

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

Reserved on : 05.03.2020
Pronounced on : 10.06.2020

+ **CRL.A. 247/2020 & CRL.M.As 4918-19/2020**

VIPSIE HOSPITALITYS PVT. LTD. Appellant

Through: **Mr. M. Sufian Siddiqui and Mr.
Rakesh Bhugra, Advocates.**

versus

WALIANET Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

JUDGMENT

CRL. M.A. 4919/2020

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.A.4918/2020

This is an application for condonation of delay in filing the present criminal appeal. Heard. In the facts and circumstances as mentioned in the application, the application is allowed and the delay in filing the present criminal appeal is condoned. The application is disposed of accordingly.

CRL.A. 247/2020

1. The present appeal U/s 341 of the Code of Criminal Procedure has been filed by the appellant with the following prayers:

- a. Set aside the impugned order and judgment dated 15.11.2019 qua the dismissal of application under section 340 Cr.P.C filed by the appellant herein in OMP(I)(COMM) No. 7/19 case titled as “*Walianet Vs. Vipsie Hospitality’s Pvt. Ltd.*” Passed by the court of Ld. Shri Vipin Kumar Rai, ADJ-06, Saket Courts, New Delhi. And
- b. Direct the Ld. Lower Court to discharge its duties whilst initiating apposite legal action as contemplated under law viz. Section 340 Cr.P.C against Shir Hemant Walia/Partner of the respondent herein for committing the ostensible acts of perjury and false claim by way of filing fabricated documents and further using them as genuine in OMP(I)(COMM) No. 7/19, case tiled as “*Walianet Vs. Vipsie Hospitality’s Pvt. Ltd.*”

2. In brief the facts of the case are that on 05.08.2015, a lease deed was executed and registered between the appellant and the respondent in respect of First Floor, Second Floor and Terrace Floor of property bearing No. M-25, M-Block Market, Greater Kailash-I, New Delhi at a monthly rent of Rs. 5,25,000/-. It is averred that a forged letter dated 18.12.2018, allegedly issued by the appellant stating that the appellant herein is handing over the physical possession to the respondent by 15.01.2019 and to consider the possession handed over to the respondent after this date was used by the respondent herein in the subsequent litigation between the parties, however, the knowledge of the said forged document could only be obtained by the

appellant when it was used subsequently and the said letter was neither issued nor signed and it was not handed over by the appellant.

3. It is averred that another forged letter dated 15.01.2019, was used by the respondent in the subsequent legal proceedings in question whereby by virtue of those letters it was shown that the appellant had allegedly handed over the physical possession of the property in question and also requested the respondent to liquidate the pub's inventory towards rent.

4. It is averred that the appellant came to know about the said forged documents later on. It is averred that on 22.01.2019, the respondent forcibly dispossessed the appellant from the property in question by way of putting the locks on the main door in the absence of the appellant and goods worth crore of rupees belonging to the appellant is lying in the said property. Thereafter, the respondent herein issued a legal notice dated 04.02.2019 to the appellant but there was no mention of the two forged letters dated 18.12.2018 and 15.01.2019. Thereafter, on 07.02.2019, the respondent filed a false claim petition U/s 9 of the Arbitration and Conciliation Act in the Court of Ld. ADJ, South East, Saket Courts.

5. The Ld. ADJ, vide order dated 12.02.2019, was pleased to grant ex-parte ad-interim relief to the respondent herein/appellant therein in the aforesaid Section 9 petition taking into consideration the details of Section 9 petition and handing over the possession vide the purported forged letter dated 15.01.2019, the original of which was filed at the behest of Court below.

6. On 23.02.2019, the appellant filed an application 340 Cr.P.C. against Hemant Walia through whom the Section 9 petition was filed seeking legal action against him for the acts of perjury and using forged documents as genuine and obtaining relief on the basis of the said documents. On 14.11.2019, the appellant filed an application/s 151 C.P.C. seeking disposal of section 340 Cr.P.C application while highlighting the duties of the Ld. Courts in dealing with the issue of perjury but the Ld. A.D.J Court dismissed the application U/s 340 Cr.P.C despite expressing doubts about the authenticity of the purported forged letters.

7. I have heard the Ld. Counsel for the appellant and perused the record of the case. Ld. Counsel for the appellant has relied upon ***“H.S. Bedi Vs. National Highway Authorities of India”*** (2015) 220 DLT 179 .

8. The appellant has challenged the impugned order dated 15.11.2019 by virtue of which the Ld. ADJ has dismissed the application of the petitioner U/s 340 Cr.P.C. The respondent herein preferred a petition u/s 9 of the Arbitration and Conciliation Act read with Section 151 C.P.C with the prayer for restraining the appellant herein from alienating its assets and for direction to secure the payment of outstanding rent/arrears and damages for illegal occupation by furnishing bank guarantee and further restraining the appellant herein from harassing the respondent herein and interfering with the lawful and peaceful possession of the respondent herein of the tenanted premises.

9. The appellant is basically aggrieved by the dismissal of the application U/s 340 Cr.P.C by the Ld. A.D.J. According to the appellant

the respondent herein relied upon two forged and fabricated documents dated 18.12.2018 and 15.01.2019. The Ld. A.D.J. while discussing the genuineness of the letters/documents observed that nothing can be said on these two letters dated 18.12.2012 and 15.01.2019 because these aspects will be taken note of by the Arbitral Tribunal in the Arbitration and no finding are to be returned in this regard in an application U/s 9 of the Arbitration and Conciliation Act.

10. According to the appellant had these two letters/documents been genuine then they would have been definitely found mention in the legal notice dated 27.12.2018. No doubt, the Ld. A.D.J. expressed some doubts in regard to the existence of these two letters in question just because of non mentioning of these two letters by respondent herein in the legal notice, however, one cannot lose sight of the fact that the Arbitral Tribunal is seized of the matter and I find no infirmity in the observation of the Ld. Trial Court that all these aspects would be taken note of by the Ld. Arbitral Tribunal.

11. In these facts and circumstances, this Court does not deem it appropriate to issue notice to the respondent. Accordingly, the petition is dismissed.

RAJNISH BHATNAGAR, J

JUNE 10, 2020

Sumant