

KABC170019842024



**IN THE COURT OF LXXXV ADDL. CITY CIVIL &  
SESSIONS JUDGE, AT BENGALURU (CCH-86)**

**THIS THE 16<sup>th</sup> DAY OF OCTOBER 2024**

**PRESENT:**

**SRI.ARJUN. S. MALLUR. B.A.L.L.B.,  
(CCH-86)**

**LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**COM.A.A.241/2024**

**BETWEEN:**

**OVERSEAS PHARMA PRIVATE LIMITED**

A company incorporated under the  
Companies Act 1956 and existing under,  
the Companies Act, 2013, having its registered office at  
No.941, 1st Floor, 2nd Main Road,  
22nd Cross, Banashankari 2nd Stage,  
Opp BDA Complex, Bengaluru - 560070  
Rep By Its Chairman Sri T Thimmegowda  
S/O Late Sri.Thimmaiah,  
Aged about 64 years

**:PETITIONER/ APPLICANT**

**(Represented by Sri. Uday Holla Senior Advocate for  
Sri.S.R.Kamalacharan, Advocate.)**

**AND**

**RAJYA VOKKALIGARA SANGHA**

A Society registered under the provisions of the,  
Karnataka Societies Registration Act, 1960  
Having its Registered office at NO.148,  
Krishna Rajendra Road,  
Visveswarapura, Bengaluru-560 004.  
Rep By Its Chief Executive Officer

**: RESPONDENT**

**(Represented by Sri. Dhyan Chinnappa Senior Advocate  
for Sri.Sudhanva D. S. Advocate)**

**ORDERS ON MAIN PETITION**

This is an application u/Sec.9 of Arbitration and Conciliation Act, 1996 for grant of temporary injunction restraining the respondent from dispossessing the applicant from the schedule properties and also restrain the respondent from taking any coercive action detrimental to the applicant in connection with License Agreement dated 19.02.2021.

**2.** The petitioner had entered into a license agreement dated 19.02.2021 with the respondent under which the respondent had agreed to provide four

premises to run four pharmacies in KIMS hospital, the respondent to purchase all consumables required for OT & ICU from the applicant pharmacy and it was also agreed that applicant would supply all required medicine to the inpatients of KIMS hospital on credit basis and respondent would settle the bills presented by the petitioner. The petitioner was required to pay a sum of Rs.42,00,000/- per month on Licence fee.

**3.** It is submitted that the respondent hospital in utter breach of the terms of agreement stopped purchasing consumables from petitioner and continued purchase of consumables for its OT & ICU from outside agencies. The representative of the applicant met the respondent several times for settlement of disputes but it went in vain. The applicant got issued a legal notice dated 13.12.2021 calling upon the respondent/hospital to perform its obligation under the agreement. The respondent neither complied with the demands made therein nor replied to the said notice. Thereafter

claimant issued notice of arbitration dated 28.06.2022 to the respondent nominating Sole Arbitrator for settlement of disputes to which the respondent did not agree but suggested appointment of another arbitrator. The same was not agreeable to the applicant. Thereafter applicant filed CMP No.698/2022 before Hon'ble High Court of Karnataka for appointment of sole arbitrator. Meanwhile applicant filed an application u/Sec.9 of the Act numbered as Com.A.A.232/2021 seeking similar reliefs. In the said petition though interim relief was granted, the application was dismissed. Against the same applicant filed appeal before Hon'ble High Court of Karnataka in Com.A.P.304/2022. In the said appeal by way of an interim arrangement the Hon'ble High Court of Karnataka appointed Sole Arbitrator and directed payment of 50% of arrears of license fee and for payment of future license fee.

4. It is further submitted that before the Sole Arbitrator the arbitration proceedings commenced and the learned Arbitrator after considering the claim, statement of defence, the oral and documentary evidence on record allowed the claim in part, rejecting the counter-claim and passed an award to that effect. The said award has been challenged in Com.A.P.No.104/2024. It is submitted that the learned Arbitrator has deviated from the terms of contract, has not construed the evidence in right prospective. It is submitted that if the respondent/hospital enforces its right to claim the amounts under the award the applicant would lose its valuable right as the award is under challenge in Com.A.P.104/2024. It is submitted that applicant has made out a prima facie case and balance of convenience lie in his favour and if the interim reliefs are not granted the applicant would suffer irreparable loss or injury. Hence the application.

**5.** The respondent has filed statement of objections denying the application averments contending that the period of license is only for two years from 19.02.2021. Under the agreement the obligation is on the applicant to supply medicines to the hospital on credit basis with 10% discount if the hospital requires so and there is no corresponding obligation on the hospital. It is submitted that though applicant contends issuance of legal notice dated 13.12.2021 but in fact no such notice is received by the respondent and also the applicant has not produced the said notice dated 13.12.2021. It is contended that applicant has not produced iota of evidence to substantiate that he was entitled to hold the agreement for 5 years. It is submitted that the applicant himself had agreed to hold the license for two years and no such oral assurance has been given by the respondent to extend the license for 5 years. It is submitted that the period of license is duty terminated and applicant has overstayed on the schedule premises

for more than 1½ years even though the license was only for two years. It is submitted that as the license agreement is terminated the applicant has no right to remain in possession of schedule premises and therefore no interim relief can be granted as prayed. It is submitted that grant of interim relief would result in irreparable loss to the respondent/hospital as the respondent would be unjustly restrained in claiming the amounts to which it is lawfully entitled to under the award. On these grounds the respondent seeks for dismissing the application with costs.

