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

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Decision reserved on: 11.01.2022Decision delivered on: 25.01.2022+ **FAO(OS) (COMM) 5/2022 and CM Nos. 1846-48/2022**

MANOJ GULSHAN AND ANR Appellants

Through: Appellant No. 1 in person.
Mr. Rakesh Kumar Gautam,
Advocate for appellant No. 2.

versus

ZEE LEARN LTD Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH****TALWANT SINGH, J.:****[Court hearing convened via video-conferencing on account of COVID-19]**

1. The appellants have filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Court Act for modifying the impugned order dated 29.09.2021 passed by learned Single Judge in OMP (I) (COMM) No. 425/2020 titled as “*Manoj Gulshan & Anr. vs. Zee Learn Limited*”, by which the learned Single Judge had disposed of the present appellant’s petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”).

2. In brief, the case of the appellant is that appellant no. 1 is the owner of the premises bearing No. A9/20, Ground Floor, Vasant Vihar, New Delhi-



110057, which was given on a licence to the respondents for a period of ten years and the appellant no. 2 has done the furnishing and fittings in the said premises. The parties have entered into an agreement dated 06.02.2018 for a period of five years w.e.f. 01.02.2018. The rent was payable @ Rs.2,10,000/- per month from 01.03.2018 till 28.02.2019 and thereafter the rent was to be increased @5% annually.

3. As per the appellants, respondents had paid the rent till August, 2019 and thereafter no payments were made. The agreement was terminated by Appellants by a letter dated 27.10.2019 and thereafter the respondent is liable to pay the user charges @ Rs.12,500 plus taxes per day. Since, the premises were not vacated, so they filed the petition under Section 9 of the Act in this Court. The prayer clause of the said petition is reproduced hereunder:

1. "Direct the Respondent to immediately pay to Petitioners Arrears of ₹59,02,918 [RUPEES FIFTY NINE LAKH TWO THOUSAND NINE HUNDRED EIGHTEEN ONLY], on account of outstanding Invoices [Nos. 19-B Dt. 01.09.2019 to 32-B Dt. 01.10.2020] @ pre-settled "Per Day Charges" for 425 days till 31.10.2020, Plus amounts becoming due till the Date of the Order.

2. Direct the Respondent to continue to deposit from the date of order in each succeeding month the consolidated charges each month @ ₹12,500 per day Plus applicable Tax thereon, till the premises is "Re-instated and "handed-back to Petitioners";

3. In alternative direct the Respondent to vacate the premises forthwith after Reimbursing and clearing the following dues:-

(i) ₹79,115=00 [RUPEES SEVENTY NINE THOUSAND ONE HUNDRED FIFTEEN ONLY], ON ACCOUNT OF UPaid ELECTRICITY BILLS PLUS 'ELECTRICITY REINSTATEMENT CHARGES) TO BE PAID TO BSES SERVICE PROVIDER;



(ii) ₹95,35,903=00 [RUPEES NINETY FIVE LAKH THIRTY FIVE THOUSAND NINE HUNDRED AND THREE ONLY] on account of “REINSTATEMENT COSTS” as per Clause(s) V(a), V(f), besides others, of Contract Dt. 6.2.2018, payable by Respondent to Petitioner No 1/Owner/Licensor Mr. Manoj Gulshan.

(iii) ₹22,70,650=00 [RUPEES TWENTY TWO LAKH SEVENTY THOUSAND SIX HUNDRED FIFTY ONLY] “REINSTATEMENT COSTS” as per Clause(s) V(a), V(f), besides others, payable by Respondent to Owner/Licensor M/s. Mona International India/Petitioner no 2.

4. Direct the Respondent to secure and deposit before this Hon Court ₹91,50,000=00 [RUPEES NINETY ONE LAKH FIFTY THOUSAND ONLY], on account of Mense profits / Damages claimed by Petitioners from Respondent, for illegally “Sub-Letting and Misusing” the Premises for diverse Un-Authorized Commercial Activities and generating many fold Income by running these illegal activities from premises in question.

