

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

Judgment delivered on: 31st May, 2017

+ W.P.(C) 8501/2016

M/S SAI ASSOCIATES

..... Petitioner

versus

DELHI WAKF BOARD & ORS

..... Respondents

AND

+ W.P.(C) 8499/2016

M/S IMAGE ADVERTISING

..... Petitioner

versus

DELHI WAKF BOARD & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners: Mr. Saket Sikri, Mr. Vikalp Mudgal, & Mr. Ajay Pal Singh,
Advocates.

For the Respondents: Mr. Aly Mirza, Advocate for R-1
Mr. Mukesh Gupta, Advocate for MCD

CORAM:

HON'BLE MR JUSTICE SANJEEV SACHDEVA

J U D G M E N T

SANJEEV SACHDEVA, J

1. Both these petitions impugn two separate orders dated 24.08.2016. The orders are identical in nature and seek to terminate

the respective license deeds executed in favour of the petitioners. Since common questions of fact and law arise in these petitions, they have been taken up together for disposal.

2. The petitioners impugn the respective orders dated 24.08.2016 on the ground that they seek to cancel the license deeds executed in favour of the petitioners. The license deed in favour of the petitioner in W.P.(C) No. 8499/2016 is dated 05.01.2006 and the license deed in respect of the petitioner in W.P.(C) No. 8501/2016 is dated 20.12.2005.

3. The petitioners seek quashing of the action of the respondents in terminating the respective license deed prior to expiry of the period stipulated therein. Further restraint is sought against the respondents from proceeding further with tender dated 07.09.2016.

4. The petitioners were allotted license for carrying out business of displaying advertisements through Unipoles.

5. The licences were initially for a period of one year. The respective deeds stipulated that the licence could be extended for a further period of one year at a time.

6. It is the contention of the petitioners that the respective licence deeds were renewed from time to time. The last renewal, in respect of

both the petitioners, was done on 24.09.2015 but for a period of two years. It is contended that since the licence deeds were extended for a period of two years, the same are valid till 20.08.2017.

7. It is contended that the petitioners have been performing their part of the obligations in terms of the licence deed.

8. By the respective impugned orders dated 24.08.2016 the licence deeds have been cancelled with effect from 30.09.2016. It is stated in the impugned letters dated 24.08.2016 that the respondents are receiving offers of amounts approximately double to the amount being paid by the petitioners. The petitioners, by the impugned letter, have been permitted to participate in the tendering process.

9. The contentions of the petitioners is that during the validity and subsistence of the extended period of licence i.e. till 20.08.2017, the respondents could not have terminated the licence and invited tender for the advertisement sites.

10. The respondents have filed counter affidavits objecting to the maintainability of the petition, inter-alia, on the ground that there is an arbitration clause in the licence deed and the petitioners in the first instance should invoke arbitration in terms of the said clause.

11. It is further contended that since it is a licence that was granted to the petitioner and licence by its very nature is terminable and the remedy, if at all, of the petitioner for wrongful termination would not be to seek injunction but to make a claim for damages.

12. It is further contended that the licence could have only been extended by a period of one year at a time and the extension of the licence by a period of two years on 24.09.2015 was itself contrary to the terms of the licence. It is further contended that the alleged extension of two years was not authorized as the minutes of the meeting in which the alleged extension took place were not signed and the appointment of Chairman who had allegedly chaired the meeting had not been notified.

13. Learned counsel for the petitioner relies on the decision in the case of **'Union of India & Ors. Vs. Tania Construction Pvt. Ltd.'**, **(2011) 5, SCC 697** to contend that mere existence of an alternative remedy is not an absolute bar. It is a rule of discretion and the court in an appropriate circumstances despite existence of an alternative remedy, may entertain a petition under Article 226 of the Constitution of India.

14. Section 14 of the Specific Relief Act, 1963 reads as under:

"14. Contracts not specifically enforceable. –

(1) The following contracts cannot be specifically enforced, namely:-

(a) a contract for the non-performance of which compensation in money is an adequate relief;

*(b) ******

(c) a contract which is in its nature determinable;

*(d) ******

*(2) ******

15. In terms of section 14 of the Specific Relief act where compensation in terms of money is an adequate relief for non-performance of a contract, court would not direct specific performance of the contract. In case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or to any understanding between the parties or for any other reason, the remedy of the plaintiff would be to seek compensation for wrongful termination and not a claim for specific performance of the agreement. No injunction can be issued preventing a party from terminating a licence.

16. A Division Bench of this High Court in **Rajasthan Breweries Ltd. versus The Stroh Brewery Co.** AIR 2000 DELHI 450 held as under:

“13. However, the principles of equity governing specific performance are almost same in Indian law and English law. The discretion of the Courts of England while enforcing the specific performance of a contract is subject to the same constraints as are applicable in the Courts in India. Under the English law specific performance of contractual obligation is available only in equity and is subject to various restrictions, which have been explained by G.H. Treitel in his work “The Law of Contracts” 6th Edition pages 764 to 775 as follows:

- (i) Specific performance will not be ordered where damages are adequate remedy.*
- (ii) If the party applying for relief is guilty of a breach of the contract or is guilty of wrongful conduct.*
- (iii) If the Contract involves personal service.*
- (iv) If the contract requires constant supervision.*
- (v) If the party against whom specific performance is sought is entitled to terminate the contract.”*

At page 775, it is stated in the aforementioned words:

“If the party against whom specific performance is sought, is entitled to terminate the contract, the order will be refused as the defendant could render

it nugatory by exercising his powers to terminate. This principle - applies whether the contract is terminable under its express terms or on account of the conduct of the party seeking specific performance.”

