
(2009) 09 DEL CK 0124

In the Delhi High Court

Case No : O.M.P. 538/08

R.P.S. Educational Society (Regd.)

APPELLANT

Vs

Delhi Development Authority

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2009) 09 DEL CK 0124

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : T.K. Ganju and B.L. Wali, for the Appellant; Bhupesh Narula, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—Petitioner claiming to be an educational society had taken on license a Community hall from DDA vide license deed dated 15.11.2007 for the purpose of developing, managing and operating the community hall for a period of 3 years at monthly license fee of Rs. 501/-. The activities which the licensee could run included reading room/library, gymnasium, indoor games such as table tennis, billiards, badminton, cafeteria, internet kiosk, temporary hobby courses, conference room (office space for use of RWA or other bodies working for the upliftment of neighbourhood). The activities permitted in community hall also included yoga, music concerts, performing arts, film festivals, etc. The activities not permitted in the community hall or open spaces were exhibition-cum-sale, diwali mela, restaurant serving alcoholic drinks etc. It was specifically provided in Clause 54 that community hall shall not be used for banqueting, tehbazari, retail shopping and licensee shall not be permitted to utilize the community hall to carry any other trade.

2. A show-cause notice was served by DDA after receiving complaints from the respondent for violation of different clauses of the licensee deed namely Clauses No. 4, 6, 12, 19, 20, 23, 28, 29 & 39. After this show-cause notice was served,

the petitioner approached the Court u/s 9 of the Arbitration and Conciliation Act, 1996 since the license deed provided for arbitration as a dispute resolution mechanism. Prayer has been made in the petition that the Court should stay the operation of show-cause notice and restrain respondent from taking any coercive action for dispossessing the petitioner from the community hall and pass an interim order in this case.

3. In reply, DDA has stated that complaints were received against the petitioner regarding misuse of community hall and its use contrary to the terms and conditions. It is submitted that under the license deed, the license of the petitioner could be terminated by giving one month notice even without assigning any reason. After termination of license, the petitioner had no title, right or interest in the community hall and respondent, DDA was entitled to possess the community hall forthwith after expiry of one month notice period. It is also submitted that the breach of license deed was enquired into and the reply to show-cause notice was not found satisfactory. The petitioner was supposed to open a separate account in respect of the community hall as provided in Clause 23 and was to include two members of DDA in the executive committee but the petitioner flouted both the conditions and minutes of meeting signed by the petitioner on 20.2.2009 show that the petitioner started operating community hall in December, 2007 and wrote a letter to the respondent after 8 months asking the respondent to associate in the executive committee and in the accounts. It is submitted that the respondent could not have approved the past accounts. The respondent had cancelled the license of the petitioner on 25th September, 2008.

4. Clause 46 of the license agreement reads as under:

That the licensor shall have the right to terminate the license after giving one month's notice without assigning any reasons thereof.

5. It is apparent that in terms of license deed, the respondent had authority to cancel the license. u/s 9 of the Arbitration and Conciliation Act, the Court can pass an interim order to preserve such subject matter of dispute which it considered was necessary to be preserved for adjudication of the dispute. However, an order u/s 9 of the Arbitration and Conciliation act cannot be passed by the Court directing specific performance of the contract, the breach of which is alleged by the petitioner. This Court in Excel Generators Pvt. Ltd. v. IJM Corporation Berhad OMP No. 241/09 decided on 13th May, 2009 had observed that where a contract is terminable contract and it can be foreclosed, the interim relief u/s 9 of the Arbitration and Conciliation Act cannot be granted for specific performance of the contract. In all those cases where monetary damages can compensate the breach of contract, the Court cannot insist upon the parties that the contract should be specifically performed.

6. Termination of the contract is one of the facets of the commercial law and if a party is aggrieved that the contract was wrongly terminated, the remedy lies in

claiming damages. The party cannot insist that the contract should be specifically performed and it should be restored to the position prior to the breach of the contract. Even otherwise it is settled law that show-cause notice cannot be stayed by a Court. Giving show-cause notice amounts to giving an opportunity to the party to explain the breaches. Serving show-cause notice is a right of the party and the Court cannot interfere in serving show-cause notice and cannot say that the department should not ask the contracting party to explain its action. It is also settled law that the Court cannot write a new contract or revalidate a contract for the parties, if the contract is already terminated. The Court cannot thrust a contract upon the party u/s 9 of the Arbitration and Conciliation Act and ask that the contract should be restored. I find no force in the petition. The petition is hereby dismissed.