5. Pass Ex-Parte Ad-interim Orders as interim measure for the preservation and protection of the Premises and items therein inundated in floodwaters and save / salvage the premises / items from irreparable loss and damage.

6. To restrain respondent from alienating or creating any third party rights or interest in the premises taken on License by the respondent from petitioner;

7. Pass award costs of the present proceedings for and in favour of Petitioners and against the Respondent herein.”

4. Notice in the petition under Section 9 of the Act was issued by the learned Single Judge on 21.01.2020. Although it has been observed by the learned Single Judge that the respondent did not file the reply but as per the appellant, reply was filed by the respondent, to which rejoinder was also filed. Arguments were heard thereafter. Learned Single Judge was pleased to pass the impugned order dated 29.09.2021. The operative portion of the



said order is as under:

“12. At this stage, this Court does not consider it apposite to pass any order for securing the petitioner in respect of its claim for damages for per day charges (@ Rs.12,500/- plus taxes) as agreed between the parties. However, since it is contended that the respondent is being pursued by several creditors, this Court considers it apposite to secure the petitioner at least to the extent of Rs.58,49,000/-. Accordingly, the respondent is directed to furnish an unconditional Bank Guarantee of the aforesaid amount in favour of the Registrar General of this Court within a period of four weeks from today and/or to deposit the said amount with the Registry of this Court within the said period.

13. This Court also appoints Ms. Sowjhanya Shankaran, Advocate (Mob. 9945469905) as the Local Commissioner to visit the demise premises and break open the locks. She shall also take photographs of the demise premises so as to indicate the state of the demise premises in question. He will thereafter handover the possession of the demise premises jointly to the petitioners. The fees of the Local Commissioner is fixed at Rs. 1,00,000 which shall be paid by the petitioners in the first instance.

14. It is clarified that the above order is without prejudice to the rights and contentions of the parties and any claims or counter-claims that the parties may prefer. The Bank Guarantee or the amount deposited by respondent in this regard will be subject to further orders that may be passed by the Arbitral Tribunal as and when constituted. It is clarified that if the Arbitral Tribunal is not constituted within a period of three months from today, the Bank Guarantee or the amount deposited with this Court shall be returned to the respondent.

15. The petition is disposed in the aforesaid terms. ”



5. It is pertinent to note herein that the respondent had also filed an appeal bearing number FAO(OS) (COMM) 136/2021 titled *Zee Learn Ltd. v Manoj Gulshan & Anr.*, which was heard by a coordinate Bench of this Court and the said appeal was disposed of on 27.10.2021 by passing the following order:

“After some arguments, since we are not inclined to interfere with the impugned order, Mr. Singla, on instructions, states that the appellant shall furnish the Bank Guarantee in terms of the impugned order dated 29.09.2021 passed by the learned Single Judge in OMP(I)(COMM) No.425/2020 within 15 days from today. Time for furnishing Bank Guarantee is extended by 15 days from today.

The appeal stands disposed of.”

6. The appellants have challenged the impugned order dated 29.09.2021 on the following grounds:

a. Serious impropriety in law has been committed by totally ignoring 'substantive evidence,' pleaded and admitted case before court, which Hon'ble Court had to examine;

b. In an 'ad-interim order': deducting Rs. 6,30,000/-, security deposit of owner. That too from an 'Amount to 'secure same owners', with a bank Guarantee', cannot be sustained, as contra to Agreement terms and settled law:

c. Fails to mention in impugned order, the most relevant fact that the 'sole' false defence of respondent stood demolished in Toto, instead recorded contrary findings to facts/record, ', Cannot be sustained:

d. Despite respondent's actual positive fraud upon Court by criminal contempt of court, stood exposed/confirmed: that respondent has deliberately lied before court to



