

IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL UNDER ARBITRATION NO.4 OF 2018

Airports Authority of India,
 A statutory authority,
 Having its office at Rajiv Gandhi Bhavan,
 Safdarjung Airport,
 New Delhi-110003 through the
 Airport Director,
 Goa International Airport,
 Goa – 403801.

.... Applicant
 (Original Respondent)

V e r s u s

P. K. Hospitality Services Pvt. Ltd.,
 having its Registered Office at 142,
 Upper Govind Nagar, Malad (E)
 Mumbai-400097, acting through its
 authorized Representative
 Mr. Raghunath Devadiga

..... Respondent
 (Original Applicant)

(Above all are registered addresses)

Shri M. P. Rao, Senior Advocate with Advocate A. Nachinolkar for the
 Appellant.

Shri N. Sardessai, Senior Advocate with Advocate V. Amonkar for the
 Respondent.

CORAM: C. V. BHADANG, J.
DATE: 20th February, 2018.

ORAL ORDER :

The challenge in this appeal under section 37 of the Arbitration and
 Conciliation Act, 1996 is to the order dated 8/2/2018 passed by the learned

Principal District Judge granting ad interim relief under section 9 of the Arbitration and Conciliation Act, 1996 (Act, for short).

2. The brief facts are that; under an Agreement of the year 2006 the respondent is in possession of the subject premises at the Goa International Airport as a licensee. The contract contains the following Arbitration clause:

“All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or which the Public Premises (Eviction of Unauthorized Occupants) Act and the rules framed thereunder which are now enforce or which may hereafter come into force are applicable) shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration Act shall be applicable.

It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the Award of the Arbitrator will not be challenged or be open to question in any Court of Law, on the account.”

3. The petitioner issued a notice dated 31/1/2018 to the respondent purportedly under sub-section (1) and clauses (b) (i) and (ii) of sub section

(2) of section 28 C of the Airport Authority of India Act, 1994 asking the respondent to show cause as to why action in pursuance of the aforesaid provisions should not be taken for the eviction of the respondent from the disputed premises, as described in the schedule annexed to the said notice. This led the respondent to approach the learned Principal District Judge under section 9 of the Act of 1996, in which, the respondent sought various reliefs. Presently we are concerned with prayer clause (e) of the application which reads thus:

“ Grant temporary injunction restraining the respondent from seeking eviction of the petitioner/initiating eviction proceedings against the petitioner in a manner contrary to the terms of the Agreement”

4. The learned Principal District Judge by the impugned order has found that the possession of the respondent needs to be protected and has therefore granted ad interim relief in terms of prayer clause (e) as above and at the same time has directed the petitioner to appear before the Estate Officer appointed by the petitioner.

5. Shri Rao, the learned Senior Counsel for the appellant submits that the Arbitration Agreement, excludes disputes which are governed by the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and similar

provisions, as contained in section 28C clause of the Airport Authority Act 1994. It is submitted that the learned Principal District Judge failed to appreciate the Arbitration Agreement properly and was in error in granting the ad interim relief.

6. Shri Sardesai, the learned Senior Counsel for the respondent has submitted that the petitioner has come up against an order granting ad interim relief order. The petitioner is yet to filed his reply to the application under section 9 of the Arbitration Act. It is submitted that all the contentions as raised on behalf of the petitioner can be appropriately considered by the learned Principal District Judge while deciding the application.

7. On hearing the learned Senior Counsel for the parties and on perusal of the record, I find that at this stage all that the learned Principal District Judge has done is to grant ad interim relief. The matter is said to be fixed today in the afternoon before the Principal District Judge. The petitioner is yet to file a reply before the learned Principal District Judge. Normally this Court would be slow in interfering with the order of the present nature, granting ad interim relief. It may not be out of place to mention that the proceedings for eviction initiated by the petitioner are also at a preliminary stage, wherein the respondent has filed reply raising certain

preliminary objections. In such circumstances, in my considered view, it would be appropriate if the learned Principal District Judge considers the application under section 9 of the Act including the application for ad interim relief/interim relief on its own merits in expeditious manner. Thus no case for interference is made out in the impugned order. In such circumstances, the appeal is accordingly dismissed, with no order as to costs. The learned Senior Counsel for the petitioner, on instructions, states that the petitioner shall file reply on merits before the learned Principal District Judge within a period of one week from today. On such reply being filed, the learned Principal District Judge shall decide the application on its own merits within three weeks from filing of the reply. All the rival contentions of the parties are left open.

C. V. BHADANG, J.

Ap/