

**IN THE COURT OF SH SHIV KUMAR
ADDITIONAL DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

Civ DJ No. 652/23

Preeti Tripathi

..... Plaintiff

Versus

**President, Resident Doctor's Association,
DDU Hospital & ors.**

....Defendants

ORDER

1. Vide this order I shall decide the application of plaintiff moved under order 39 rule 1 & 2 CPC

2. Brief facts of the case are that plaintiff entered into an agreement to run a 24-hour cafeteria at the Doctor's Hostel premises at Deen Dayal Upadhyay hospital, (hereinafter referred to as DDU hospital) Hari Nagar, New Delhi with defendant no. 1 i.e. the President Resident Doctor's Association, DDU Hospital (hereinafter referred to as RDA-DDUH). The tenure of the agreement was for a period of five years from 1.08.2019 to 31 July 2024. The defendant no. 1 executed, signed the said full and final agreement to run the cafeteria.

3. It is further averred by the plaintiff that defendant had initially granted permission to the plaintiff's late husband Mr. Hemant Tripathi to run the 24-hour cafeteria on 15.09.2015. The plaintiff's husband was successfully running the cafeteria since then. The defendant no. 1 took permission from the office of Medical Superintendent DDU and they were entrusted with the responsibility to operate the same by the hospital.

4. It is further averred by the plaintiff that defendant has put up a clause in the agreement that they will only be providing the baron-land space to the plaintiff and the plaintiff has to put-up a structure of his/her own. The plaintiff desirous of the contract had invested sum of money to the tune of Rs. 10 lacs in construction of the structure over the handed over baron-land, so that the plaintiff can make some structural arrangements for the sitting, cooking and other structural spaces over that baron-land.

5. It is further averred that plaintiff entered into agreement to run the 24-hours cafeteria vide agreement dated 02.08.2019 and after few months the world was under the state of lock down because of global pandemic i.e. from the month of March 2020 due to which there was no ordinary conditions for the plaintiff to recover the investments.

Realizing that the plaintiff is not in state to protest, the defendant no. 1 started threatening the plaintiff that if the RDA-DDUH doctors were charged for the consumables and services provided by the plaintiff in the cafeteria then they will terminate the contract and will throw the plaintiff out of the premises. The plaintiff realizing that she is widow and she had this cafeteria as her only source of income bowed down to illegal and arbitrary demands of the RDA-DDUH/defendant no. 1.

6. It is further averred that these demands were regularly been catered under the constant threat of losing the opportunity of survival/earning by the plaintiff and soon it started aggravating, as it then became a regular fashion of defendant no. 1, as to whenever they wanted they used to come to the cafeteria now with their friends and other people and it was compulsively obligatory to the plaintiff to cater their demands and not to ask for the charges on the services provided or goods consumed.

7. It is further averred that the demand of defendant no. 1 did not end here but kept rising and rising, and they also started demanding money to sponsor their events and also provide catering services to them free of cost. Copy of the said Whatsapp conversation for the demand of money along with transaction details wherein an amount of Rs. 20,000/- has been paid to the defendant no. 1 has been attached with the plaint by the plaintiff.

8. It is further averred that defendant no. 1 as a regular fashion kept on demanding money and free services and somewhere in May, 2023, once again demanded from plaintiff to sponsor the event of the RDA-DDUH and this time asked for a monetary sponsorship of Rs. 1 lac along with the other food catering and services. The plaintiff then reasoned with the defendant no. 1 and tried to convince the RDA-DDUH President that such a huge amount can't be arranged by the plaintiff as she has already paid invested such a huge amount in the cafeteria and there is no other way to recover the same as the cafeteria which she is running is only for the resident doctors and out of which RDA-DDUH doctors are already not paying the services and the consumed goods and out of her contractual period a majority of the period was observed under the pandemic due to which the cafeteria was closed. Under such a situation plaintiff does not even have the opportunity to earn or survive and on top of that this regular fleecing out of money by the RDA-DDUH is making the survival more difficult for the plaintiff.

9. It is further averred that defendant no. 1 did not show any mercy over the situation of the plaintiff and via notice dated 16.06.2023 forcefully closed the cafeteria indefinitely till further notice without any prior discussion or intimation to the plaintiff. The notice further gave a period of two weeks for evacuation of the cafeteria.

10. It is further averred that plaintiff contacted the defendant and complained about the obstruction to the premises and the hindrance in running the cafeteria but the defendant has been evading the issue. It is further contended that the above said notice is a clear violation of the agreement entered between the parties which is a governing document for the running of the cafeteria. It is further contended that it is already mentioned in the agreement that in case dispute arises between the parties, the parties had to first go through a channel of mediation for its resolution.

