

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Arbitration Appeal (ST) NO. 17942 OF 2019

M/s. Austin Daniels Caterers And Suppliers
Proprietary Firm Thr. Its Prop. Shri. Austin Daniel ...Appellant

Versus

The Union Of India Thr. The Senior Divisional
Commercial Manager And Ors. ...Respondents

Mr.Raj Patel I/b. Ruturaj V. Bankar, for the Petitioner.

Mr.T.J.Pandian, for the Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 1 July 2019

P.C.

1. Heard the learned Counsel for the appellant and the learned Counsel for the respondents.
2. This is an appeal filed under Section 37 of the Arbitration and Conciliation Act,1996 (for short 'the Act') of the appellant being aggrieved by an order dated 21 June 2019 passed by the learned District Judge-8, Pune, on an application filed by the appellant under Section 9 of the Act. The grievance of the appellant is in regard to the revision of the licence fees as made by the respondents. The contention is that 2010 Catering policy is made applicable to the contract between the parties, and more

particularly concerning the revision of licence fees. It is contended that clause 18.3 will become applicable which provides that at the time of renewal of licence, licence fee should be enhanced / reassessed based on actual sales turnover of the unit.

3. Learned Counsel for the appellant would contend that in the facts of the present case while fixing the enhanced licence fee, the respondent has not followed the provisions of Clause 18.3 and has made a demand for higher licence fees which is contrary to the agreement entered between the parties. It is submitted that now the licence fees are enhanced at Rs.28,78,628/- per annum and there is differential amount of Rs.7,19,068/- which is being demanded by the respondents which the respondents are not entitled to demand if Clause 18.3 is to be followed.

4. Mr.Pandian, learned Counsel for the respondents has disputed the contention as urged on behalf of the appellant. It is submitted that the revision has been undertaken by the respondents as per the agreement and as per the Catering policy of 2010. It is submitted that in fact upto March 2019 the appellant has made payment as per the revision effected by the respondents. It is his submission that all this material can be placed before the Court.

5. Having heard the learned Counsel for the parties and having perused the impugned order, it is clear that the impugned order does not address these issues as urged on behalf of the appellant and more particularly as to whether clause 18.3 of Catering Policy 2010 is followed as being asserted on behalf of the respondents. Learned District Judge has purely proceeded on the reasoning that it is within the domain of the licensor to increase the licence fees and thus has not granted interim relief.

6. In the above circumstances, I am of the opinion that interest of justice would be served if learned District Judge hears the parties afresh on these issues and pass appropriate order considering the contractual provision and the contention as would be urged on behalf of the parties. The impugned order is accordingly set aside. The parties are directed initially to appear before the learned District Judge on 3 July 2019 at 11 a.m.

7. Learned District Judge if necessary shall grant an opportunity to the parties to place on record any further documents/affidavits. Learned District Judge shall decide the civil Miscellaneous Application no.573 of 2019 afresh on its own merits without being influenced by the earlier order or this order. All contentions of the parties in that regard are

expressly kept open.

8. In the meantime the appellant shall deposit the differential amount, as demanded, if any, with the respondents without prejudice to its rights and contentions and subject to outcome of decision of the learned District Judge on the Section 9 application. The amount be deposited within ten days from today.

9. Needless to observe that this Court's direction to the appellant to deposit the amount is strictly without prejudice to the rights and contentions of the appellant and in no manner is any expression on the merits of the disputes.

10. Disposed of in the above terms. No costs.

(G.S.Kulkarni, J.)