

COCP No.1037 of 2015
COCP No.1038 of 2015

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

- (1) **COCP No.1037 of 2015**
Date of decision:04.05.2015
- M/s. Deva Swimming Institute Ltd. ...Petitioners
- Versus
- Anita Yadav and others ...Respondents
- (2) **COCP No.1038 of 2015**
Date of decision:04.05.2015
- M/s. Deva Swimming Institute Ltd. ...Petitioners
- Versus
- Anita Yadav and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. Alok Mittal, Advocate, for the petitioner.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing COCP Nos.1037 and 1038 of 2015 as both are inter-connected. However, for the sake of convenience, the facts are extracted from COCP No.1037 of 2015.

The petitioner has invoked the provisions of Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the “Act of 1971”), for the alleged willful disobedience of the order passed by the Additional District Judge, Gurgaon, on 17.04.2015, on an application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act”). The petitioner brought to the notice of

COCP No.1037 of 2015
COCP No.1038 of 2015

[2]

the lower Court the willful disobedience of the order dated 17.04.2015 by the respondents to initiate action under Order 39 Rule 2-A of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”) but its application was dismissed on 21.04.2015 on the ground that the lower Court had no jurisdiction to entertain the contempt petition as, according to it, the remedy would lie under the provisions of the Act of 1971. As a consequence thereof, both these petitions have been filed before this Court.

The brief facts of the case are that the HUDA Gymkhana Club invited applications for the purpose of operating swimming pool at HUDA Gymkhana Club, Sector-4, Gurgaon, on BOT basis. The proposal submitted by the petitioner was accepted and allotment letter dated 11.03.2012 in regard to running, maintenance and operation of the swimming pool, for a period of 9 years, was granted which included the construction of a Baby Learners Pool. The annual rent was fixed @ ₹15,00,000/- being the monthly rent @ ₹1,25,000/-. The parties entered into an agreement on 12.03.2012 for increase of 10% in rent after every 3 years. There was no dispute between the parties till a notice of termination of agreement was issued to the petitioner on 05.03.2015 to which reply was filed by it on 11.03.2015. However, instead of burying the hatchet, the agreement was terminated vide order dated 04.04.2015, which led to the filing of a suit for permanent injunction in the Civil Court at Gurgaon in which an application was filed by the HUDA Gymkhana Club under Section 8 of the Act invoking the arbitration clause. The said suit is still pending, however, on 16.04.2015, certain officials of the respondents, taking advantage of the fact

COCP No.1037 of 2015
COCP No.1038 of 2015

[3]

that there was no *ad interim* injunction by the Civil Court, reached the club premises and tried to forcibly dispossess the petitioner, which led to the filing of an application under Section 9 of the Act in which the Additional District Judge, Gurgaon, passed an interim order on 17.04.2015, which reads as under:-

“Keeping in view the said facts, this court finds that it is in the interest of justice fair play that the parties are directed to maintain status quo regarding the service provided by the petitioner till the next date of hearing. Ordered accordingly.

The observation made above shall not be construed as opinion in any manner in the final outcome of the petition to be decided after hearing both the parties.

Notice be issued to respondent for 8.5.2015.

Notice be given dasti as well.”

Although the order was passed on 17.04.2015 but on the same day, at about 4.30 p.m., the respondents, with large number of people, not known to the petitioner, came to the club premises to forcibly dispossess the petitioner who were confronted with the order passed by the Court on 17.04.2015, but despite that they did not desist in their adventure and forcibly ousted the petitioner and its staff from the club premises, at about 5.00 p.m. The petitioner approached the Additional District Judge, Gurgaon, for initiating contempt proceedings but the said application has

COCP No.1037 of 2015
COCP No.1038 of 2015

[4]

been dismissed vide order dated 21.04.2015, observing that the Act is a special Act which is a complete Code in itself and though the principles for grant of injunction under Order 39 Rules 1 & 2 of the CPC are applicable for deciding the petition under Section 9 of the Act but Order 39 Rule 2A of the CPC is not applicable as such. It is also observed that there is no provision in the Act to punish the defaulting party for violation of any order passed by this Court under Section 9 of the Act and hence, the petitioner was left to avail its remedy under the Act of 1971, if the action of the respondents falls within the definition of willful disobedience.