11. It is further averred that defendant no. 1 is in clear breach of the agreement with the plaintiff and the same is fraudulent and cannot be sustained and defendant no. 1 has created unnecessary financial loss and mental pressure to the plaintiff. It is further averred that plaintiff was and is ever ready and willing to perform her part of the said agreement and run the 24-hour cafeteria as per the agreement. Plaintiff has thus prayed for a decree of Specific Performance of the Agreement dated 02.08.2019 in her favour and against the defendant thereby directing the defendant to let the plaintiff to run the 24 hour cafeteria without any impediments. Plaintiff further seeks injunction restraining the defendant no.1 from entering into any other agreement with respect to 24-hours cafeteria, award cost of the present suit, award compensation for the loss of business because of forceful closure of the

cafeteria in favour of the plaintiff and against the defendant.

12. Per contra it is contended on behalf of the defendant no. 1 that the present suit is abuse of process of law and has been filed on false grounds and is defective as plaintiff is silent on the point as to which clause in the agreement she wants specific performance. It is further contended that there is no clause in the agreement that the service of the plaintiff can be restored after termination of her service. It is further contended that at the most the plaintiff has a right to remove her structure as specifically mentioned in clause 2 the Termination clause.

13. It is further contended that plaintiff has not sought declaration regarding declaring the termination of service of plaintiff by defendant no. 1 as null and void. It is further contended that the alleged agreement dated 1.08.2019 was executed by the former President of RDA in his personal capacity and the said assertion is supported due to absence of official stamp of RDA on the contract and therefore, the subsequent RDA President have no obligation to adhere to the terms of above- mentioned agreement. The absence of RDA stamp on the alleged agreement also suggests that the agreement has not been rectified or authorized by the Association as a whole.

14. It is further contended that there is no Resolution of the RDA passed in support of alleged agreement dated 01.08.2019 and it makes

the agreement dubious and casts a shadow over the credibility and enforceability over the alleged agreement. It is further contended that it is admitted by the plaintiff, earlier her husband late Sh. Hemant Tripathi was running the 24 hours Cafeteria in DDU hospital for providing food to resident doctors. It is further contended that when her husband had already put the structure in the Cafeteria for running the same then what happened to the said structure. It is further contended that plaintiff is silent on this aspect and her story cannot be believed as no prudent man would raise another structure when there is already structure available in the land provided by the hospital. It is further contended that by keeping the above said aspects in consideration, it can be presumed that the alleged agreement dated 1.08.2019 is a self-created, self-serving agreement of the plaintiff. It is further alleged that the said agreement is forged and fabricated as a stamp papers were allegedly purchased on 2.08.2019 and the date of execution is also 2.08.2019 but the date of agreement is dated 01.08.2019 and the said agreement is also admittedly signed by Dr. Asgar Ali is of date 02.07.2019.

15. It is further contended that without admitting the agreement, as per clause 2 of Termination clause of the alleged agreement, the contractor had a right to remove all the assemblies, construction, structure and structure work from the said land. It is further contended that the when there is specific remedy available for the breach of the terms of the said agreement then the plaintiff cannot force the defendant

no. 1 to allow her to continue 24 hours canteen over the said premises.

16. It is further contended that plaintiff has maintained the canteen under unhygienic condition and the concerns were raised by the doctors about the deteriorated quality of the food being served. It is further contended that due to the unhygienic conditions and deteriorated quality of foods, several individuals had fallen ill after consuming meals from the canteen. It is further contended that due to the unfortunate events and protest raised a formal notice was issued to the plaintiff to vacate the cafeteria and this action was taken with the paramount objective safeguarding the health and well-being of all individuals who utilize the canteen services.

17. During arguments ld. Counsel for the plaintiff submits that earlier the husband of the plaintiff had run the cafeteria from the year 2015 till 2019 and thereafter the alleged agreement has been executed by RDA-DDUH with her and she was given the contract to run the 24 hours cafeteria in the premises of the DDU hospital from 1.8.2019 to 31.07.2024. Ld. Counsel for the plaintiff further submits that as per the terms of the contract, the plaintiff sent Rs. 10 lakh on further raising the structure, arranging equipment, furniture, articles etc. for running the said cafeteria. He further submits that the plaintiff was running the cafeteria efficiently and was providing food of good quality to the resident doctors but arbitrary and without any ground, the defendant no. 1 vide notice dated 16.06.2023 forcefully closed the said cafeteria and

foreclosed her only source of income. He further argued that in case plaintiff is not allowed to run the cafeteria, the plaintiff will suffer irreparable loss and injury.

