

\$~24(Original Side)

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

+ O.M.P.(I) (COMM.) 331/2021 & I.A. 12867/2021

CFS NETRALAYA PRIVATE LIMITED & ANR.

..... Petitioners

Through: Mr. Anil Sapra, Senior
Advocate with Mr. Ajay
Bhargava, Mr. Arvind Kumar
Ray & Mr. Karan Gupta,
Advocates

versus

DR. ROOP & ORS.

..... Respondents

Through: Mr. Saurabh Kirpal, Sr.
Advocate with Mr. Monish
Panda, and Ms. Priyamwada
Sinha, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

%

01.10.2021

1. The prayer clause in this petition, under Section 9 of the Arbitration & Conciliation Act, 1996 ("the 1996 Act"), reads thus:

"In the above noted facts and circumstances, it is most humbly prayed before, this Hon'ble Court may be pleased to:-

a) Appoint a Local Commissioner to inspect the entire Demised Premises bearing no. 334, E.K. Road, Meerut for preparing a list of all assets, equipment, fixtures, fittings, belongings, medical records, etc. of the Petitioner No. 1, including the list of assets mentioned in Annexure - A to the Petition which are at the Demised Premises but have not been handed over to the Petitioner No. 1 till date; and

b) Pass appropriate orders directing the State Police to provide adequate assistance to the Local Commissioner for ensuring inspection of the entire Demised Premises, in the event of any hindrance/obstruction being caused by the

Respondents in carrying out the said inspection; and

c) Pass an ad-interim ex-parte order directing the Respondents to immediately hand over all the assets, equipment, fixtures, fittings, belongings, patient medical records and other properties of the Petitioner No. 1 at the Demised Premises, including all the assets, equipment, fixtures, fittings, belongings, etc. as stated in Annexure - A to the present petition; and

d) Permit the Petitioners to remove the Femtosecond Laser Cataract machine by temporarily removing hinges of doors, dismantling of the grills and removing front facade glass portion of the Demised Premises as may be required for doing the needful, with directions as the Petitioner would refix the same at its own cost and expense, immediately on the removal of the said machine; and

e) Pass an order for cost of this Petition in accordance with Section 31A of the Arbitration and Conciliation Act, 1996; And

f) Permit the Petitioner No. I to show to the Local Commissioner the proof of ownership of the assets, equipment, fixtures, fittings, belongings, etc. of the Petitioner No. I which are the Demised Premises; and

g) Pass any other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. This petition is actually a fallout of an earlier order which was passed by a coordinate Bench of this Court on 9th July, 2021, in OMP (I) (COMM) 127/2021. On the said date, in a similar Section 9 petition, learned Counsel for the petitioners had agreed to withdraw the petition with liberty to urge all issues in controversy before the arbitral tribunal, as and when constituted. However, the Court acceded to the request of the petitioner, for appointment of a Local Commissioner to visit the premises at Roop Netralaya, 334, E.K. Road, Meerut, (hereinafter “the

premises in dispute”), and inventorise the goods contained therein.

Paras 5,6,8 of the said order read thus:

“5. He further requests that a Local Commissioner be appointed to visit the premises, Roop Netralaya, 334, E.K. Road, Meerut, and make an inventory of the assets belonging to the CFS Netralaya Private Limited in the presence of the representatives of the parties. He prays that the Local Commissioner shall also note whether such machines and other equipments are in working order. The learned counsel appearing for the respondents has no objection to the Local Commissioner being appointed for the aforesaid purposes.

6. In view of the above, Mr. Ankit Banati, Advocate (Mobile No. 9811428913) is appointed as the Local Commissioner to visit the premises in question (Roop Netralaya, 334, E.K. Road, Meerut) after informing the learned counsel for the parties. He shall make an inventory of all the assets which admittedly belong to CFS Netralaya Private Limited at the said premises. He shall also note whether the machines are in working order or not. In the event there is controversy regarding whether a particular machine is owned by the CFS Netralaya Private Limited or whether it is in working condition, he shall make a note of it in his report. He shall file his report within a period of one week after executing the commission. A copy of the report will also be furnished to the learned counsels for the parties.

