

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

FAO-1946-2023 (O&M)
Date of Decision:-06.07.2023

Haryana Mass Rapid Transport Corporation Ltd. ... Appellant

Versus

Onkar Mendiratta and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Goyal, Advocate for the appellant.

GURVINDER SINGH GILL, J.

1. The appellant assails order dated 7.2.2023 passed by learned Additional District Judge, Gurugram vide which an application under Section 9 of the Arbitration and Conciliation Act, 1996 (in short hereinafter referred to as 'the Act') filed by respondent No. 1 has been accepted.
2. Shorn off unnecessary details, the basic facts required to be noticed are that appellant is managing and handling the Metro-Rail Network in Gurugram. Respondent No. 1 had taken a shop situated on the ground level of Metro Station of Section 42-43, Gurugram on lease and had been operating a Salon since the last more than 9 years. A dispute arose regarding payment of rent and as per the appellant an amount of Rs. 25 lacs was outstanding till March, 2020 and another amount of about Rs. 11 lacs in respect of period April 2020 to December 2021. The appellant claimed that it was in fact License Agreement between the parties which had been expressly

terminated vide letter dated 13.8.2021 and that thereafter the appellant was well within its rights to seal the property or to disconnect the electricity supply. The learned Additional District Judge, Gurugram while observing that the dispute mainly related to the amount outstanding as rent for the period which included the COVID-19 period as well and that the exact quantum of amount due would finally be determined by the Arbitrator held that disconnection of electricity supply and sealing of the premises as had been done by petitioner would cause irreparable loss and accordingly allowed the application under Section 9 of the Act filed by respondent No. 1.

Concluding paragraphs of the said order are reproduced herein-under :-

“9. For the aforesaid reasons, the present application is hereby allowed with costs and the respondent no. 2 is directed to remove the seal of the shop in question and to restore the electricity supply and to allow the applicant to work therein as per the agreement dated 13.12.2017 without causing any sort of interference during the pendency of the arbitration proceedings, within two days of deposit of ₹10 lacs by the applicant with the respondent no. 2. The applicant shall continue to pay the future rent and other charges.

As per Section 9(2) of the Act, the applicant shall commence the arbitral proceedings within 90 days from today, failing which the interim measures granted by this order shall stand vacated automatically.

10. No expression of this order shall be construed to be an opinion upon the merits of the matter.”

3. Learned counsel representing the appellant has vehemently argued that since respondent no. 1 till date has not paid the amount of Rs. 10 lacs as had been directed by learned Additional District Judge, Gurugram vide its order dated 7.2.2023, the respondent no. 1 has no right to remain in possession of the premises in question and that since no time period has been specified in order dated 7.2.2023 for deposit of Rs. 10 lacs and the said time period has been kept open ended, the order in question deserves to be modified accordingly.

It has further been submitted that on account of the said amount not having been deposited by respondent no. 1, the appellant is not even in a position to further let out the property and is, thus, suffering recurring losses.

4. This Court has considered the aforesaid submissions.
5. This Court cannot lose sight of the fact that the impugned order was passed on an application filed by respondent no. 1 under Section 9 of the Act wherein specific prayer made by respondent no. 1 was to issue directions to the appellant to restore the electricity supply and to de-seal the premises in question. The Court of learned Additional District Judge, Gurugram while accepting the application and granting the relief, as had been prayed for, had granted the same conditionally making the same subject to payment of an amount of Rs. 10 lacs. A perusal of para 9 of the impugned order dated 7.2.2023 would show that it was directed by learned Additional District Judge, Gurugram that the electricity supply would be restored and the premises would be de-sealed within 2 days of deposit of an amount of Rs. 10 lacs. Since as per the appellant, the said amount has not been deposited which necessarily follows that the appellant is not obligated to restore the electricity supply or to desal the premises in question.
6. Needless to mention, it shall always be open to the appellant to have recourse to appropriate remedies for seeking possession of the premises in question as well as to claim any arrears of rents/damages, if any such are due/outstanding. Any such order of dispossession cannot be passed on an application under Section 9 of the Act filed by respondent no. 1.

7. The appeal, as such, is found to be sans merit and is hereby dismissed.

06.07.2023

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Whether Reportable

Yes / No

Yes / No