18. On the other hand, Id. Counsel for D-1 argued that the alleged agreement is forged and fabricated and plaintiff has no right to run the cafeteria as the agreement was executed by the former President in his personal capacity and plaintiff has not challenged the termination of the agreement hence the present suit is not maintainable.

19. It is further argued that plaintiff has maintained the canteen under unhygienic condition and provided food of low quality and due to which several individuals fallen ill, after consuming meals from the canteen. It is further argued that due to above said reasons, a formal notice was issued to the plaintiff to vacate the cafeteria and this action was taken with the paramount objective of safeguarding the health and well- being of all individuals who utilize the canteen services.

20. Heard. Case file perused.

21. It is settled law that before the grant of interim injunction under Order 39, rules 1& 2 CPC, the court must have satisfied about the existence of Following conditions: -

(1) Whether plaintiff has a Prima facie case?

(2) Whether the balance of convenience is in favour of the plaintiff?

(3) whether the plaintiff would suffer Irreparable injury if his prayer for interim injunction is not granted.

The above said three conditions are called “three pillars” on which the foundation of every injunction order rests and also known as triple test for deciding application for grant of interim injunction under Order 39, rules 1& 2 CPC.

22. In a case titled as “**Dalpat Kumar And Anr. vs Prahlad Singh And Ors, AIR 1993 SC 276**”, Hon’ble Apex Court has discussed the principles for dealing with interim injunction application moved under Order 39, rules 1& 2 CPC and held in Para No.5 t as follows: -

“ 5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking

relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

23. The defendant no. 1 is challenging the agreement notarized on 2.07.2019 on two- fold grounds: First that the said agreement is false and fabricated as the stamp paper has been purchased on 2.08.2019 whereas the date of agreement is written as 01.08.2019 and the date under the signature of Dr. Asgar Ali is mentioned as 02.07.2019. The second ground is that the agreement was executed by

Dr. Asgar Ali, formal President of RDA in his personal capacity and the said assertion is also supported due to absence of official stamp of RDA on the contract and therefore, the subsequent RDA President has no obligation to adhere to the terms of above- mentioned agreement.

24. It is apparent that the agreement is signed on 02.07.2019 whereas the stamp papers attached with the agreement is of dated 02.08.2019, but on this ground alone the agreement cannot be considered false and fabricated. The effect of attaching postdated stamp paper can be appreciated at the final stage after leading evidence on behalf of the parties. This agreement is also attested by Notary Public on 02.08.2019. The defendant no. 1 has not denied the fact that at the time of execution of alleged agreement, Dr. Asgar Ali was the President of Association and also not disputed the signatures of Dr. Asgal Ali upon the said agreement. it is admitted fact on the part of defendant no. 1 that plaintiff was running cafeteria in DDU hospital and the defendant no. 1 issued notice dated 16.06.2023 to close the cafeteria indefinitely. The defendant no. 1 has not placed any other document on record by way of which plaintiff was allowed to run cafeteria in DDU hospital. The defendant no. 1 has not placed any document on the record that the said alleged agreement was ever cancelled or denied by the association. The defendant no. 1 has issued notice for closing the cafeteria by mentioning grounds in his written statement that the said cafeteria has been closed due to unhygienic conditions and low quality of food.

Prima facie it is established that the defendant no. 1 has acted upon the said agreement and allowed the plaintiff to run cafeteria in DDU hospital. So, both contentions of defendant no. 1 do not hold any force.

25. The defendant no. 1 has contended that it is unbelievable that the plaintiff would have spent an amount of Rs. 10 lacs for raising structure and for other things, for running the cafeteria as earlier the husband of the plaintiff was running the cafeteria and had already raised the structure for running the cafeteria and there is no need for the plaintiff to further raise the structure. For appreciating this contention, there needs some evidence on record but defendant no. 1 has not filed any document or other evidence to support his contention. If this contention of the defendant no.1 is presumed to be correct, even then there was no restriction upon the plaintiff to raise further structure, to make structural arrangement for sitting, cooking etc. in the canteen. The structure already raised by the husband of the plaintiff is also belonged to the plaintiff being her wife.

26 As per agreement, it is the duty of plaintiff to bring her own tools, cookers, hot boxes, steam boxes, trolleys, equipment, utensils, plates, jugs etc. in sufficient quantity as needed to maintain the cafeteria services and run it efficiently. It is clearly mentioned in the agreement that plaintiff will be entitled for an amount of Rs. 10 lacs in lieu of the structure put by her or she will be entitled to remove the structure on the termination of the contract.

