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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 22, 2009
Date of Order: May 29, 2009

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29.05.2009

M/s Wingsfield Knitwear Pvt. Ltd.

...Petitioner

Through : Mr. Sanjeev Puri, Sr. Adv. with Ms. Sumita Kapil, Advocates

Versus

Mr. Deepak Kumar & Ors.

...Respondents

Through: Mr. Chetan Sharma, Sr. Adv. with Mr. Manjeet Ahluwalia and
Ms. Kamlesh Mahajan, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. By this petition under Section 9 of the Arbitration & Conciliation Act, 1996 (for short, "the Act"), the petitioner had made a prayer that this Court should pass an ex parte injunction restraining respondents, its agents, employees from alienating or interfering or dealing with the rented premises of ground floor and basement of M-26, Greater Kailash, Part-I, New Delhi.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner entered into a lease deed with respondents Deepak Kumar and Company through its proprietor Mr. Deepak Kumar for a period of three years in respect of premises namely half portion of ground floor and half portion of basement of Shop No.26, Greater Kailash Part-I. The rest half portion of the shop belonged to brother of the respondent and the petitioner entered into a

separate lease deed with brother of respondent. As per the lease deed for the ground floor area ad measuring 800 sq. ft. (half portion) and basement area ad measuring 600 sq. ft, the rent reserved between the parties was Rs.5,50,000/- and Rs.1,25,000/- respectively totaling to Rs.6,75,000/-, plus service tax. Since the petitioner had to do interiors of the premises before the petitioner effectively use it and the premises was earlier under tenancy of some other tenant who had interiors according to his requirements. it was observed in the lease deed that the petitioner would not pay the rent from 20th February 2009 to 31st March 2009. This period was given to the petitioner for doing the interior work. The rent was to start from 1st April 2009. The basement of the premises was lying sealed at the time lease was entered into. However, the seal was opened on 13th March 2009. It was provided in the lease deed that in case the petitioner was not interested in taking the basement portion on rent after opening of seal, then respondent will have the right to make entry to the basement from the front side of the shop through an area measuring 4' x 9' and the respondent would be free to lease out the basement portion to some other party. The lease deed entered into between the parties specifically provided about the lock-in-period in the following terms:

“6. That the Lease may be renewed for a further two terms of three years after the expiry period of first term of 3 years i.e. after 31/03/2012, the lease money shall be increased by 15% (Fifteen Percent) after every three years on last paid lease money as per para 1 of this deed. The lock-in-period of this lease deed is 3(three) years, i.e. 01/04/2009 to 31/03/2012. In case the Lessee, i.e. M/s Wingsfield Knitwear Pvt. Ltd. vacates the premises before 31/03/2012, the Lessee shall be liable to pay full lease money for the entire period of three years, i.e. upto 31/03/2012. The lock-in-period from the Lessor side is 36

(Thirty Six) months from 01/04/2009 to 31/03/2012 i.e. the Lessor shall not ask for termination of this Lease Deed before 31/03/2012 provided there is no breach of terms of this lease deed by the Lessee, i.e. M/s Wingsfield Knitwear Pvt. Ltd.”

3. It is contended by the petitioner that the petitioner had taken possession of the shop in terms of the lease on 20th February 2009 and the petitioner started doing interiors. The petitioner had engaged an interior decorator firm for doing the interiors. The petitioner also engaged security guards. The petitioner also ordered for manufacturing of stocks so that the petitioner could start his fully furnished and equipped showroom from 1st April 2009. However, on 21st March 2009 at about 9.30 pm when the work of interior in the shop was going on and labour and contractor of the petitioner were inside the shop, respondents Mr. Deepak Kumar and his brother Mr. Bharat Bhushan along with 10/12 unidentified persons came there carrying fire arms and threatened the security guard and the labour working inside the shop and they pushed them outside the shop. The key of the shop was snatched from the security guards and the respondents did not allow the petitioner to come near the shop. The shop was locked by respondent. The general manager of the petitioner at that time was in Gurgaon and he rushed to the premises but he too was threatened by respondents at the midnight of 21st March 2009. It is submitted that since the petitioner had entered into a lease of premises with a lock-in-period of three years and the lease being renewable for two more terms of three years even thereafter with increase in rent, the termination of lease could not be done by respondent. However, the respondents after forcibly dispossessing the petitioner and his contractor from the shop were making efforts to create third party rights in the premises

and they should be restrained from creating any third party rights.

