



2025:AHC:226641-DB

AFR

Reserved on : 03.11.2025

Delivered on : 17.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT 1996 No. - 289 of 2025

Banaras Hindu University, Varanasi through its Registrar
.....Appellant(s)

Versus

M/s Umang Cure Pvt. Ltd. and 3 others
.....Respondent(s)

Counsel for Appellant(s)	: Rahul Agarwal, Reema Pandey, Ishan Mehta
Counsel for Respondent(s)	: Manish Goyal (Sr. Advocate), Syed Fahim Ahmed

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

(Per : Arun Bhansali, CJ)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act of 1996') is directed against order dated 12.06.2025 passed by Commercial Court, Varanasi, whereby application filed by respondent under Section 9 of the Act of 1996 has been allowed and the appellants have been restrained not to evict the respondent from the property in dispute (indicated in the license deed) and not to take any coercive measures.

2. The appellants-University manages and operates Sir Sunderlal Hospital within its campus. On 24.09.2013, the appellants entered into a license deed with the respondent for operating a 24-hour pharmacy

within the hospital premises, the arrangement was subsequently renewed in the years 2014, 2015 and on 24.09.2016. By the last renewal, the respondent was granted a five year license to operate the chemist shop with certain conditions regarding continuation and termination. It is indicated that the Hospital Management Committee of the appellants in its meeting dated 09.02.2022 decided against granting any further extension to the respondent and resolved to initiate new tender process for 24-hour pharmacy. The resolution was approved by the Vice Chancellor of the University. Though the term of the license expired on 23.09.2021, the appellants allowed the respondent to continue for a further period of three months upto 23.12.2021. Further extensions were granted and by an order dated 20.01.2023, the period from 23.09.2021 to 03.01.2023 was treated as deemed to have been extended prior to which on 03.01.2023, an extension for a period of three months was granted.

3. Besides the 24-hours pharmacy within the hospital premises, additionally on 04.07.2022, a separate license deed with the respondent was executed for operating two new 24-hour pharmacies at the Trauma Centre Hospital and Hospital OT Complex under IMS system. The license was for a period of three years subject to periodic review.

4. The appellants after 31.03.2023 offered the respondent a fresh license deed for operating pharmacies at various locations within the hospital. The revised agreement containing terms and fees for license was forwarded on 11.10.2023 fixing license fee at Rs.1916.66 per sq. ft. It is claimed that the respondent did not execute the fresh license deed and persisted in paying the license fee as per expired license deed. The appellants issued an eviction notice dated 21.11.2023 to vacate the premises within 30 days and clear all the dues failing which legal steps were threatened. It is claimed that despite the legal notices were issued through counsel for the University dated 16.01.2025 and 17.02.2025, the respondent refused to vacate and continued to run the shop illegally.

5. Apparently, to enforce eviction/bring the respondent to terms, the appellants initiated steps for electricity disconnection and attempted to repossess the premises, which was objected by the respondent.

6. Aggrieved of the attempts made by the appellants, the respondent filed application under Section 9 of the Act of 1996 before the Commercial Court, Varanasi seeking interim protection in respect of the shop premises. An *ex-parte* injunction dated 20.02.2025 was passed restraining the appellants from taking any coercive action. Reply to the application under Section 9 of the Act of 1996 was filed *inter alia* claiming that the respondent has no subsisting right to remain in the possession of the premises.

7. After hearing the parties, the Commercial Court vide its order dated 12.06.2025 passed an order as noticed hereinbefore. Feeling aggrieved, the present appeal has been filed.

8. Learned counsel for the appellants made submissions that the Commercial Court fell in error in granting protection under Section 9 though the license deed between the parties had expired on 31.03.2023 and no valid or subsisting agreement existed on the date of filing of the application. Further submissions were made that the Commercial Court fell in error in not recording any finding on the essential prerequisites for grant of interim relief, i.e. *prima facie* case, irreparable injury and balance of convenience, which vitiates the order.

9. Learned counsel emphasized that once the term of license deed and its extension had expired on 31.03.2023, the arbitration clause provided in the license deed dated 24.09.2016 perished with the expiry of the term of license and the respondent could not have invoked the jurisdiction of the Commercial Court under Section 9 of the Act of 1996 and on that count alone, the order impugned deserves to be quashed and set aside. On the said aspect, reliance was placed on **Anoop Maheshwari vs. Thomas T. Kurian** : 2024 SCC OnLine All 8893.

10. Further submissions were made that though the Commercial Court noticed the fact/submission that the respondent was willing to increase the license fee with effect from 11.10.2023 and had only objection qua the retrospective enhancement with effect from 01.04.2023, however a blanket interim order has been granted against eviction and any coercive process, which is *ex-facie* illegal and contrary to the indications made in the order impugned. The respondent has been given a nature of protection, to which he is not at all entitled.

