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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 8/2026, CM APPL. 3362/2026 & CM APPL.
3363/2026

M/S CONOCEDOR HOSPITALITY PVT LTDAppellant

Through: Mr. R. Krishnaamorthi, Adv.
versus

M/S PRATHAM INFRATECH PVT LTD & ANRRespondents

Through: Mr. Jeevesh Nagrath, Sr. Adv. with
Mr. Jenis Francis and Mr. Rahul
Sarkar, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

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12.03.2026

Per DINESH MEHTA, J. (Oral)

1. By way of the instant appeal, the appellant has challenged the order dated 04.08.2025 of learned Single Judge which was passed under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as 'the Act of 1996'*).

2. At the time of issuance of notice, it was contended, rather asserted, by learned counsel for the appellant that no notice of the petition under Section 9 of the Act of 1996 was served upon it. And since such fact was also averred in Ground E of the Memo of Appeal, we were persuaded to issue notice vide order dated 19.01.2026. Another reason for which we had issued notice was, the argument of learned counsel for the appellant that while deciding the petition under Section 9 of the Act of 1996, the learned Single



Judge not only appointed a Local Commissioner and directed him to prepare a list of the goods and inventory belonging to the parties lying in the disputed shop but had also directed that after the shop being vacated and the possession being handed over to the petitioner (respondent herein), it would be allowed to let out the shop in question to any other person.

3. Mr. Jeevesh Nagrath, learned Senior Counsel for the respondent, at the outset submitted that the appellant has perjured and has given a false affidavit to the effect that the notice was not served upon it. In a bid to demonstrate the falsity of the appellant's assertion, he pointed out from the record that a copy of the petition under Section 9 of the Act of 1996 was firstly served upon Mr. Subir Poddar (Director of the appellant-company) on the e-mail ID which was given in the Leave and License Agreement.

4. Thereafter on 09.05.2025, when the Section 9 petition came up for consideration for the first time, learned Single Judge issued notice to the respondent (appellant herein) through all permissible modes, which was served upon the appellant on its e-mail ID on 02.07.2025. He submitted that the matter again came up for consideration before learned Single Judge on 25.07.2025, wherein it was observed thus :

“1. Mr. Jeevesh Nagrath, learned senior counsel for the petitioners submits that the notice has already been sent to the respondent by all permissible modes including by registered post and courier. Additionally, he contends that the notice was sent on an email which is forming part of the agreement.

2. Mr. Nagrath, then contends that the premises in question is locked by the respondent and the petitioner is suffering immense financial loss on account of the commercial shop being not in operation. He, therefore, contends that the respondent is deliberately avoiding service.

3. The Court is of the prima facie opinion that once the notice of



the petition has been sent on an email, which is being maintained by the respondent and is forming part of the agreement, the same should be sufficient compliance of service. However, as an abundant caution, addition effort is directed to be made by way of service through counsel who has represented the respondent before the Trial Court in the civil suit as well as who has sent the notice dated 23.04.2025 to the petitioner.

4. Let the notice be made returnable on 31.07.2025.

5. Let dasti notice to the said advocate C/o Bar & Associates Advocates and Solicitors Office D-27, Om Vihar, Uttam Nagar, New Delhi-110059 is also permitted.

6. Additionally, let a copy of the petition be also sent to the concerned counsel through email with a clear stipulation that the matter shall be taken up on 31.07.2025.”

5. He pointed out that notice was again served upon Mr. Subir Poddar (Director of the appellant-company) on his e-mail ID on 29.07.2025 and also upon his Advocate Mr. Shoaib Akhtar. The matter thereafter came up for consideration before the learned Single Judge on 31.07.2025, when Ms. Diksha Hira, Assisting Counsel of Mr. Shoaib Akhtar appeared and prayed for time to take instructions and the matter was ordered to be posted on 04.08.2025.

6. On 04.08.2025, said Ms. Diksha Hira, Advocate appeared and pleaded no instructions. He submitted that it is therefore, clear that the appellant had been served on three occasions and even its counsel (who had issued the legal notice on behalf of the appellant) had been served and therefore, the plea which the appellant has come with is absolutely unfounded and factually incorrect.

7. Learned Senior Counsel further invited Court's attention towards the e-mail dated 07.08.2025, which the Local Commissioner had served upon the appellant and argued that the appellant's plea in the memo of appeal so



also in the affidavit explaining the delay in filing the appeal to the effect that it was neither served with the notice nor was aware of the order dated 04.08.2025 is a blatant lie. He contended that appellant's stance that it came to know that the possession of the shop in question had been taken over by the Local Commissioner only when he incidentally passed through the area and found that someone else was in possession of the shop in question, is equally false.

