(2021) 03 KAR CK 0008

In the Karnataka High Court

Case No : Commercial Appeal No. 21 Of 2021

M/S. Pharmatree Corporation APPELLANT

Vs

Rajya Vokkaligara Sangha RESPONDENT

Date of Decision : 01-03-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9
Specific Relief Act, 1963 — Section 41(h)

Citation : (2021) 03 KAR CK 0008

Hon'ble Judges : Abhay S. Oka, CJ;S.Vishwajith Shetty, J

Bench : Division Bench

Advocate : Muralidhar H.M, Anil Kumar R

Final Decision : Dismissed

Judgement

Abhay S. Oka, CJ

1. The appellant who is an applicant in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, â??the said Act of

1996â??) has taken an exception to the order dated 23rd January 2021 passed by the learned Judge of the Commercial Court.

2. With a view to appreciate the submissions made across the Bar, it will be necessary to make a reference to the facts of the case in brief.

An agreement was executed by the respondent in favour of the appellant on 5th February 2018 under which the respondent agreed to provide to the

appellant, a premises having the area mentioned in clause 1 of the said agreement in the hospital run by the respondent. The area was agreed to be

given to the appellant to run a pharmacy. Security deposit of Rs.2,00,00,000/- was paid by the appellant. Under clause 5 of the said agreement, the

appellant, being a licensee, was liable to pay a sum of Rs.42,00,000/- per month as a licence fee for the first three years and the enhanced licence fee

for the last two years of the period of the licence. As stated in clause 2 of the agreement, the period of agreement is up to January 2023.

3. In the application filed by the appellant under Section 9 of the said Act of 1996, a prayer was made for grant of temporary injunction restraining the

respondent from terminating the agreement. On 5th December 2020, during the pendency of the said application under Section 9 of the said Act of

1996, a notice/order of termination was issued by the respondent terminating the said agreement with effect from 15th December 2020. Prior to that,

there was a correspondence exchanged between the parties in which it is pointed out by the respondent that the appellant was in arrears of licence

fee plus GST to extent of Rs.3,75,90,000/-.

4. By the impugned judgment and order, the learned Judge of the Commercial Court has held that firstly, the appellant has not approached the Court

with clean hands as the appellant has not paid the arrears of licence fee payable under the said agreement. Secondly, the learned Judge of the

Commercial Court held that in view of the notice of termination of the agreement, the appellant was not entitled to relief in view of the principles laid

down in clause (h) of Section 41 of the Specific Relief Act, 1963 inasmuch as more efficacious relief could have been claimed by the appellant but the

same has not been claimed.

5. The submission of the learned counsel appearing for the appellant is that though a notice of termination was issued by the respondent on 5th

December 2020 which was to be effective from 15th December 2020, on 11th December 2020 an order of status quo was passed by the

Commercial Court and, therefore, the termination has not come into effect. His submission is that even the respondent failed to make reimbursement

of the bills of the appellant for having supplied the medicines to the patients. It is submitted that the reimbursement ought to have been made within the

stipulated time. His submission is that though the respondent was bound to purchase the required medicines and operation theatre and ICU

consumables from the appellant, it failed to do so. He submitted that the claim of the appellant for reimbursement has to be adjusted against the

arrears of licence fee. He would, therefore, submit that the learned Judge of the Commercial Court has committed an error by rejecting the application under Section 9 of the said Act of 1996. He submitted that the respondent did not come forward to convene the meeting for reconciliation of the

accounts.

6. We have considered the submissions. The only limited prayer made in the application under Section 9 of the said Act of 1996 was for restraining

the respondent from terminating the agreement dated 5th February 2018. The learned Judge of the Commercial Court relied upon a decision of the

Apex Court in the case of ADHUNIK STEELS LTD. VS. ORISSA MANGANESE AND MINERALS (P.)A LITRD 7 SCC 2563 The learned Judge

of the Commercial Court referred to the relevant clauses in the agreement and especially clause 21 of the agreement under which either of the party

was entitled to terminate the agreement. Moreover, the learned Judge has also considered the conduct of the appellant of not paying the licence fee as

per the said agreement. We may note here that after the termination was effected on 5th December 2020, amendment to the application under

Section 9 of the said Act of 1996 was not sought for claiming any additional relief.

7. Thus, no case is made out to interfere with the discretionary and equitable order made by the learned Judge of the Commercial Court. There is no

merit in the appeal and the same is accordingly dismissed.

8. The pending interlocutory applications do not survive for consideration and stands disposed of.