11. Various submissions were made seeking to justify to the enhanced rent and the fact that the respondent was seeking to be unreasonable, so as to refuse the enhancement and was taking advantage of the nature of order passed by the Commercial Court and on that count, it is prayed that the order be set aside.

12. Counsel for the respondent made submissions seeking to contest the allegations made. Submissions were made that the respondent has been regularly making payment of the license fee in terms of the agreement and nothing is due to the respondent. Submissions were made that the plea raised pertaining to the arbitration clause contained in the license deed perishing with the purported expiry of its term, has no substance inasmuch as the respondent has been continuing in possession of the license premises and is regularly paying the license fee, which has been accepted by the appellants. Further submissions have been made that irrespective of the expiry of the license and the fact that the respondent was ready and willing to execute a fresh license deed, the action of the appellants being highhanded in seeking to disconnect the electricity and forcefully dispossessing the respondent, the respondent has no option but to invoke the jurisdiction of the Commercial Court.

13. Submissions have been made that under no provisions of law, respondent can forcefully dispossess the respondent from the license premises. They are required to only employ legitimate means and therefore, the grant of injunction by the Commercial Court cannot be faulted.

14. Qua the enhanced license fee, submissions were sought to be made that the enhancement cannot be unilateral and the respondent is willing to negotiate with the appellant for a reasonable enhancement and, therefore, the order passed by the Commercial Court cannot be faulted. Reliance was placed in **Branch Manager, MAGMA Leasing and Finance Limited and another vs. Potluri Madhavilata and another :** (2009) 10 SCC 103; **Bharat Petroleum Corporation Ltd. vs. Great Eastern Shipping Co. Ltd. :** (2008) 1 SCC 503 and **Raymond Limited vs. Miltex Apparels and others :** 2025 SCC OnLine Bom 333.

15. We have considered the submissions made by counsel for the parties and have perused the material available on record.

16. The principal submission made by counsel for the appellants, which was neither raised before the Commercial Court and nor in the present appeal, centers around the maintainability of the proceedings under Section 9 of the Act, once the period of license is over wherein the arbitration clause is contained. The Arbitration Clause reads as under:

“56) All questions, disputes and differences arising under and out of, or in connection with the License Deed, shall be referred to the sole arbitration by an arbitrator appointed under the provisions of the Arbitration and Conciliation Act, 1996 by the Vice-Chancellor, BHU whose decision shall be final and binding, on both the parties. The venue for the arbitration proceedings shall be Varanasi and courts at Varanasi shall have exclusive jurisdiction. All the arbitration proceedings shall be carried out in English language”

17. The plea which has been raised, is apparently based on the judgement in **Anoop Maheshwari** (supra) wherein a Single Judge of this Court, referring to judgement in **Union of India vs. Kishori Lal Gupta :** AIR 1959 SC 1362, came to the conclusion that existence of a contract is necessary for invocation of arbitration clause prescribed under the agreement as the clause would perish with the contract and as the contract therein was only for a period of 11 months, the moment the contract perished, the lease ended and the condition under lease also perishes with such contract, suit would not be barred under Section 8 of the Act of 1996 and therefore suit for eviction would lie.

18. Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation Ltd.** (supra) wherein the agreement called 'Time Charter Party', was for a period of two years from 22.9.1996 to 30.6.1997 and from 1.7.1997 to 30.6.1998, which period was extended till 31.8.1998, however, the vessel continued to be chartered by BPCL till 31.8.1999, when payment for the period 1.9.1998 to 31.8.1999 was not made, based on the arbitration clause, an arbitral tribunal was constituted wherein issue was raised pertaining to the jurisdiction of the Tribunal to adjudicate dispute for the period September, 1998 to August 1999. In those circumstances, the Hon'ble Supreme Court indicated the following issue:

"17. Thus, the short question for determination is whether on the expiry of the extended period of charter hire on 31-8-1998, charter party dated 6-5-1997 came to an end and the arbitration agreement between the parties perished with it?"

19. The Hon'ble Court further observed as under:

"19. It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance-an agreement *sub silentio*. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.