4. The case of the respondent is that the petitioner after taking the premises on lease started having grudge that he had agreed for higher rent and he started pressurizing the respondents for decreasing the rent. The petitioner also served a notice on the respondent that the petitioner had not seen the premises from inside at the time of signing the lease and when he entered into the premises after it was vacated by the previous tenant, he found that large portion on the ground floor was useless because of stairs going through the basement to the upper floors. The petitioner asked the respondents to proportionately decrease the rent for area covered by stairs and told the respondent that the respondent had misrepresented the facts.

5. It is submitted by respondent that possession of the premises was never handed over to the petitioner. The keys of the shop used to remain with the security guards of respondents. The petitioner was only allowed to carry out interiors in the shop. Since the rent was to start from 1st April 2009, the possession was to be handed over on 1st April 2009. However, before that date, disputes arose between the parties due to attitude of the petitioner and non cooperative stance of the petitioner. It is submitted that the respondent tried to have cordial relations with the petitioner but looking at the way the petitioner had threatened the respondents and showed highhandedness, the respondents were not prepared to have any dealing with the petitioner.

6. During arguments, counsel for the respondents offered to return back the entire security amount of Rs.16,15,000/- received from the petitioner plus the amount of Rs.20 lac allegedly spent by the petitioner on interior

decoration, although respondent disputed that Rs.20 lac was spent on interior decoration and submitted that amount spent was hardly Rs.3-4 lac, subject to settlement of dispute by arbitration.

7. The efforts of getting the matter settled between the parties through the intervention of their advocates was also done but it failed. Both the parties continued to stick to their stands. While petitioner submitted that he had spent money on advertisement and had already represented to the people that he was going to open a showroom in Greater Kailash. The stock for the showroom had already been manufactured and was lying dumped. The petitioner's counsel submitted that petitioner shall suffer an irreparable loss and injury and the damages that may be suffered by the petitioner cannot be calculated. The respondents, on the other hand, submitted that in view of bad blood between the petitioner and respondents, respondents do not want to keep the petitioner as a tenant.

8. There is no dispute that the lease deed was entered into between the parties on 20th February 2009. It is specifically provided in the lease deed that no rent will be charged for the period from 20th February 2009 to 31st March 2009 so that the petitioner may do the interior decoration and rent will be charged from 1st April 2009. I consider that once the lease deed is entered into between the parties in respect to the shop and the rent is reserved, the possession of the premises goes to lessee. It makes no difference if for a specific period lessor does not charge rent to enable lessee to do the interior decoration. The claim of lessor that he had not handed over possession of shop to lessee is baseless. The shop stood handed over to tenant the moment the lease deed was signed between the parties and the lessor accepted

security amount and took post-dated cheques for the rent period commencing from 1st April 2009. The lease deed also provides that the lessee will have its own security arrangement and shall install its own fire-fighting system. It is obvious that the lessee needed time to do the interior and to install different systems in order to run the showroom properly. Even if the keys of the shop was being handed over to the respondents for convenience sake at the end of the day when interior decoration was going on, it does not mean that the possession was with respondents. Prima facie the respondent had taken over the possession of the premises from the petitioner forcibly, contrary to the terms and conditions of the lease. Such possession has to be seen as an illegal possession and law does not recognize a forcible possession taken from the tenant by the landlord as a lawful possession. I, therefore, consider that the legal possession has to be considered of the petitioner and in case respondents do not allow the petitioner to work in the premises, the respondents will have to suffer the consequences. The petitioner is also at liberty to stop the payment of rent to the respondents, without prejudice to his other rights because the respondents had forcibly taken possession of the premises from the petitioner. The respondents in terms of the lease could not terminate the lease deed before expiry of three years i.e. before 31st March 2012 so long as the petitioner continued to pay rent. The petitioner in this case had given advance cheques and the rent was to start from 1st April 2009. Even before that respondents put their own locks on the shop and prevented the petitioner from using the premises. Under these circumstances, I consider that respondents cannot be permitted to re-let the shop. It would be in the interest of respondents if they allow the petitioner to operate from the shop in terms of the lease deed. The petitioner had contended during proceedings that it only wants that showroom should be opened as early as possible. It

had no intention to ask for reduction of rent but the respondents did not agree to this.

9. In view of foregoing facts, I allow this petition. The respondents' possession over the premises in question is prima facie illegal. The respondents are hereby restrained from re-letting, alienating or creating any third party interest qua ground floor and basement of M-26, Greater Kailash, Part-I, New Delhi.

10. The petition stands disposed of in above terms.

May 29, 2009
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SHIV NARAYAN DHINGRA J.