mislead on 'fundamental fact to Entitlement of relief' qua 'handing of possession' - Suo-moto cognizance neither taken nor this material fact recorded in impugned orders, but petition disposed-off arbitrarily by a 'non speaking' & 'non reasoned' order- cannot be sustained:

e. Clear bias shown towards respondent by recording a patently false finding of fact: that respondent has not filed its "reply" and passed "non-speaking" and "non-reasoned" impugn Order, disposing-off petition thus favoured a dishonest defaulter respondent corporation:

f. Failed to take cognizance that defaulting respondent tenant, in the 'same set pattern', has held under seize/under its lock-key, properties taken on rent/license of all 7 owners/licensors in Delhi, (as done with appellants) without paying a penny-which fact was also dishonestly concealed & suppressed from Hon'ble court:

g. Sec.9 petition is a step in aid of enforcement and is intended to ensure that enforcement of the award results in a realizable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the ambit of execution.

h. Respondent has created third party interest in the property in question, due to which only part possession and/or inferior possession of property has been handed over to appellants by the local commissioner appointed by the Hon'ble court."

7. The appellants have appeared in person and arguments on admission have been heard. It emerged during arguments that till the date of the filing of the petition under Section 9 of the Act before the learned Single Judge, no petition under Section 11 of the Act was moved for appointment of an Arbitrator for adjudicating the main dispute between the parties; the petition



was filed before the learned Single Judge only to protect the rights of the appellants/petitioners in the interim period.

8. The stand of appellants is that till August, 2019 rent was paid, and thereafter, no rent was paid from September, 2019. The other grievance of the appellants is that they have terminated the lease agreement via letter dated 12.09.2019, and, thereafter, they are entitled to damages @ Rs. 12,500/- plus taxes on daily basis. The notice was served but till filing of petition, premises were not vacated. The respondent was stated to be not in good financial health; hence, they have prayed for interim protection by filing petition under Section 9 of the Act.

9. The appellants have also placed on record the reply filed by the respondent company before the learned Single Judge. In the said reply the stand of the respondent is that the premises was vacated on 22.02.2020 after giving the termination notice dated 17.01.2020, which was sent through Blue Dart Courier and the keys were handed over to the Guard of the appellants on 04.03.2020. In view of this, the respondent has prayed that the petition under Section 9 of the Act was not maintainable. Copy of the termination notice dated 17.01.2020 has been also placed on record. It was further stated that respondent was liable to pay licence fee from November 2019 upto 17.04.2020 and the security deposit could have been adjusted against the said dues. Till 17.04.2020 a sum of Rs.12,55,811/- was shown as due and payable by the respondents, which was further reduced by Rs.6,30,000/- being the security amount, leaving an unpaid balance of Rs.6,25,811/-. It was the case of the respondent that the appellants had knowingly raised a false claim with an ulterior motive to extort money from the respondent even after the appellants had received the keys of the



premises. The learned Arbitrator has the jurisdiction to entertain the claim, if any. Till date no claim was raised by the appellants before the Arbitrator. All other claims of the appellants were denied by the respondent. It is also reiterated that the appellants have acknowledged the receipt of the notice of termination sent by the respondents, but they chose to file the petition before the learned Single Judge. As per the appellants, they have filed a rejoinder to the reply of the respondents before the learned Single Judge denying all the averments made by the respondents in their reply.

10. It is pertinent to note that in the list of dates and events filed by the present appellants, they have stated that on 29.02.2020 the respondent had sent a notice of termination, pre-dated as 20.02.2020 and thereafter an e-mail dated 02.03.2020 was sent mentioning about the vacation of premises on 17.04.2020. However, in the present appeal, which has arisen from an order passed by learned Single Judge on a petition under Section 9 of the Act, we refrain ourselves from entering into the controversy regarding the actual date of vacation of the premises. It will be competent for the learned Arbitrator to enter into the said controversy as both the parties will have ample opportunity to prove their claim/counter claim before the learned Arbitrator, as and when the said Arbitrator is appointed.

