
(2013) 06 DEL CK 0003
In the Delhi High Court
Case No : O.M.P. No. 581 of 2013

Encyclopaedia Britannica India Pvt. Ltd.	APPELLANT
Vs	
M/s. Ma Radha Trust and Others	RESPONDENT

Date of Decision : 08-06-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2013) 06 DEL CK 0003

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sudhir Nandrajog and Mr. Aman Nandrajog, for the Appellant; V.P. Singh and Mr. Shakeel Ahmed and Mr. Deepak K. Tyagi, for the Respondent

Judgement

Manmohan Singh, J.—The petitioner has filed the abovementioned petition u/s 9 of the Arbitration and Conciliation Act, 1996. The case of the petitioner is that respondent No. 1 contacted the petitioner and offered to show the premises to the petitioner, i.e. Ground Floor, A-41, Mohan Cooperative Industrial Area, Main Mathura Road, New Delhi-110044 admeasuring 6720 Sq.ft. along with parking space for 3 cars, for leasing the same out to the petitioner on a fully furnished basis. Pursuant thereto, the petitioner agreed to take the demised premises on lease from respondent No. 1 on a monthly rent of Rs. 5,29,200/- for a period of three years. A Lease Deed was executed in this regard on 15th March, 2013 and the same was registered in the office of Sub Registrar-V, New Delhi on 2nd April, 2013.

2. It was agreed between the parties that respondent No. 1 would provide 70 workstations and 7 cabins as incubation space to the petitioner from 1st December, 2012. The parties executed a Maintenance Agreement on 17th October, 2012 regarding the provision and maintenance of various facilities, including air conditioning, power back up, water supply etc. The infrastructure which was to be provided and maintained by respondent No. 1 was set out in Annexure-I to the Maintenance Agreement upon payment of monthly

maintenance charges of Rs. 1,00,800/- by the petitioner.

3. It is submitted that the air conditioning in the demised premises was not at all efficient or effective resulting in a number of complaints from the staff of the petitioner. A temperature of 22C should be maintained in order to ensure a comfortable working atmosphere. However, the same was not being maintained by the respondents. The petitioner wrote a e-mail dated 22nd April, 2013 to M/s Espire Consolidated Services Pvt. Ltd. (respondent No. 2), the firm engaged by respondent No. 1 to provide and maintain the facilities as per the agreement, bringing all the aforementioned facts along with other problems. The same was replied to by respondent No. 2 vide its e-mail dated 23rd April, 2013. It was claimed that the temperature being maintained was of 24C, however, an assurance was given that a maintenance team would look into the issue of effectiveness of the A/C. Another e-mail dated 30th April, 2013 was sent by the petitioner to the respondent stating that not even 24C was being maintained. It was also pointed out that proper air conditioning was the responsibility of the respondent. The said e-mail was replied to by the respondent on the same day, i.e. 30th April, 2013. It was stated that there was no fault in the air conditioning. It was also stated in the said e-mail that if the petitioner so desires, it could install its own air conditioning at its own cost and not at the cost of the respondent.

4. Another e-mail was sent by the petitioner to the respondent on 1st May, 2013, once again intimating that if the problem is not rectified within three days, the petitioner would be constrained to install its own air conditioners, the cost of which shall be debited to the account of the respondent. The said e-mail was replied to by the respondent vide its e-mail dated 2nd May, 2013 wherein it was stated that an inspection was carried out to ascertain the problem and resolve the issue. It was also stated that the wooden partition in the cabin of the MD needs to be opened up so that air can flow in. An e-mail was received by the petitioner on 3rd May, 2013 stating that the partition in the cabin of the MD would have to be removed since the inlet and outlet of the air conditioner is in the same room.

5. The petitioner, vide its e-mail dated 13th May, 2013 intimated to the respondent that the petitioner would be calling its own experts and would be rectifying the situation. The said e-mail was replied to by the respondent on the same day admitting that the air conditioning was not effective in a few areas and requesting for some time to provide a solution. The petitioner sent another e-mail dated 14th May, 2013 to the respondent that the petitioner would be installing its own air conditioners in the premises, the cost for which would be debited to the account of the respondent. An intimation by way of e-mail dated 21st May, 2013 was sent by the petitioner to the respondent that air conditioners would be installed on that day, i.e. 21st May, 2013. The said e-mail was replied to by the respondent, requesting the petitioner not to take any decision till the respondent does not get back to the petitioner.

6. The petitioner submits that the temperatures in New Delhi were already hitting close to 45C. The petitioner was finding it impossible to operate its office under such conditions with ineffective air conditioning and was receiving complaints from employees. The petitioner, therefore, took the decision to install its own air conditioners. It was apprehended by the petitioner that the respondent would create some hindrances in the installation of the air conditioners. The petitioner made a complaint dated 22nd May, 2013 to the SHO of Sarita Vihar Police Station. The petitioner urgently requires to install 9, 1.5 ton air conditioners and 14, 2 ton air conditioners in the demised premises in order to maintain a comfortable environment in the office. Since the amount of rent was agreed to on the assurance of the respondent providing the facilities as mentioned in the Lease Deed and the Maintenance Agreement, the respondent having failed to adhere to its obligations, the petitioner is entitled to the reduction of the amount of rent and the maintenance charges.