**6.** Heard Sri. Uday Holla Learned Senior Advocate appearing for Sri.S.R.Kamalacharan, Advocate for the applicant and Sri. Dhyan Chinnappa Learned Senior Advocate appearing for Sri.Sudhanva D. S. Advocate for the respondent and perused the material on record.

**7.** The Learned Senior Counsel for the respondent in the course of argument submitted that the applicant

being unsuccessful under the award cannot maintain an application under Sec.9 of Arbitration and Conciliation Act,1996. In view of it a point on maintainability is raised.

**8.** The points that arise for my consideration are as under:-

1) Whether the applicant being unsuccessful under the award dated 28.05.2024 in the matter of Disputes and Differences arising out of License Agreement dated 19.02.2021 can maintain an application U/Sec.9 of Arbitration and Conciliation Act,1996?

2) Whether applicant has made out prima facie case for grant of interim measures as prayed?

3) Whether applicant substantiate that balance of convenience lie in its favour and applicant would suffer irreparable



loss or injury if interim measures are not granted?

4) what order?

9. My answer in the above points are as under: -

Point No.1:- In the **Negative.**

Point No.2 & 3:- **Does not survive  
for consideration**

Point No.4:- As per final order  
for the following.

### **REASONS**

**10. POINT NO.1**:- The Learned Senior Counsel Sri. Dhyan Chinnappa for the respondent would categorically submit that an unsuccessful party in the Arbitration proceedings cannot maintain an application Under Sec.9 of Arbitration and Conciliation Act 1996. In support of his submission he placed reliance on the judgment of Division Bench of our Hon'ble High Court in **Com.A.P.No.2/2024 dated 22.03.2021 Smt.**

***Padma Mahadev and others vs. M/s. Sierra Constructions Pvt Limited*** wherein our Hon'ble High Court referring to judgment of Hon'ble Bombay High Court reported in ***2013 SCC Online Bom 481 Dirk India Pvt. Limited vs. Maharashtra State Electricity Generation Com. Ltd.,*** which is approved by the Hon'be Apex Court in ***Hindustan Construction Company Ltd and another vs. Union of India and others - 2019 SCC Online SC 1520*** has observed as under:

*"When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered illusory by dealings that would put the subject of the award beyond the pale of enforcement.*

*Contextually therefore the scheme of Sec.9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Sec.9(ii) is intended to protect through the measure, the fruit of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Sec.36. The object and purpose of an interim measure after passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement.*

*The Court which exercises jurisdiction under Sec.34 is not a Court of first appeal under the provision of CPC. An appellate court to which recourse is taken against a decree of trial Court has the powers which are*

*co-extensive with there of trial Court. The Court to which an arbitration petition challenging the award U/Sec.34 lies does not pass an order decreeing the claim. Where an arbitral claims have been rejected by the arbitral tribunal the Court U/Sec.34 may either dismiss the objections to arbitral award or in the exercise of its jurisdiction set aside the award. The setting aside of an award rejecting a claim does not result in the claims which was rejected by the Arbitrator being decreed as a result of the judgment of the court in a petition u/Sec.34. What such litigating party cannot possibly obtain even upon completion of the proceedings U/Sec.34 it cannot possibly secure in a petition U/Sec.9 of the award. The object and purpose of Sec.9 is to provide an interim measure that would protect the subject matter of the arbitral proceedings whether before or during the continuance of the arbitral proceedings and even thereafter upon conclusion of the proceedings until the award is enforced. Once the*

*award has been made and a claim has been rejected, even the successful challenge to the award U/Sec.34 does not result an order decreeing the claim. In this view of the matter there could be no occasion to take recourse to Sec.9. Enforcement for the purpose of Sec.36 on a decree of the Court is at the behest of a person who seeks to enforce the award."*

**11.** Per contra, the petitioner/applicant relied upon decisions of Apex Court reported in **2010 AIR SCW 6983 Mumbai International Airport Pvt. Ltd vs. M/s Golden Chariot Airport and another** wherein the Apex Court has dealt with plea of extension of license. The above decision is with respect to challenge to the arbitral award on merits U/Sec.34. But in the case on hand it is a proceedings U/Sec.9 of the Act which is held to be not maintainable at the hands of an unsuccessful party. The respondent also relied upon decision of Hon'ble Delhi High Court in **AIR Online 2020 Del 243 - Inter Ads Exhibition Pvt. Ltd vs.**

***Busworld International Cooperative*** wherein Hon'ble Delh High Court was dealing with grant of interim measure in a case pending completion of arbitration proceedings. Such is not the case on hand.

**12.** In the light of decision of our Hon'ble High Court in ***Padma Mahadev case*** referred supra, the applicant being unsuccessful in the arbitral proceedings cannot maintain an application U/Sec.9 of the Act. Accordingly, **Point No.1 in answered the Negative.**

**13. POINT NO.2 and 3:-** In view of the findings recorded on point No.1 as the applicant being unsuccessful in the arbitral proceedings cannot maintain an application U/Sec.9 of the Act these two points do not survive for consideration and are answered accordingly.

**14. POINT NO.4:-** For the aforesaid reasons, I proceed to pass the following.

**ORDER**

The application filed by the applicant U/s.9 of the Arbitration and Conciliation Act 1996 is hereby **dismissed with costs.**

Interim order dated 15.07.2024 stands vacated.

[Order hand written by me, typed by the Stenographer Grade-III, corrected and signed by me then pronounced in the Open Court, dated **this the 16<sup>th</sup> day of October 2024**]

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**