Kishan Kaul, very fairly waives the costs subject to the condition that if the petitioner prefers an appeal such concession would stand withdrawn.