8. The learned counsel appearing for the respondents also state that the respondents have no objection if the equipments are removed after the Local Commissioner has prepared the inventory. The respondents are bound down to the said statement and the respondents shall not create any impediment in removal of the machinery and other equipment.”

3. Alleging that the exercise, as permitted by the order dated 9th July, 2021, could not be completed owing to obstructions on the part of the respondent, the petitioner has re-approached this Court for issuance of fresh directions for appointment of a Local Commissioner and

inventorisation of assets etc., and in accordance with the prayer clause already reproduced hereinabove.

4. Mr. Saurabh Kirpal, learned Senior Counsel for the respondent, fairly submits that respondent has no objection to the grant of the prayers in the petition, with the following caveats:

(i) *Qua* prayer 'c', as was directed by the coordinate Bench in OMP (I) (COMM) 127/2021, the assets, equipment, fixtures, fittings and belongings contained in the premises in dispute, be directed to be returned to the petitioner to the extent the right of ownership of the petitioner in the said properties are admitted by the respondent and,

(ii) Insofar as the patient medical records are concerned, while the respondent has no objection to the handing over of the said records to the petitioner, the petitioner should be directed to make the said records available to the respondent, in the event, the respondent is in need thereof, *inter alia*, in connection with any medico-legal case etc. or for any other reason,

(iii) *Qua* prayer 'd', the petitioner may be permitted to remove the Femtosecond Laser Cataract machine from the premises in dispute by temporary removal of the hinges of the doors, dismantling of the grills and front facade glass portion, but should be directed to restore the premises to the condition in which they were before the equipment was removed from the premises on the same day, as it is functioning fully.

5. Mr. Sapra, learned Senior Counsel for the petitioner, on instructions, has no objection to these suggestions as conveyed by Mr. Kirpal.

6. Accordingly, this Court disposes of the present petition with the following directions:

(i) Mr. Anish Dewan, Advocate (Mobile Number: +91 9999571081, email id: anishdewanadvocate@gmail.com) is appointed as the Local Commissioner to visit the premises in dispute at Roop Netralaya, 334, E.K. Road, Meerut, on 10th October, 2021, at 9:00 a.m. The Local Commissioner shall inventorise and prepare a list of all assets, equipment, fixtures, fittings, belongings and medical records of Petitioner No. 1, CFS Netralaya Private Limited, including the assets which are present in the premises in dispute.

(ii) The permission to secure the assistance of the local police authorities, if need be, is granted, though Mr. Kirpal assures that this would not be required.

(iii) In the event, the requirement of police assistance arises, this order shall be treated as a direction to the police authorities in that regard.

(iv) Under supervision of the Local Commissioner, the respondents would also hand over, to the petitioner, all assets,

equipment, fixtures, fittings, belongings and medical records or other properties which are admitted by the respondent to belong to Petitioner No. 1. A separate inventory of the properties thus handed over would also be prepared by the Local Commissioner.

(v) Handing over of the medical records to Petitioner No. 1 would be subject to Petitioner No. 1 making the said records available to the respondents should the respondents require the same for any reason, such as demand by the patient concerned or, any medico-legal case etc.

(vi) Under supervision of the Local Commissioner, the respondent is also permitted to remove the Femtosecond Laser Cataract machine by temporarily removing hinges of the doors, dismantling of the grills and front facade glass portion of the premises in dispute. The undertaking of Mr. Sapra, to the effect that the premises would be restored into the condition in which they were before removal of the machine on the same day, is recorded and the respondent shall remain bound thereby.

(vii) The fees of the Local Commissioner and other expenses would be same as directed by the coordinate Bench in its order dated 9th July, 2021, passed in OMP(I)(COMM) 127/2021.

(viii) The fees would be payable prior to execution of the commission.

7. This petition stands disposed of in the aforesaid terms.
8. Order be provided *dasti* to learned Counsel for both parties.

C. HARI SHANKAR, J.

OCTOBER 1, 2021

SS