11. Here in the present case at this stage, we are only concerned with securing interest of the appellants, in the meantime, till the time of proper adjudication of their claim or the counter claim (if any) to be filed by the respondent before the learned Arbitrator. At page 317 of the case file, as Annexure-A-26, the appellants have filed the statement as per the admitted liability of the respondent company till 30.09.2021, which comes to Rs.64,79,005/-. The same statement was also filed before the learned Single



Judge as noticed by him in para 9 of the impugned order. The learned Single Judge has rightly adjusted the security deposit of Rs.6.30 Lacs from this amount and had ordered the respondent to furnish an unconditional bank guarantee of Rs.58.49 Lacs in favour of the Registrar General of this Court within a period of four weeks or to deposit the said amount with the Registry of this Court in the said period.

12. Whether the appellants are entitled to damages @ Rs. 12,500/- plus tax from the date of the alleged service of the notice of the termination or not or the controversy as to whether the respondent company had vacated the premises on 17.04.2020 or not; these controversies are to be decided by the learned Arbitrator after allowing both the parties to lead evidence and after giving a chance to both the parties to cross-examine the witnesses of the opposite side.

13. Let's take the grounds raised by the appellants in the present appeal one by one. The first ground raised is that the learned Single Judge had ignored the substantive evidence while passing the impugned order. We are of the view that the admitted position regarding there being an agreement between the parties to pay a monthly rent of Rs.2,10,000/- w.e.f.01.03.2018 to be increased by 5% annually is the unquestioned and admitted document before the learned Single Judge and he has rightly placed reliance on the said document and has rightly ordered the respondent to secure the interest of the appellants till 30.09.2021 on the basis of the calculation submitted by the appellants themselves. All the averments raised by the appellants have been seriously challenged by the respondent and similarly the averments of the respondent are seriously contested by the appellants, hence the said averments are to be decided on the basis of evidence to be led before the



learned Arbitrator, as and when one is appointed. The reliance placed by the appellant on the case titled as ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India* AIR 2000 SC 2740** is misplaced. In that case, learned Single Judge was considering the implications of an order passed under Order XII Rule 6 of CPC, where the matter is to be decided only on admissions. Moreover, in the present case, there are no such admissions; respondent has seriously contested the stand of the appellant regarding termination of the agreement and vacation of the premises.

14. The second grievance of the appellants is regarding the deduction of Rs. 6.30 Lacs security deposit against the amount secured for the appellants. As per them, the said deduction was not sustainable. In our view, the learned Single Judge has secured the entire amount due till date of passing of the order by him, without entering into controversy as to whether the respondent had vacated the premises earlier or not as the said controversy is to be decided by the learned Arbitrator. In our considered view, learned Single Judge is right in ordering adjustment of Rs.6.30 Lacs, which was lying with the appellants as security deposit. We found nothing erroneous with the said order.

15. Reliance is placed on the judgment rendered by this Court in ***Sona Corporation India Pvt Ltd v. Ingram Micro India P. Ltd & Anr.*, OMP (I) COMM 249/2018**. In the said case, the tenant continued to occupy the premises and the learned Single Judge had ordered for payment of monthly rent during the pendency of arbitration proceedings. The facts of the present case are quite different. The agreement stands terminated, although there is dispute about the date; respondent claimed to have vacated the premises but appellants denied the same and Local Commissioner has handed over the



possession to Appellants. Reliance is also placed on judgment titled as ***Permanand Verma & Anr v. Vimal Chand Jain*** [1995 SCC Online Del326: 59 (1995) DLT 515], which is again of no help to the appellants as the said case was under the Delhi Rent Control Act and court was considering compliance of the provisions of the said Act. The learned Single Judge had observed in ***Permanand Verma (Supra)*** as under:

“The present case is in the context of the Delhi Rent Control Act which does not contain any such provision. There is nothing in the Delhi Rent Control Act requiring adjustment of any advance rent or other amounts paid by the tenant to the landlord contrary to the provisions of the Act.”

