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

+ **FAO(COMM) 72/2025**

ROBAB KHAN

.....Appellant

Through: Ms Akanksha Sisodia, Advocate.

versus

ANIL KUMAR SIRVASTAVA & ORS.

.....Respondents

Through: Mr Shahzeb Ahmed with Mr Shikhar Khare, Ms Bhavini Chaurasia and Mr Utkarsh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

12.03.2025

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CM APPL. 15142/2025

1. This is an application seeking condonation of delay of sixty days in filing the present appeal.
2. The learned counsel appearing for the appellant submits that there were mitigating circumstances that caused the delay including serious medical issues in the appellant's family.
3. In view of the above, we consider it apposite to condone the delay in filing the present appeal.
4. The application is disposed of.

FAO(COMM) 72/2025 and CM APPL. 15143/2025

5. The appellant has filed the present appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [A&C Act] impugning an order



dated 19.10.2024 whereby the appellant's application was rejected with costs quantified at ₹20,000/- to be paid to Legal Aid. The appellant had filed the said application, *inter alia*, praying as under:

- “a) Direct the Petitioner and/ or authorized representative to collect all her assets/ items with respect to Demised Premises which are currently in possession of the Respondents.
- b) Direct the inspection and preservation of the Demised Premises situated at Unit Nos. 31A & 31B, Tower C, situated on the ground floor, Spectrum @ metro, Phase 1, Sector 75, Noida.
- c) Restrain the Respondents from creating any third-party rights with respect to Demised Premises till the passing of the Arbitral Award.
- d) Pass an ad-interim ex-parte order in respect of prayer (a), (b).”

6. The appellant was a tenant in a property described as unit Nos.31A and 31B, Tower C, situated on the ground floor, Spectrum at the rate metro, Phase 1, Sector 75, Noida, U.P. [**the demised premises**]. The demised premises were let out by the respondents to the appellant. The parties had entered into a Letter of Intent (**LoI**) on 27.11.2021 and thereafter the parties had entered into a lease agreement dated 28.03.2023 [**the lease agreement**] whereby the premises in question were leased to the appellant for a term of three years at the initial rent of ₹1,80,000/- per month. The appellant claims that she has invested ₹63,00,000/- for renovation, machinery, civil structure and furniture and was operating a restaurant from the demised premises.

7. The appellant states that on 11.05.2024 she was shocked to know that on the instructions of respondent no.1 and respondent no.2, the electricity to the demised premises had been disconnected by the mall owners. She also alleged that the respondents had broken the lock of the demised premises without the consent of the appellant and had sent a list of only thirty-eight



items that were lying in the demised premises.

8. The respondents had filed a petition under Section 9 of the A&C Act [being OMP(I) 37/2024] before the learned Commercial Court, *inter alia*, praying as under:

(a) Appoint a Local Commissioner/Receiver to visit the Demised Premises at Unit No.31A & 31B (Tower C) situated on the Ground Floor, Spectrum @ Metro, Phase I, Sector- 75, Noida, Uttar Pradesh, make inventory of the items/equipment lying at the Demised Premises and take custody of the same;

(b) Direct the respondent to deposit a sum of Rs.13,67,820/- with this Hon'ble court or furnish a bank guarantee or any other security of equivalent amount to secure the amount in dispute.

9. By an order dated 05.08.2024, the learned Commercial Court appointed a Local Commissioner to visit the premises, break open the locks and make an inventory of the goods lying in the premises. The Local Commissioner had since executed the commission.

10. In the meanwhile, the respondents filed an application under Section 11 of A&C Act. On 11.09.2024, the learned Commercial Court noted that the Local Commissioner had executed the commission. Since the respondent had filed an application under Section 11 of the A&C Act, they did not press for the remaining relief for deposit of ₹13,67,820/-. The petition filed by the respondents under Section 9 of the A&C Act was disposed of.

11. Notwithstanding that the said application was disposed of, the appellant filed a fresh application seeking *status quo* be maintained, which was rejected by the learned Commercial Court. The learned Commercial Court observed that the appellant had concealed the order dated 11.09.2024. The learned Commercial Court held that the relief under Section 9 of the A&C Act sought by the appellant was an equitable relief and the facts in the



case did not warrant exercise of any such discretion.

12. Clearly, the relief sought by the appellant cannot be granted. Admittedly, the appellant was in default of the payment of rent and the lease agreement between the parties who had been terminated. The learned Commercial Court had, in exercise of powers under Section 9 of the A&C Act, appointed a Local Commissioner to take possession of the premises as well as to make an inventory of the goods lying in the said premises. It is material to note that the order dated 11.09.2024 was passed after hearing the counsel for the parties. However, subsequently, the appellant filed another application, claiming that the *status quo ante* be restored. Thus, effectively the appellant sought to reagitate the controversy as to the interim measures of protection that were granted on 11.09.2024.

13. It is also material to note that the Arbitral Tribunal has been constituted and both the parties also filed their applications for interim measures of protection under Section 17 of the A&C Act, which were heard by the Arbitral Tribunal and orders are reserved.

14. It is material to note that although the present appeal was filed on 19.02.2025, the appellant took no steps to cure the defects immediately. The appeal has now been listed on an urgent mentioning after the orders, in the applications filed by the parties under Section 17 of the A&C Act, have been reserved by the Arbitral Tribunal. We have no doubt that the purpose of listing the matter today on mentioning is to delay and prejudice the proceedings before the Arbitral Tribunal regarding interim measures of protection.

15. We find no merit in the present appeal and the same is dismissed. Pending application shall also stand disposed of.



16. We clarify that all rights and contentions as to the merits of the claims/counter-claims, pending resolution before the Arbitral Tribunal, are reserved.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 12, 2025/tr