8. In relation to nature of injunction, which learned Single judge has granted, Mr. Jeevesh Nagrath learned Senior Counsel submitted that the appellant was given the shop in question on the basis of leave and license agreement and it was clearly agreed by both the parties that one key would be kept with the respondent (owner of the shop) and since the appellant did not pay the license fee after 2022, as a law abiding entity the respondent approached the Court under Section 9 of the Act of 1996 to ensure that the possession of the shop in question is handed over to it in a lawful manner, rather than opening the lock (with the key which was with it) and taking possession on its own.

9. Learned Senior Counsel further argued that since the appellant did not appear before the learned Single Judge to defend its cause and was not intentionally paying the license fee, the learned Single Judge had allowed not only the possession to be handed over to the respondent but also allowed the shop in question to be leased out to any other person.

10. Heard learned counsel for the parties.

11. Upon considering the submissions and going through the record, we are unhesitatingly of the opinion that the appellant has taken an absolutely false plea and has filed a false affidavit averring therein that it was not



served with the notice. As demonstrated by the respondent, the notices were served upon the appellant not once but on three occasions apart from the service of the notice on Mr. Shoaib Akhtar, the Advocate, who had issued legal notice on appellant's behalf.

12. If the appellant had chosen not to appear before the learned Single Judge, it has only himself to blame for the order he has been visited with. Though the appeal is liable to be dismissed with heavy cost on the sole ground of the false assertion the appellant has made in the affidavit, but we would like to make some observations on the merit of the order also, which the learned Single Judge has passed. According to us, such order is fully justified for the following reasons:

(a) Since, the appellant was in possession of the subject shop pursuant to a leave and license agreement, he could have remained in possession as long as the respondent, the owner so wished and it was being paid the license fee.

(b) Having failed, omitted or neglected to pay the license fee for more than two years (for two years as per the appellant), the appellant cannot as a matter of right retain possession, that too of an otherwise closed and locked shop.

13. At this juncture, Mr. R. Krishnaamorthi, learned counsel for the appellant, interjected and contended that the license fee is due for the period between November 2023 and 06.03.2024. To this, Mr. Jeevesh Nagrath, learned Senior Counsel responded and submitted that even this assertion of the appellant is false on the face of it. He took the Court through the legal notice dated 23.04.2025 (page 126 of the paperbook, paragraph No. 48 in particular) and submitted that even as per the appellant itself, a sum of



Rs.93,29,355 (Rs.23,84,934/- + Rs.69,44,421/-) was due.

14. According to us, since on the date of issuance of notice, a huge amount of Rs. 94 Lakhs was outstanding, learned Single Judge was absolutely justified in directing the Local Commissioner to handover the shop in question to the respondents and in allowing the respondents to keep control of the shop in question and to let it out to someone else.

15. Section 9 of the Act of 1996 provides for protection or preservation of the subject matter of the dispute of contentious property. The protection of the disputed property cannot be read in a restrictive sense. Section 9, according to us takes within its fold the protection of physical form of the property so also its commercial worth or propensity to derive income. A commercial property which is meant for deriving rentals should continue to get rentals. Preserving the property does not only mean that possession should be taken and the commercial property should be placed under lock and keys.

16. We are therefore of the considered opinion that if the learned Single Judge has allowed the respondent to let out the shop to any other person, the same squarely falls within the scope of securing the property. In case, the shop in question was not allowed to be let out, the loss caused to the respondent could never be recouped. Because, the litigation may continue for years, in such case not only the physical condition of the shop would deteriorate but its commercial value would also diminish.

17. After having remained closed for years, no award of the arbitrator or for that matter, any order passed by the Court can correctly measure the monetary loss of rentals and recover it from the appellant, whose leave and license agreement has been terminated and who has not even paid rentals for



months together. In an unlikely event of the Arbitrator directing the possession to be handed over to the appellant-lessee, he can well be put in possession and compensation can be recovered from the lessor.

18. In view of what we have discussed hereinabove, the appeal is dismissed with a cost of Rs.1 Lakh to be paid in four weeks. The cost of Rs.1 Lakh is being imposed for the false assertion made in the memo of appeal and corresponding assertion made during arguments in the Court. In case the cost is not paid within such time, it shall become part of the award of the arbitrator, as and when the award is passed.

19. Needless to state that we have not made any observation on merits and otherwise of the rights of either of the parties, the arbitrator shall therefore, be free to take his independent view of the matter on the basis of pleadings and evidence led.

20. The appeal stands disposed of along with all pending applications.

DINESH MEHTA, J

VINOD KUMAR, J

MARCH 12, 2026/ *dd*