16. In the present case, final termination of the agreement has already taken place. The learned Single Judge has passed the order to secure the rent of the premises till the date of passing of the order by him (rather till a day after passing of the order) without entering into the controversy as to whether termination of the agreement had taken place on the date when the appellants claim or on the date which respondent claimed. The petition before learned Single Judge being under Section 9 of the Act, he was right in ordering adjustment of the security deposit.

17. It is to be kept in view that there were delay and laches on the part of the present appellants also as they claim that from September, 2019 onwards the respondent had not paid any rent and on 12.09.2019 they had terminated the agreement, however they came to the Court by filing a petition under Section 9 of the Act only on 27.11.2020, i.e., after more than one year, so the entire blame cannot lie at the door of the respondent. The appellants are to be equally blamed and to balance the equity, the learned Single Judge was right in ordering the adjustment of the security deposit lying with the



appellants and the money secured by him by passing the impugned order.

18. Ground 'C' taken by the appellant says that the learned Single Judge has failed to mention that the sole defence of the respondent stood demolished. In our view, no such findings were required while passing the impugned order on a petition under Section 9 of the Act as it is not the final adjudication of the disputes between the parties and any comments made by the learned Single Judge on that issue would have prejudiced one party or the other, when they will present their case before the learned Arbitrator.

19. The next plea taken by the appellants is that the respondents have made false averments and have shifted their stand one after the other. In our view, the appellants are at liberty to take whatever steps they wish to take about the shifting of stand or making false averments made by the respondents and they do not need any permission from any Court in this regard.

20. The appellants have alleged that the learned Single Judge has shown bias towards the respondent by recording that the respondent has not filed its reply. It might be an oversight at the end of learned Single Judge but he has taken note of the submissions of both the sides and thereafter has passed a reasoned order balancing the equity and securing the interest of the appellants to a reasonable and justified extent and it is for the appellants to carry forward the matter regarding the other reliefs claimed by them by filing the claim before the learned Arbitrator to be appointed.

21. We have gone through the reply filed by the respondent before learned Single Judge and the rejoinder filed by the appellants. We have formed our opinion after considering all the pleadings and documents on record of the file of learned Single Judge and the contents of the appeal preferred by the



appellants.

22. Ground 'F' taken by the appellants is that the learned Single Judge has not taken cognizance of the fact that there were other properties in Delhi, which were allegedly put under lock by the present respondent. In our view, the said fact is not material for deciding the dispute in hand and that is why learned Single Judge has not taken any cognizance of the same.

23. The ground 'G' agitated by the appellants is that the steps taken under Section 9 of the Act are to ensure that the award, as and when passed, is enforced. In the present case, the learned Single Judge has, without entering into the controversy regarding the date on which the termination/vacation had taken place, rightly secured the interest of the appellants and the respondent has been ordered to deposit the admitted rent till the date of the order, which in our view, secures the interest of the appellants to the maximum possible extent because whether or not the termination/vacation had taken place on a particular date, the said question is still open and it has to be decided by the learned Arbitrator. Consequential reliefs, subject to determination of the moot question by learned Arbitrator, shall follow.

24. Ground 'H' taken by the appellants is that the premises were damaged or only part possession has been handed over to them by the Local Commissioner. It cannot be a ground against an order passed under Section 9 of the Act and in case there are any damages noticed by the appellants at the time of handing over the possession of the premises by the Local Commissioner to them, then, it is always open to them to raise the claim for the same before the learned Arbitrator.

25. In view of the above, we do not find any merit in the appeal to admit the same. The present appeal is liable to be dismissed at admission stage and



it is ordered accordingly. Pending applications are also closed.

TALWANT SINGH, J

RAJIV SHAKDHER, J

JANUARY 25, 2022/mr

[Click here to check corrigendum, if any](#)