At the outset, learned counsel for the petitioner is asked about the nature of the order dated 17.04.2015 to which the obvious reply is that it is in the nature of injunction. He also submits that though the Civil Court has the jurisdiction under Section 9 of the Act to grant injunction but the Act is further silent about the provision for compliance of the injunction order passed as an interim measure and in case of willful disobedience of the order, the only remedy lies with the petitioner is to invoke the provisions of Sections 10 and 12 of the Act of 1971 as the action of the respondents falls within the definition of civil contempt in terms of Section 2(b) of the Act of 1971.

In a reported case of the Delhi High Court titled as **Sri Krishan v. Anand**, 2010(2) R.A.J. 543, an application under Section 9 of the Act was filed for interim measure before the Court though an order for interim measure had already been passed by the arbitral tribunal under Section 17 of the Act. It was sought to be argued by the applicant therein that the order

COCP No.1037 of 2015
COCP No.1038 of 2015

[5]

passed by the arbitral tribunal under Section 17 of the Act is unenforceable as it does not have the teeth. It was further argued that even the provisions of Order 39 Rule 2A of the CPC are not applicable as it relates to the Order 39 Rules 1 and 2 of the CPC and would not apply to the order passed by the arbitral tribunal under Section 17 of the Act. The Court dismissed the application filed under Section 9 of the Act on the ground that once the party had elected to seek relief under Section 17 of the Act from the arbitral tribunal, it cannot seek the same relief from the Court under Section 9 of the Act and while answering the question of the applicant that there is no mechanism for enforcing the order passed under Section 17 of the Act, the following observations were made:-

“11. Though neither of the counsel had drawn attention to the aforesaid provision but in my opinion the same is a complete answer to the cause of action for the present petition. The petitioner seeks same interim orders from the court as already granted to him by the arbitral tribunal only for the reason of the breach of the order of the arbitral tribunal being remediless. But that is not the position. The aforesaid provision provides the remedy for such breach. Any person failing to comply with the order of the arbitral tribunal would be deemed to be “making any other default” or “guilty of any contempt to the arbitral tribunal during the conduct of the proceedings”. Thus the remedy of the other party is to

COCP No.1037 of 2015
COCP No.1038 of 2015

[6]

apply to the arbitral tribunal for making a representation to the court to meet out such punishment, penalty to the guilty party, as would have been incurred for default in or contempt of the court. Naturally, the arbitral tribunal would make such a representation to the court only upon being satisfied that the party/person is in default or in contempt. Once such a representation is received by this Court from the arbitral tribunal, this court would be competent to deal with such party in default or in contempt as if in contempt of order of this court i.e., either under the provisions of the Contempt of Courts Act or under the provisions of Order 39 Rule 2A CPC.”

Since it was an order passed under Section 17 of the Act, therefore, the Delhi High Court had observed that the arbitral tribunal would make a representation to the High Court only upon being satisfied that the either party is in default or in contempt and once such a representation is received from the arbitral tribunal, the High Court would be competent to deal with such a party in default or in contempt either under the provisions of the Act of 1971 or Order 39 Rule 2A of the CPC.

This was the position in regard to interim order passed by the arbitral tribunal under Section 17 of the Act. There is no quarrel with the fact that the arbitral tribunal may pass an order for any interim measure under Section 17 of the Act which a Court can pass under Section 9 of the Act. The arbitral tribunal can pass an order under Section 17 of the Act

COCP No.1037 of 2015
COCP No.1038 of 2015

[7]

when the arbitration proceedings are pending before it, but the Court can pass an order under Section 9 of the Act even before initiation of the arbitration proceedings. If, according to the Delhi High Court, the order passed by the arbitral tribunal, in regard to its satisfaction of the breach of the interim measure, can be dealt with under the provisions of the Order 39 Rule 2A of the CPC, the Court, who had issued the injunction in terms of Section 9(d) of the Act, would definitely have the jurisdiction to pass an order under Order 39 Rule 2A of the CPC especially when it has observed that the principles for grant of injunction under Order 39 Rules 1 & 2 of the CPC are applicable for deciding petition under Section 9 of the Act.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the order passed by the lower Court dated 21.04.2015 is erroneous and hence, the said order is hereby set aside and the matter is remanded back to the Additional District Judge, Gurgaon, to initiate proceedings in terms of Order 39 Rule 2A of the CPC for the alleged breach of its order dated 17.04.2015.

Disposed of.

May 04, 2015
rr/vinod*

(Rakesh Kumar Jain)
Judge