
(2010) 10 BOM CK 0163

In the Bombay High Court

Case No : Appeal Under Arbitration No. 5 of 2010

Euphoria Hotels Pvt. Limited

APPELLANT

Vs

Ecco-Nirman Pvt. Ltd. and Axis Bank Ltd.

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2010) 10 BOM CK 0163

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : M. S. Sonak and Manish Salkar, for the Appellant; C.A. Coutinho and S. Singbal, for the Respondent No. 2, for the Respondent

Judgement

A.P. Lavande, J.—Heard learned Counsel for the parties. By consent of the learned Counsel, the matter is heard finally.

2. By this appeal, the appellant takes exception to the order dated 31st March, 2010 passed by Principal District Judge, North Goa, Panaji in Civil Miscellaneous Application No. 4/2009 allowing the application u/s 9 of the Arbitration and Conciliation Act, 1996 ("The Act" for short).

3. Briefly, the facts relevant for disposal of this appeal are as under:

The appellant being the owner of the plots of land bearing plot Nos. 24/1, 24/5, 24/3 and 24/4 situated at Candolim, Goa entered into lease deed in respect of the property along with the buildings etc. existing thereon with respondent No. 1 on 3rd August, 2007. Thereafter, there was addendum to the said agreement entered into between the appellant and respondent No. 1 on 27th June, 2008. On 2nd July, 2008, a tripartite agreement was entered into between the appellant and the respondents for repayment of the amounts due to respondent No. 2 by depositing the rent with respondent No. 2. In terms of the agreements entered into between the parties, respondent No. 1 has been put in possession of the said property with effect from 2nd July, 2008. Thereafter, respondent No. 1

raised the dispute in respect of the property and/or the amounts paid. The appellant issued public notices inviting various offer for lease of the said property. On 14th January, 2009, respondent No. 1 filed Civil Miscellaneous Application No. 4/2009 u/s 9 the Act in the Court of District Judge, Panaji and sought an ex-parte injunction from the Court which was granted. The application was contested by the appellant. By the impugned order dated 31st March, 2010, the learned Principal District Judge has allowed the application. The operative part of the said order reads thus:

The application u/s 9 is allowed restraining the respondent No. 1 and its servants and agents from directly or indirectly disposing of, alienating, encumbering or inducing any third party or creating any third party right, title or interest or executing any lease or other agreement, or disturbing the peaceful possession of the applicants in respect of the hotel premises or any part thereof, or from taking any steps or action to dispossess or evict the applicants from the said property or to disturb or interfere with their possession.

4. The appellant has challenged the said order by filing the present appeal.

5. Mr. Sonak, learned Counsel appearing for the appellant submitted that the learned Judge has erred in granting injunction sought for by respondent No. 1. Mr. Sonak further submitted that in terms of the agreement and addendum, entered into between the parties, as on 31st December, 2009, respondent No. 1 is liable to pay an amount of Rs. 8.75 Crores out of which respondent No. 1 has only paid Rs. 5.25 Crores and as such, the learned Judge could not have granted injunction, which is granted without putting respondent No. 1 to terms. According to Mr. Sonak, respondent No. 1, who is a lessee, is not entitled to continue in possession with an injunction against the appellant without complying with the terms and conditions of the agreement and the addendum.

6. Per contra, Mr. Coutinho, learned Counsel for respondent No. 1 submitted that the construction is not complete and respondent No. 1 is not in a position to run the Hotel for which the lease deed was executed. According to Mr. Coutinho, the appellant has not given occupancy certificate for the building and as such, respondent No. 1 is not in position to run the hotel for which purpose the property was taken on lease by respondent No. 1 and, therefore, they are not liable to pay any amount due under the lease deed dated 3rd August, 2007 or addendum thereto. Mr. Coutinho further submitted that the learned Judge has rightly granted injunction thereby protecting the rights of respondent No. 1. Mr. Coutinho further submitted that respondent No. 1 has paid all the amounts due to the appellant till 31st December, 2009 amounting to Rs. 5.25 Crores.

7. I have considered the rival submissions and perused the record.

8. In terms of the agreement entered into between the parties, respondent No. 1 is bound to pay to the appellant yearly rent of Rs. 3.5 Crores and also is bound to deposit by way of security an amount of Rs. 3.5 Crores since the appellant has put respondent No. 1 in possession. At this stage, I am not inclined to direct

respondent No. 1 to pay to the appellant security deposit of Rs. 3.5 Crores. However, respondent No. 1 having obtained possession of the said property pursuant to the lease deed and addendum is bound to pay yearly rent to the appellant. In my opinion, the learned Judge has clearly erred in granting injunction in favour of respondent without putting respondent No. 1 to terms. Respondent No. 1 being the Lessee of the appellant in respect of the said property is bound to pay rent irrespective of the fact whether the buildings existing in the property are ready in all respects to run a hotel. Respondent No. 1 having taken possession of the property pursuant to an agreement is not entitled to contend that it would continue with the possession of the property without paying any rent to the appellant.

9. In view of the above, the impugned order passed by the learned District Judge granting injunction in favour of respondent No. 1 is confirmed subject to respondent No. 1 paying the rent of Rs. 3.5 Crores for the year 2010 by 30th November, 2010 and continuing to pay the future yearly rent of Rs. 3.5 Crores on or before 31st March of every year beginning from 2011 till respondent No. 1 continues to be in possession of the said property. It is made clear that the injunction granted by the learned Judge is confirmed subject to payment of rents by respondent No. 1 as directed above. In the event of failure on the part of respondent No. 1 to pay the rents as aforesaid, the injunction granted by the learned District Judge shall be liable to be vacated.

10. The appeal stands disposed of in aforesaid terms with no order as to costs.