

(2009) 04 DEL CK 0328

Delhi High Court

Case No: C.C.P. (O) 193 of 2008 in O.M.P. 179 of 2008

Paradigm Franchising Pvt. Ltd.

APPELLANT

Vs

Krishna Continental Ltd.

RESPONDENT

Date of Decision: April 8, 2009

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 9
- Contempt of Courts Act, 1971 - Section 11, 12

Hon'ble Judges: S.N. Dhingra, J

Bench: Single Bench

Advocate: Gaurav Liberhan, for the Appellant; Vikas Dhawan and S.P. Das, for the Respondent

Final Decision: Dismissed

Judgement

Shiv Narayan Dhingra, J.

By this contempt petition under Sections 11 and 12 of the Contempt of Courts Act it is prayed that this Court should initiate contempt proceedings against respondents for violation of the order dated 25th April 2008.

2. This Court vide order dated 25th April 2008 had allowed an application of the petitioner company u/s 9 of the Arbitration & Conciliation Act, 1996 and directed the respondent that it shall allow the petitioner use of L-5 License (for liquor) issued in the name of the respondent and the request of the petitioner for liquor shall be forwarded by the respondent on its letterhead to the concerned authority on the same day and the petitioner shall be paying taxes/fees to the authorities and shall pursue with concerned department for supply of liquor in time. The petitioner was to pay directly to the authorities for the liquor purchased in this manner and was to keep the respondent indemnified as agreed vide agreement dated 10th May 2005.

3. The contention of the petitioner is that this order of the Court was not complied with and the respondent did not handover its letterheads to the petitioner for

applying to the excise department for liquor.

4. This Court had not given a direction to the respondent to give its letterheads to the petitioner. The only direction given by the Court was that the petitioner shall specify its requirement to the respondent and respondent shall, on the same day, forward this requirement on its letterheads mentioning the license number etc to the concerned authorities for liquor. The everything rest was to be done by the petitioner viz. pursuing with the authorities, get the liquor and pay the price. The license fee for keeping the L-5 License alive was to be borne by the petitioner as provided in the agreement. However, the petitioner did not pay to the respondent the license fees of Rs. 5, 74,800/- for the year 2008-09. Vide its letter dated 27th February 2009, the petitioner informed the respondent that claim of Rs. 5,74,800/- as license fee for L-5 License for the year 2008-09 was not admitted by it since it was not allowed to use L-5 license by refusing to issue letterheads despite the order of the Court. The petitioner took the stand that it will pay the license fee on pro-rotta basis for the period of 2008-09 since its use was hindered by the respondent. Regarding license fee for the year 2009-10, the petitioner demanded that it should be given 300 letterheads by the respondent marked "For Excise and L-5 Purpose only" and then only it would pay the license fee.

5. Since it was the liability of the petitioner to pay the license fee for L-5 License in terms of the contract, the petitioner cannot insist upon availing this facility without payment of license fee. No direction was given by this Court to give letterheads in advance to the petitioner. Since the petitioner failed to pay license fees for the year 2008-09, I, therefore, find no force in this contempt petition. The contempt petition, as far as this ground is concerned, is not maintainable.

6. The other ground taken by the petitioner is that the petitioner was not allowed to use the passage from the back entrance as directed by this Court for ingress to the restaurant, as per the agreement. The petitioner has placed on record some photographs showing that the door of the ingress was closed. The respondent also placed photographs of the door showing that the door was open and a guard of the petitioner had been deployed at the door. The respondent also drew attention of this Court to the cross examination of the petitioner witness recorded before the learned Arbitrator wherein it was admitted by the witness that the rear entrance was open and a guard had been posted by the petitioner. In view of this cross examination and testimony of the petitioner witnesses before the Arbitrator, I consider that no contempt is made out on this count also.

7. In view of the foregoing situation, I find no force in this contempt petition. The contempt petition is hereby dismissed.