

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP No.522/2009**

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Date of decision: 09.09.2009

SHRI SANNIL SETHI

....Petitioner

Through: Mr. Sunil Malhotra, Advocate for the
Petitioner.

Versus

PUNJABI BAGH CLUB (REGD.) & ORS. ... Respondents

Through: None

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition under Section 9 of the Arbitration Act, 1996 is preferred for interim measures. The petitioner had a contract with the respondent No.1 club (Respondents No.2&3 are its office bearers) for providing catering services in the Restaurant, Banquets, Bar, Card Room, Tambola Lawn & Family Lounge in the club premises. The said agreement was for a term of two years expiring on 28th February, 2010. Clause 19 of the agreement provides that the agreement can be terminated at any time with two months notice if the services are not found satisfactory or for any other reason whatsoever and the decision of the respondent club in this regard

shall be final. The agreement also provides for arbitration. The respondent club vide letter dated 30th April, 2009 notified the petitioner that there were deficiencies in the services provided by the petitioner and that the said letter may be treated as one month's notice for termination of the agreement. The respondent club on 24th July, 2009 also invited fresh tenders for awarding the said contract to another person w.e.f. 1st September, 2009. The present petition was filed first on 3rd September, 2009. On enquiry, the counsel for the petitioner states that the other contractor who may have been appointed by the respondent club pursuant to the tender has not taken over as yet and the petitioner continues to provide the catering services. Interim measures are sought in this petition of restraining the respondents from awarding the contract of catering services to any other person and to allow the petitioner to continue with the catering services under the agreement aforesaid. Directions in the form of specific performance of the contract are also sought. One of the reliefs claimed is for directing the respondents to refund the security amount of Rs.5 lacs deposited by the petitioners with the respondent for providing the catering services in the Coffee Shop of the club and with respect where to the respondents are stated to have already appointed another contractor.

2. On enquiry, the counsel for the petitioner states that the agreement with respect to the Coffee Shop was different from the agreement on the basis whereof this petition has been filed. However on further enquiry, it is informed that there is no other written agreement with respect to the Coffee Shop. This query was made because the petitioner has in the petition inter-alia taken a ground that the respondents on the one hand are not refunding the security deposit aforesaid of the petitioner and on the other hand are

seeking to remove the petitioner. It was felt by this court that if the petitioner has already demanded the security deposit, the petitioner could not have at the same time sought directions in the nature of specific performance. However, in view of the stand taken during the hearing, this aspect though felt to be relevant is not considered.

3. The counsel for the petitioner has drawn attention to the correspondence between the parties of a date prior to the termination whereunder the petitioner is shown to have been demanding performance by the respondent of the obligations which the respondent club was to perform under the agreement. It is contended that the breach in fact was on the part of the respondent club in not providing the infrastructure as agreed and not on the part of the petitioner.

4. It is also contended that the termination letter of 30th April, 2009 is of one month only while according to the contract the termination notice was required to be of two months.

5. Attention is also drawn to the appreciation meted out to the petitioner in the Comments Card filed along with this petition. It is urged that a large number of the members of the club have been appreciating the services of the petitioner.

6. In my view, the matter is not res integra. The Supreme Court in ***Indian Oil Corpn. Ltd. Vs. Amritsar Gas Service*** (1991) 1 SCC 533 has held that where the agreement by its very nature is terminable, injunction or direction in the nature of specific performance cannot be issued. It was further held that even where the requisite notice of termination as agreed has not been given, the

claim on that account can also be for damages only and not for performance of the agreement during the said period. I find the said dicta to be squarely applicable to the facts of this case. Not only is the agreement by its very nature incapable of specific performance under the provisions of the Specific Relief Act and even otherwise in as much as this court is not in a position to supervise or enforce the performance of various obligations going into the minute details by the parties but also for the reason of the parties having expressly agreed to the same being terminable. Though more than two months have expired since the notice of termination but even if there be a grievance of the petitioner on that account, the claim of the petitioner would be for damages only and not by way of injunction.

7. I also find that the petition is highly belated. The termination was as far back as on 30th April, 2009; tender inviting fresh bids was issued on 24th July, 2009 and the new caterer was to take over w.e.f. 1st September, 2009. The petitioner has been sleeping for the last so many months and now when as per the tender, the new caterer is supposed to have taken over the services which the petitioner was to provide under the agreement, the petition has been filed.

8. The counsel for the petitioner has also argued that the petitioner has employed 40 persons for running services under the said contract and they would be rendered jobless. However, the petitioner knew that the agreement is terminable by the respondent club at any time; more over, the term of the agreement is, in any case, is to expire in the end of February, 2010 and this ground does not persuade me to grant any interim measures as claimed.

9. In the aforesaid circumstances, neither is the petitioner found

to be having any prima facie case nor would the petitioner suffer any irreparable loss nor is the balance of convenience found in favour of the petitioner or in granting interim measures claimed.

The petition is dismissed.

IA No.11603/2009 (u/S 151 of the CPC for exemption).

Allowed, subject to just exceptions.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**September 9th, 2009
PP**