7. The petitioner further submits that the provision of such air conditioners does not require any structural changes to the building and 4 such air conditioners are already installed. The site plan detailing the intended locations of the air conditioners has been annexed.

8. It is not in dispute that the Lease Deed and the Maintenance Agreement contain an arbitration clause, i.e. Clauses 14 & 21 respectively.

9. The disputes between the parties have arisen which could not be resolved between them. Therefore, the present petition has been filed seeking following directions:-

(i) Pass an order restraining the respondent from creating hindrances in the installation of 9 (nine) 1.5 ton air conditioners and 14 (fourteen) 2 ton air conditioners in the demised premises; and

(ii) Pass an order directing the respondent to discontinue the supply of Central Air Conditioning to the petitioner; and

(iii) Pass an order directing the respondent to remove the obstruction in the form of a desk that is being caused in front of the entrance of the demised premises; and

(iv) Pass an order restraining the respondent from disconnecting the electricity to the demised premises.

10. The matter was listed before Court on 31st May, 2013. Short date notice was issued for 3rd June, 2013 due to urgency of the matter. The respondents duly appeared before Court on 3rd June, 2013 through their counsel, Mr. Deepak K. Tyagi, Advocate who sought two days time to look into the problem raised in the petition and ensured the Court that in case, any fault in the plant of the central air condition system, the respondents would appoint an expert to cure the said defect so that the facility of air condition to the petitioner be provided with a temperature of 22C, i.e. comfortable working atmosphere. The matter was again

taken up on 5th June, 2013. Learned counsel for the petitioner informed the Court that there is no progress despite of order passed by the Court on 3rd June, 2013.

11. The petitioner also filed an additional affidavit of Mr. Sumit Gupta, along with Annexures A to D, in which the statement has been made that on 4th June, 2013 the petitioner itself noted down the temperatures within the premises at 1.45 p.m. The temperatures were recorded with the assistance of digital temperature gauges. The temperatures that were recorded in different parts of the office are as under:-

12. Thereafter, the petitioner sent an e-mail dated 4th June, 2013 to the respondent at 2.12 p.m. giving the details of the temperatures which were taken. The representative of the respondents came to the premises and started noting down the temperatures at about 4.00 p.m. in a mala fide manner. Mr. Ranjit Singh, HR Manager of the petitioner as well as Mr. Sumit Gupta, both objected to the temperatures being recorded in such a manner by the respondents and they refused to sign on the joint inspection report. It is also stated that the respondents have not correctly noted down the temperatures. The temperatures recorded by the petitioner are correct. The photographs containing the recording of temperatures by the petitioner are annexed with the affidavit as Annexure-D. Copies of the e-mail exchanged between the parties are filed as Annexure-C.

13. When the matter is taken up by Court on 7th June, 2013 and 8th June, 2013, learned Senior counsel appearing on behalf of the petitioner is pressing the interim order sought in the petition. His submission is that the respondents are only dragging the proceedings. As the temperature, at present, in New Delhi is unbearable due to weather conditions which is running close to 45C, it is not possible for his client to wait more as the repairing work of the Central Air Condition by the expert Engineer if appointed by the respondents or the Local Commissioner by this Court, the same may take some more time. His further submission is that even the suggestion of the respondents is allowed with regard to the said problem, then also after the expiry of said period, it is not sure that the problem would be over. It is submitted by him that despite of various reminders sent to the respondents for the last 11/2 months, till today no situation has been changed by the respondents. Therefore, it is difficult for his client to run the office as staff members of the office have been complaining about the difficulty. He relied upon the e-mail of the respondents wherein it was informed to the petitioner to install its own air conditioners for which the respondents did not raise any objection provided that the petitioner shall not claim cost of the air conditioners to be installed by the petitioner.

14. Learned Senior counsel appearing on behalf of the petitioner has also refuted the arguments of Mr. V.P. Singh, learned Senior counsel for the respondents that the petitioner is unnecessarily creating the dispute in order to take the benefit of lock-in period as it intends to vacate the premises before the expiry of the lease period.

15. After having considered the submissions of the parties and also the peculiar facts and circumstances of the case, I am of the view that it is not possible for the Court to postpone the dispute between the parties of this kind of nature and the suggestion made by the respondents would definitely take some time and there is no positive assurance or undertaking given by the respondents to cure the problem within short time, i.e. next few days. It is the admitted position that the respondents despite of receiving the reminders from the petitioner did not make any effort to accede to the request of the petitioner who is paying rent more than Rs. 5 lacs per month as well as the maintenance charges under the Maintenance Agreement dated 17th October, 2012. There could be no justification possible if the matter be again adjourned for filing of a reply and rejoinder.

