

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.21187 of 2017 (O&M)

DATE OF DECISION: 29.09.2017

M/s Garden Paradise (Wah Dilli)

....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.Kartikey, Advocate for the petitioner.
Mr. Deepak Balyan, Advocate for the HUDA.

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S.J. VAZIFDAR, CHIEF JUSTICE: (Oral)

The petitioners have challenged several orders passed by the respondents. However, the final order in which the other orders stand merged is the one dated 12.07.2017 (Annexure P-21). The challenge is only to a limited extent for the petitioners have infact derived considerable benefit under the order.

2. The petitioners have been permitted to continue to use the premises despite the fact that the period of the lease has admittedly come to an end. The claim for extension is now given up unconditionally. The order, however, permits the petitioners to continue to use the premises but only up till the process of inviting fresh applications and the grant of a lease to the successful party is made. The premises had earlier been sealed. By the said order the sealing is directed to be

undone on the payment of the entire outstanding dues by the petitioners or the submission of a bank guarantee as conceded by the petitioners. By the said order, the guarantee can be invoked in the event of the petitioners not making the full payment within four months i.e. by 12.11.2017.

3. The petitioners have now rightly gone a step further. The petitioners have admitted an amount of ₹ 68 lacs to be due and payable upto and including 31.05.2017 and have agreed to pay the same over to the respondents. The undertaking to do so is accepted and it is so ordered. The respondents, however, contend that an amount of ₹ 1.20 crores is due and payable upto 31.05.2017.

4. Under the order the rent for the period for which the petitioners have been permitted to utilize the premises is to be calculated as per the terms and conditions of the expired lease agreement. There is, however, a dispute regarding computation of the amount due upto 31.05.2017. We are unable to understand how there can be a dispute regarding computation for the basis of computation is admitted by both the parties. Although the full amount has not been paid, part payments have been made from time to time. The respondents admit that there is no provision for compound interest. In the circumstances the simple interest as per the agreement is payable on the reducing balance. Further, admittedly the petitioners shall not be liable to pay any amount during the period the premises were sealed.

5. The respondents shall afford the petitioners an opportunity of being heard and compute the amounts on the above basis. The petitioners are always at liberty to have the calculation done by an independent person and to place the same before the officer concerned i.e. Chief Controller (Finance), HUDA, Panchkula. The respondents shall also permit the independent person to make submissions in respect of the calculations.

6. The petition is, therefore, disposed of by the following order:-

- i) The petitioners shall pay a sum of ₹ 70 lacs to the respondents and a further sum of ₹ 11 lacs as advance rent for three months for the use of the premises hereafter. The petitioners shall also furnish an unconditional guarantee of a nationalized bank in the sum of ₹ 50 lacs. The guarantee shall be valid initially for the period upto and including 31.03.2018.
- ii) In the event of the petitioners making the aforesaid payments and furnishing the guarantee, the premises shall be de-sealed and the petitioners shall be entitled to use the same on the terms and conditions of the said order dated 12.07.2017.
- iii) Upon the amounts being recomputed by the respondents after hearing the petitioners, the petitioners shall pay the same over to the respondents within four

weeks of being intimated in writing, failing which the respondents shall be at liberty to invoke the guarantee. The invocation of the guarantee and the receipt of the amounts thereunder, however, shall be subject to the petitioners' right to challenge the same including by invoking the arbitration clause contained in the lease agreement. The petitioners shall appear before the officer concerned i.e. the Chief Controller (Finance) HUDA, Panchkula at 11.00 A.M. on 04.10.2017 and thereafter as directed by the officer.

7. The apprehension that the bank will not furnish the guarantee unless the property is first de-sealed does not appear to be well founded. Upon the petitioners making the aforesaid payments and furnishing the guarantee, the respondents would be bound by force of this order to desal the premises.

8. The petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

29.09.2017
ravinder

NOTE:

Whether speaking/non-speaking: Speaking✓
Whether reportable: YES/NO✓