27. The defendant no. 1 has contended that defendant no. 1 has the right to terminate the contract and on the termination of the contract, the only remedy left with the plaintiff to remove all her structure and for which notice was given to the plaintiff.

28. I have perused the agreement notarized on 2.08.2019. In this agreement there is no clause which gives right to the defendant no.1 to break the contract arbitrarily, in between, before completion of term of contract. Clause 2 of Termination clause of the contract, only talks about the fact that on the termination of the contract, the new contractor will pay Rs. 10 lacs only, for all the assemblies, construction, structure work etc., to the last contractor or the last contractor has the right to remove the structure. This clause talks about the consequences on termination of the contract, but does not give any unilateral right to the defendant no.1, to break the contract, before expiry of term of contract. This clause does not give any right to defendant no.1 to break the contract arbitrary and without any just grounds. Even in the present case Rs. 10 lacs have not been given to the plaintiff.

29. If the defendant no.1 was not satisfied with the food quality or maintenance of canteen under hygienic conditions by the plaintiff, then he should have given notice to the plaintiff to improve the food quality and hygienic conditions in cafeteria. In the present case defendant no.1 has neither given any notice nor made any written

communication with the plaintiff for the above said deficiencies, rather defendant no.1 straight way closed the cafeteria indefinitely, by issuing notice dated 16-06-2023. Even in the notice no reasons have been mention for closing the cafeteria. Defendant no.1 is an association of resident doctors of DDU hospital. The defendant no.1 should have shown some fairness and transparency in closing the cafeteria. No efforts have been made on behalf of defendant no.1 for resolving issues, if any, with plaintiff through mediator before closing the cafeteria.

30. There are also allegations levelled by the plaintiff that during running of cafeteria, the defendant no. 1 has continued threatened her that if the RDA-DDUH doctors were charged for the consumables and services provided by the plaintiff in the cafeteria then they would terminate the contract and would throw the plaintiff out of the premises. The plaintiff further alleged that considering the running of cafeteria as her only source of income, she bowed down to the illegal and arbitrary demands of the RDA-DDUH/defendant no. 1 and did not demand for the charges of the consumables and services provided by her.

31. It is further alleged by the plaintiff that defendant no. 1 also demanded money from her to sponsor their events and also provided catering services to them free of cost. Plaintiff also relied upon copy of the WhatsApp conversation for the demand of money along with transaction details wherein an amount of Rs. 20,000/- has been alleged

to be paid by the plaintiff to the defendant no. 1 and further alleged of further demand of Rs. one lakh to sponsor events made by defendant no.1.

32. As per agreement, the plaintiff is entitled to run the cafeteria till July 2024 and if there is any complaint against the plaintiff regarding low food quality and unhygienic conditions in canteen, then notice is required to be given to plaintiff by defendant no.1 and efforts to be made to resolve the dispute through agreed mediator, whose is mentioned in the agreement, but in this case defendant no.1 has without following the above procedure, arbitrary closed the cafeteria and forcefully prevent the plaintiff from running the cafeteria. The defendant no.1 has not produced any minutes of meeting or resolution of the association, by which the decision to close the cafeteria, due to low food quality and unhygienic conditions in canteen, has been taken by the association and the president of the association has been authorized to issue notice dated 16/06/2023 for closing the cafeteria. Without expressing anything on merits, just for deciding the present application, it is held that the act of defendant no.1 to close the cafeteria and forcefully preventing and obstructing the plaintiff in entering the cafeteria and running the cafeteria, prima facie appears to be arbitrary, unreasonable, against the principle of natural justice and against the agreed terms of agreement. Due to said act of defendant, not only the plaintiff has been deprived of her earning source of income but the

resident doctors of DDU hospital has also been deprived of the services of the canteen run by the plaintiff.

33. In view of the above said observations, facts and circumstances, this court is of the view that a prima facie case and balance of convenience, lie in favor of the plaintiff for grant of interim injunction and plaintiff shall suffer irreparable injury, in case his application under 39 rule 1 and 2 is declined. Hence, the application of plaintiffs for grant of interim injunction under Order 39, rules 1& 2 CPC is **allowed** and defendant no 1 is restrained from obstructing or preventing the plaintiff from running the cafeteria in DDU hospital as per the period specified in agreement notarized on 02.08.2019 without following due course of law till the disposal of the present suit. Defendant no. 1 is further restrained from giving the contract of said cafeteria to third person during the enforceability of the above-said agreement till the disposal of the present suit.

34. It is clarified that nothing expressed in this order shall be deemed to be an expression on the merits of the suit.

**Announced in the open court
On 09.12.2023**

**(Shiv Kumar)
Addl. District Judge
West-02: Delhi**