16. Under the Lease Deed, 800 KWA Power Load is available for the whole property. Clause 7 of the Lease Deed mentions the air condition load for normal functioning of the office in the Maintenance Agreement dated 17th October, 2012. As per Clause 5, it was ensured and indemnified by the respondents to the petitioner at the time of execution of the said document with regard to the internal air conditioning and electrical system. It is not disputed by the respondents that the temperatures in the months of May and June are very high and mercury level is soaring day-by-day. The statement is also made in the petition that the petitioner will install the air conditioners which do not require any structural changes to the building and the petitioner also ensured to this Court at the time of making his submission that the petitioner's intended locations of the air conditioners would not change the main facet of the building, even site of the units of the air condition would be changed despite of site plan filed along with the petition, in case any AC would come in the way to secure the facet in the same manner.

17. It is pertinent to mention here that the respondents themselves in their e-mail dated 30th April, 2013 issued to the petitioner in reply have agreed to the petitioner to install its own air conditioners/automatic temperatures controls for the air conditionings at its own cost without debiting/adjusting any cost against their accounts, however, no window AC will be permitted. Not only that, in the said e-mail it is also admitted by the respondents that the cause of air conditioning not up to the desired level is not because of any issue with the air conditioning but because of the area being closed and congested. Had the same be an open hall, the air conditioning would have been perfect to meet the expectations of the petitioner. It is also not denied by the respondents in their e-mail dated 2nd May, 2013 wherein it was specifically admitted that the parties have jointly inspected the issues relating to air conditioning not functioning properly in the MD Room and wooden partition needs to be opened up so that air can flow in. It was also mentioned in the said e-mail that they are working on along with the maintenance team to check if there is any internal issues and if the petitioner so desires can install its own air conditioners or take measures at its own cost. However, the same would not be debited/adjusted against the

respondents" accounts. Power Load is admittedly available at the site.

18. Mr. Sudhir Nandrajog, learned Senior counsel submits that in view of the respondents' agreement with the petitioner allowing the petitioner to install its own air conditioners, the details of which are mentioned in the e-mails dated 30th April, 2013 and 2nd May, 2013, the prayer made in the petition is liable to be allowed. The question of any objection and reply on behalf of the respondents is not required as it is the admitted position that the respondents in the said e-mails have raised no objection for installing the air conditioners by the petitioner, except the condition put by the respondents is that the petitioner would install the air conditioners at its own cost and no window air conditioner would be installed, for which the petitioner also has no objection and is prepared to install the air conditioners at its own cost and no window air conditioners would be installed as per the suggestion of the respondents. The respondents in those circumstances cannot create hindrances in installation of air conditioners, the details of which are mentioned in the prayer clause.

19. In view of the above said facts and circumstances of the case, I am of the considered view that the petitioner is entitled for the relief claimed in the petition. As there is an arbitration clause in the Lease Deed/Maintenance Agreement between the parties; there is a live dispute arisen between the parties; and either party is entitled to invoke its dispute under the said arbitration clause, the claims or counter-claims of the parties can be determined by the Arbitrator if appointed under the relevant clauses of the two agreements.

20. Before allowing installation of the air conditioners, the details of which are mentioned in the prayer clause, as suggested by the learned counsel for the parties, it is directed to Shriram Institute for Industrial Research, 19, University Road, Delhi-110007 to appoint an expert as Local Commissioner who will visit the subject matter of the premises, i.e. Ground Floor, A-41, Mohan Cooperative Industrial Area, Main Mathura Road, New Delhi-110044 admeasuring 6720 Sq.ft., on 12th June, 2013 and 13th June, 2013 and overview the entire situation in view of the facts stated in the petition and reasons recorded in the order. The Local Commissioner will assess the entire situation in the presence of the Authorized Representatives of both the parties as well as representatives of the Maintenance Committee (who shall also provide full cooperation to the Local Commissioner) and will take the temperatures of all the areas during the various times between 1.00 p.m. to 5.00 p.m. on the days mentioned above and give his report as to whether the respondents, as per present condition of Central Air Conditioning Plant, would be able to provide the temperature of 22C in the areas of the petitioner during this period. In case, it is found that the same is not possible and there is no solution to the problem with regard to the requirement of the petitioner up to the evening of 13th June, 2013, the Local Commissioner would file his report by 14th June, morning before Court and under those circumstances, the appropriate orders may be passed on the next date in terms of para-19 of my order. The fee of the Local Commissioner is fixed at Rs.

30,000/- per visit which shall be paid by the petitioner, as agreed by the counsel.

21. Copies of this order be given dasti to the learned counsel for the parties, under the signatures of the Court Master and a copy be also communicated to Shriram Institute for Industrial Research, 19, University Road, Delhi-110007 by the Registry today itself by sending Special Messenger. List on 14th June, 2013 before the Vacation Judge for directions.