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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: May 25, 2009
Date of Order: May 29, 2009

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29.05.2009

M/s Narendra Implex Limited

...Petitioner

Through : Mr. A.S. Chandhoik, Sr. Adv. with Mr. P. Banerjee & Ms. Manmeet Arora, Advocates

Versus

Indian Institute of Planning & Management ...Respondent

Through: Mr. Rajiv Nayar, Sr. Adv. with Mr. Raman Kapur, Mr. Arvind Kumar, Mr. Amit Sharma, Mr. Manoj Ohri and Mr. Neeraj Kumar, 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 Arbitration & Conciliation Act, 1996 (for short, "the Act"), the petitioner seeks a relief that this Court should give directions to respondent not to breach the lease deed dated 3rd March 2008 as notified by agreement dated 16th April 2008 and the respondent should continue to pay quarterly rentals of Rs.6,55,66,377/- to Punjab National Bank or the respondent be directed to deposit a sum of Rs.65,5663,770/-. Directions are also sought against respondent for deposit of Rs.13,11,32,754/- with 24% interest and to furnish security for payment on account of rentals of unexpired lock-in-period.

2. Brief facts necessary for disposal of this petition are that the petitioner sought to purchase the premises in question from NBCC through a public

auction. After entering into agreement to purchase the said premises, the petitioner obtained 'No Objection Letter' from NBCC authorizing the petitioner to lease out the premises to respondent and the petitioner then executed a lease deed dated 3rd March 2008 with the respondent letting the premises for the purpose of running an educational institute and related activities. It is submitted by the petitioner that the respondent had satisfied itself with respect to petitioner's right and title in the said property. The lease entered into between the parties provides for a lock-in-period of three years and was renewable after every three years subject to enhancement of rent. The respondent's rent started from 1st May, 2005 though occupation of the premises was given in March, 2005 but the period of 60 days was given to respondent to furnish and equip the property for running the institute. It is submitted that respondent was not entitled to terminate the lease for the period of first 33 months commencing from the effective date and respondent was entitled to terminate the lease only thereafter by giving a notice of three months showing its intention to vacate the premises with expiry of lock-in-period of 36 months. The respondent had deposited security of Rs.15,09,20,000/- on account of six months rental which was to be refunded on expiry of lease deed. Respondent had issued PDCs for rent falling due from May, 2008 to July 2008.

3. It is apparent from the averments in the petition that the respondent did not continue with the lease for 36 months and terminated the same by giving a notice to the petitioner alleging therein violation of the terms of lease on the part of petitioner. The respondent stopped paying rent and vacated the premises during pendency of this petition on 30th April 2009. The petitioner's contention is that despite respondent's vacating the premises, the respondent was liable to pay quarterly rent as mentioned in the lease

deed for the lock-in-period because respondent could not have terminated the lease by an unilateral act before expiry of lock-in-period of 36 months.

4. A perusal of notice issued by respondent to the petitioner terminating the lease deed would show that the respondent had taken the stand that the petitioner failed to provide the completion certificate/ occupation certificate from MCD which the petitioner was supposed to provide in terms of the lease deed. The petitioner had undertaken that the owner of the property namely NBCC will create no interference for the use of the property by respondent in peaceful manner but NBCC had cut the electricity of the aforesaid premises on various occasions due to the fact that there was no completion certificate/ occupancy certificate provided by the petitioner to NBCC. MCD contacted the respondent and informed that it would seal the premises. The grounds of terminating lease by respondent are as under;

- (i) it was being used/occupied without completion certificate;
- (ii) that the petitioner created hindrance in enjoyment of the premises by sending certain persons to the premises who illegally and forcibly entered into the premises and threatened the students on 17-18th February 2009;
- (iii) that the petitioner issued a legal notice dated 24th February 2009 threatening legal action against respondent on unjustified reasons;

5. The respondent called upon the petitioner to refund the security deposit of Rs.15 crore and collect keys of the premises on 30th April 2009, the date on which the respondent was to vacate the premises.

6. It is submitted by counsel for respondent that when the premises was

let out by the petitioner, the petitioner vide Clause 13 of the lease deed had taken responsibility that the completion certificate/occupation certificate will be provided by the petitioner to the respondent on or before 1st May 2008 or such extendable time as may be mutually agreed. It was also provided that in the event of completion certificate not having been obtained, misuse charges or other related charges relating to misuse, imposed by the municipal authorities shall be borne by the lessor. Counsel for respondent pointed out to the show cause notice dated 23rd March 2009 received by respondent from MCD whereby MCD has notified to respondent that the building was occupied without permission/ without obtaining occupancy certificate in violation of provisions of Section 346 of DMC Act. He also pointed out to the order of learned ADJ showing that the electricity of the premises was disconnected by NBCC without any notice resulting into immense hardships to respondent and the respondent had to move the Court.

