

(2006) 03 DEL CK 0062
In the Delhi High Court
Case No : LPA 883 of 2004

Delhi Metro Rail Corporation Ltd. and Others	APPELLANT
Vs	
Updesh Bakshi	RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Citation : (2006) 1 CTLJ 225 : (2006) 129 DLT 182

Hon'ble Judges : Markandeya Katju, C.J;S.N. Dhingra, J

Bench : Division Bench

Advocate : Shiv Kumar, for the Appellant; Rishikesh, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment dated 28.8.2004 of the learned Single Judge.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The Appellants (Respondents in the writ petition) invited application for issue of license for retail shop at Shahdara Rail Corridor MRTS Station and in response thereto the petitioner submitted two applications. The appellants awarded license of Shop Nos.16 and 17 (Department stores) to the writ petitioner. A copy of the letter dated 28.2.2003 intimating award of license of the aforesaid two shops and forwarding tender document containing terms and conditions is Annexure P-1 to the writ petition. Thereafter the appellants issued Invoice on 23.5.2003 in the name of the writ petitioner giving details of deposits including refundable security deposit, advance quarterly license fee etc. vide Annexure P2 to the writ petition. The petitioner deposited a sum of Rs.4.70 lacs being refundable security deposit and Rs.53,000/- (approx) as advance license fee.

5. It is alleged in paragraph 6 of the writ petition that the Appellants asked the petitioner to take possession of the said shops. It is alleged that before taking possession, the petitioner visited the shops along with the marketing manager and during his visit he was shocked to see that the shops were incomplete. Even the flooring of the shops was not done. It is alleged that the office bearer of the appellants assured that on taking possession of the shops as it is, the appellants will complete the shop in all respects including flooring. It is alleged that the petitioner visited the office of the appellants for doing the needful so that the shops were ready for doing the business but the appellants did not do the needful and did not complete the shops. Hence vide letter dated 11.02.2003 followed by reminder dated 01.07.2003 and 17.7.2003 the petitioner surrendered the shops and demanded refund of advance license fee and security deposit of Rs.4.70 lacs. Copies of the said letters are Annexure P3 to the writ petition. The petitioner also requested the appellants to take possession of the shops. Since the amounts was not refunded the petitioner gave a legal notice dated 22.7.2003 to the appellants vide Annexure P4 to the writ petition. However, despite the petitioner's requests and representations the appellants neither refunded the aforesaid amounts nor took back the possession of the shops. Instead, the appellants vide letter dated 4.9.2003 forfeited the amounts of advance license fee and the refundable security deposits. Hence this writ petition.

6. A counter affidavit was filed by the respondents (appellants in this appeal) and we have perused the same.

7. Clause (b) of term 6.16 of the terms of the tender states as under:- ?The licensee shall have the right to terminate the agreement during the term by giving three (3) months notice in writing of his/her/their intentions. In such a case the Security Deposit and advance license fee will stand forfeited in favor of DMRC. On expiry of the said period the agreement shall stand terminated.?

8. Another condition of the terms and conditions of the tender states:-

Licensor will have the right to terminate the agreement in case of breach of any of the terms and conditions of this agreement. The Security Deposit and advance license fee will stand forfeited.

9. It is stated in the counter affidavit that in view of the terms and conditions of the tender it is clear that the petitioner is not entitled for any relief as prayed for in the writ petition. It is stated that the invitation to tender is in the realm of contract and hence no writ lies. It is alleged that the impugned order dated 4.9.2003 is in accordance with the terms and conditions of the tender document and guidelines thereof.

10. In paragraph 5 of the counter affidavit it is stated that the petitioner failed to furnish before this Court the tender application and terms and conditions thereof and the agreement etc. along with the writ petition. Hence the petitioner has not come with clean hands. It is denied that the shop was incomplete including

flooring before taking possession. It is denied that the appellant assured the petitioner that the shop will be completed including flooring after taking possession.

11. In paragraph 7-9 of the counter affidavit it is stated that the petitioner had an impression that he would not be able to do business in this shop as he does not have funds to invest in the procurement of general merchant items and it is for this reason that he requested for refund of the deposits. Hence it is alleged that the demand of the petitioner for refund of deposits is motivated with ulterior objects on the pretext that no legal possession was given. It is stated that the petitioner deposited security amount and advance license fee and had taken possession of the shops in question. It is denied that the petitioner visited the office of the respondents several times from the period 11.3.2002 to 17.7.2003. It is stated that the amount can be forfeited in view of the Clause (b) of term 6.16 of the tender conditions.

12. We have also perused the rejoinder affidavit filed by the petitioner in the writ petition.

13. The learned Single Judge observed in his judgment that the petitioner had contended that there was no agreement executed between the parties. The appellants (respondents in the appeal) had assured that the original documents signed by the petitioner accepting the terms and conditions would be produced before the Court, but admittedly, no license was produced and instead all that was produced was the tender application form.

14. In our opinion, the tender application form even if signed by the petitioner is not a license. Clause (b) of term 6.16 applies only when a license has been granted. Since admittedly no license had been granted, obviously Clause (b) has no application. In our opinion, until and unless a license has been executed by the appellant in favor of the writ petitioner the amounts in question could not be forfeited. Hence we agree with the view taken by the learned Single Judge and accordingly this writ appeal is dismissed.