14. The effect of breach of a contract by a party seeking to specifically enforce the contract under the Indian law is enshrined in Section 16(c) read with Section 41(e) of the Specific Relief Act, 1963. Clause (e) of Section 41 of the Specific Relief Act provides that injunction cannot be granted to prevent the breach of contract, the performance of which would not be specifically enforced. Clause (c) of Section 41 enumerates the nature of contracts, which could not be specifically enforced. Clause (c) to sub-section (1) of Section 14 says that a contract which is in its nature determinable cannot be specifically enforced. Learned Single Judge thus was justified in saying that if it is found that a contract which by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract no injunction could also be granted and this is mandate of law. This, however, is subject to an exception, as provided in Section 42 that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement.

19. Even in the absence of specific clause authorising and enabling either party to terminate the agreement in

the event of happening of the events specified therein, from the very nature of the agreement, which is private commercial transaction, the same could be terminated even without assigning any reason by serving a reasonable notice. At the most, in case ultimately it is found that termination was bad in law or contrary to the terms of the agreement or of any understanding between the parties or for any other reason, the remedy of the appellants would be to seek compensation for wrongful termination but not a claim for specific performance of the agreements and for that view of the matter learned Single Judge was justified in coming to the conclusion that the appellant had sought for an injunction seeking to specifically enforce the agreement. Such an injunction is statutorily prohibited with respect of a contract, which is determinable in nature. The application being under the provisions of Section 9(ii) (e) of the Arbitration and Conciliation Act, relief was not granted in view of Section 14(i) (c) read with Section 41 of the Specific Relief Act. It was rightly held that other clauses of Section 9 of the Act shall not apply to the contract, which is otherwise determinable, in respect of which the prayer is made specifically to enforce the same.

17. The Division Bench in **Rajasthan Breweries Ltd.** (supra) has held that Specific performance will not be ordered where damages are adequate remedy or where the party applying for relief is guilty of a breach of the contract or is guilty of wrongful conduct or where the contract involves personal service or where the contract requires constant supervision or where the party against whom specific

performance is sought is entitled to terminate the contract. If the party against whom specific performance is sought, is entitled to terminate the contract, the order will be refused as the defendant could render the direction to perform nugatory by exercising his powers to terminate. This principle has been held to be applicable whether the contract is terminable under its express terms or because of the conduct of the party seeking specific performance.

18. Further it has been held that if it is found that a contract, which by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract, no injunction could also be granted and this is mandate of law. This, however, has been held subject to the exception that where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstances that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement.

19. The Division Bench has further held that if it is ultimately found that termination was bad in law or contrary to the terms of the agreement or to any understanding between the parties or for any other reason, the remedy of the plaintiff would be to seek

compensation for wrongful termination but not a claim for specific performance of the agreements.

20. Clause 16 of the License Deed stipulates that :

“16. In the event of breach of any of the terms & conditions of this license deed, default of payment of licence fee by the Licensee the Licensor shall have the right to terminate the Licence after giving one months notice to the Licensee.”

21. In terms of clause 16 of the licence deed, the contract is determinable by the licensor. Since the Licensor has been given a right to terminate the Licence, no injunction can be granted restraining the Licensor from terminating the contract. In case the termination is held to be wrongful, Petitioner can be adequately compensated by way of damages.

22. Clause 18 of the Licence Deed read as under:

“18. In the event of any dispute, difference of opinion or claim arising out of or relating to this license deed or breach, termination or the invalidity thereof, shall firstly be attempted to be settled by conciliation., If the efforts, to resolve all or any of the disputes through conciliation fails, then such disputes shall be referred within 30 days to a Sole Arbitrator nominated by the Chief Executive Officer, Delhi Wakf Board. The Arbitration Proceedings shall be governed by the Arbitration and Conciliation Act 1996, as: amended from time to time including provisions in force at the time the reference is made.”

23. Clause 18 shows that the parties have agreed to resolve their disputes through Arbitration.

24. In *Tantia Construction Pvt. Ltd.*, (supra) the Supreme Court has held that mere existence of an alternative remedy is not an absolute bar. It is a rule of discretion and the court in an appropriate circumstances despite existence of an alternative remedy, may entertain a petition under Article 226 of the Constitution of India.

25. However, in the facts of the present case, the petitioners have failed to show circumstances that would warrant an exercise of discretion in their favour. The contract is of a pure commercial nature. The Licence deed is terminable by the Licensor. Termination notice has admittedly been given. In case of a wrongful termination, damages, in my view, would be an adequate remedy.

26. In view of the finding, that the license is terminable in nature, no injunction can be granted and remedy for wrongful termination would be by way of damages, the question raised by the respondents that the extension itself is incorrect as it could not have been for a period exceeding one year need not be gone into and is left open to be decided by the appropriate forum where such an issue is raised.

27. Similarly, the further question raised by the respondents that the extension was not authorized as the minutes were not signed and the

Chairman's appointment was not notified is not being gone into and is left open to be decided by the appropriate forum where such an issue is raised.

28. In view of the above, I find no merit in the writ petitions. The same are accordingly dismissed. No orders as to costs.

May 31, 2017
'rs'

SANJEEV SACHDEVA, J