7. It is contended by counsel for the petitioner that non-obtaining of completion certificate was no ground available to the respondent for termination of lease deed. The building can be occupied without obtaining proper completion certificate. He relied upon *MCD v Piyush Traders Pvt. Ltd. ILR (1988) 1 Delhi 577* wherein this Court held that there was no requirement of law that unless and until a completion certificate was issued, a building cannot be considered fit for occupation and there was no legal bar placed by any statute prohibiting letting out of land till the completion certificate was obtained. He submitted that in view of this judgment, the plea of the petitioner taken for cancellation of lease deed was not maintainable and the petitioner was bound by the terms of the contract.

8. Another plea raised by respondent is that the letting out of the building to respondent was contrary to the building bye-laws and approved site plan by MCD of NBCC Plaza. Counsel for respondent submitted that the building sanction plan of the NBCC Plaza shows that the area was not meant for an educational institution but it was meant for ninety shops. The petitioner let out the premises to the respondent for educational institute representing that the petitioner had obtained permission from MCD for letting out the area for educational institution. However, no such permission was obtained. He submitted that in view of the fact that user of the premises was contrary to the building bye-laws and the approved/ sanctioned site plan, there was every possibility of the premises being sealed.

9. A perusal of site plan of NBCC Complex would show that the site in question was to consist of 90 shops. The site plan also shows different shops earmarked in it and instead of letting out the proposed shops to different persons, the petitioner had let out the entire area to respondent for running an educational institute.

10. Counsel for petitioner contended that the petitioner had obtained permissions from MCD for letting out the same to an educational institution. Petitioner had written a letter to Dy. Commissioner of MCD seeking clarification whether the area of 78350 sq yards taken by the petitioner from NBCC on ground floor and first floor can be leased out to IIPM. MCD vide a letter informed the petitioner that the Master Plan 2021 (MPD-2021) which defines use of community center contained following:

"Table 5.1: Five-Tier System of commercial areas

(MPD-2021).

Retail shopping, stockists and dealers of medicines and drugs, commercial and offices of local bodies, PSUs, cinema, Cineplex, hotels, service appts., restaurants, halls, guesthouse, nursing home, dispensary, clinical lab, clinic and poly clinic, coaching centres/ training institutes, police post, post office, petrol pump/CNG station, repair/services, bank ATM, informal trade, multilevel parking."

11. The petitioner was informed that petitioner can carry out the activities as set out in the Master Plan. The petitioner has construed this letter of MCD as a permission of MCD of leasing out the premises to respondent. The letter on the face of it shows that MCD had not given any permission to the petitioner to lease out the premises to an educational institution but has simply drawn attention of the petitioner to the provisions of Master Plan.

12. I consider that both the parties have raised questions about interpretation of the agreement and a dispute whether the respondent was within its rights to terminate the lease or not arise in this case. This Court cannot give a finding either in favour of the petitioner or respondent on the issues whether the lease was rightly terminated by the respondent or the respondent was liable to pay the rent as reserved in the lease deed despite its terminating the lease and vacating the premises. This question has to be left open to the arbitrator who shall adjudicate the disputes between the parties and shall decide the issues as may be raised before him by the parties.

13. Counsel for petitioner submitted that the respondent was bound by the

tripartite agreement dated 16th April 2008 entered upon between petitioner, respondent and Punjab National Bank, the respondent had agreed to hypothecate all future lease rentals payable by the lessee to the bank. I consider that this tripartite agreement would not stand in the way of respondent in terminating the lease if it could otherwise do so. In case the respondent was lawfully entitled to terminate the lease, the respondent would have no liability to pay the rentals of the premises to PNB after termination of lease. This tripartite agreement is valid so long as the lease between the petitioner and respondent is valid and continuous. The tripartite agreement can be considered as a part of the lease deed. The tripartite agreement is only an arrangement which was entered into between the petitioner, respondent and the bank after premises was let out to respondent as to how rental is to be paid. The rental was to be paid directly to the bank because of the fact that the petitioner had taken huge loans from the bank, offering this property as security.

14. I consider that looking into all facts and circumstances, it is not the case where the court should give directions to respondent to continue to pay rental despite respondent having vacated the premises on 30th April 2009 after termination of the lease deed vide a notice. The issue whether this termination of lease deed was a valid termination or not, cannot be gone into by the Court at this stage and has to be gone into by the arbitrator. I, therefore, find no force in this petition. The petition is hereby dismissed. No orders as to costs.

May 29, 2009
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SHIV NARAYAN DHINGRA J.