20. In our view, the principle of *sub silentio* is clearly attracted in the present case. As noted above, after the extended period of charter party dated 6-5-1997 had come to an end on 31-8-1998 and the bids received pursuant to fresh invitation were pending finalisation, vide their letter dated 12-10-1998, the respondent had informed the appellant that they were agreeable to apply new rates for use of the vessel from 1-7-1998 provided all the nine vessels are used. However, on 31-10-1998, the appellant faxed IOC's message informing them of the extension of the existing coastal tanker fleet for the month of October 1998 at reduced rates viz. 80% of the charter party rates prevailing till 30-8-1998. On receipt of the said letter, the respondent vide their letter dated 5-11-1998 protested against the revision of the rates for the vessel not being considered under the new bid and stated in unequivocal terms that it was not possible for them to accept the proposal of the Oil Coordination Committee, communicated to them vide letter dated 12-10-1998. Yet again while responding to the appellant's fax dated 31-12-1998, whereby the respondent was required to sign a provisional charter party by 4-1-1999, vide their letter dated 4-1-1999, the respondent, pointed out to the appellant that usual practice is that pending finalisation of the new charter, the existing terms and conditions of the charter party continue to apply and, therefore, they were willing to sign the agreement as contemplated by the

appellant based on the existing terms and conditions. It was suggested that an agreement may be signed between them for the period from 1-9-1998 until the matter was finally decided by the appellant under the tender, on the existing terms and conditions with the charter hire being provisionally paid on ad hoc basis at 90% of the rate which was prevailing under the existing charter party. As noted hereinabove, there was no response by the appellant to the respondent's letter dated 4-1-1999 though it appears that vide their letter of even date, the appellant did suggest to the respondent that as a token of formal agreement the said letter may be jointly signed by the charterers and the vessel owners. Admittedly, no such agreement was signed between the parties. Indubitably, there was no further exchange of correspondence between the parties during the year. Nevertheless, the appellant continued to use the vessel on hire with them under the time charter dated 6-5-1997. The conduct of the parties, as evidenced in the said correspondence and, in particular the appellant's silence on the respondent's letter dated 5-11-1998 and 4-1-1999, coupled with the fact that they continued to use the vessel, manifestly goes to show that except for the charter rate, there was no other dispute between the parties. They accepted the stand of the respondent *sub silentio* and thus, continued to bind themselves by other terms and conditions contained in the charter party dated 6-5-1997, which obviously included the arbitration clause."

"23. We are, therefore, of the opinion that though performance of the charter party agreement dated 6-5-1997 may have come to an end on 31-8-1998 but it was still in existence for some purposes viz. the effect of vessel's non-redelivery as per the prescribed mechanism and its continued use beyond the stipulated time and, thus, the arbitration clause in the said charter party operated in respect of these and other allied purposes. Therefore, the factual scenario in the instant case leads to an inescapable conclusion that notwithstanding the expiry of the period fixed in the time charter party dated 6-5-1997, the said charter party did not get extinguished, inter alia, for the purpose of determination of the disputes arising thereunder and the arbitration clause contained therein could be invoked by the respondent.

24. In view of the foregoing discussion, we do not find any infirmity in the view taken by the High Court that the charter party dated 6-5-1997 had not come to an end by efflux of time and it got extended by the conduct of the parties, warranting interference."

(emphasis supplied)

20. A perusal of the above determination made by Hon'ble Supreme Court reveals that though the agreement may have come to an end on expiry of its term, the arbitration clause operated and for the purpose of determination of the disputes, the arbitration clause could be invoked and that the agreement had not come to an end by efflux time and the same got extended on account of conduct of the parties.

21. The present circumstances, as noticed hereinbefore, are quite similar wherein despite the expiry of the term in the year 2021, the same was extended from time to time till 31.03.2023 and thereafter also, the appellants had continued to receive the license fee as paid by the respondent, which is also a conscious decision inasmuch the amount has not been directly deposited in the accounts of the appellants rather cheques/drafts were sent which had been deposited by the appellants in its Bank accounts.

22. In the case of **Branch Manager, MAGMA Leasing and Finance Limited** (supra), after considering the judgement in the case of **Kishori Lal Gupta** (supra) also, in a case where the agreement was terminated due to breach, the Hon'ble Supreme Court came to the following conclusion:

“14. The statement of law expounded by Viscount Simon, L.C. in *Heyman* as noticed above, in our view, equally applies to the situation where the contract is terminated by one party on account of the breach committed by the other particularly in a case where the clause is framed in wide and general terms. Merely because the contract has come to an end by its termination due to breach, the arbitration clause does not get perished nor is rendered inoperative; rather it survives for resolution of disputes arising “in respect of” or “with regard to” or “under” the contract. This is in line with the earlier decisions of this Court, particularly as laid down in *Kishorilal Gupta*.

15. In the instant case, Clause 22 of the hire-purchase agreement that provides for arbitration has been couched in the widest possible terms as can well be imagined. It embraces all the disputes, differences, claims and questions between the parties arising out of the said agreement or in any way relating thereto. The hire-purchase agreement having been admittedly entered into between the parties and the disputes and differences have since arisen between them, we hold, as it must be, that the arbitration Clause 22 survives for the purpose of their resolution although the contract has come to an end on account of its termination.”

(emphasis supplied)

23. The Bombay High Court in the case of **Raymond Limited** (supra), relied on judgement in the case of **Bharat Petroleum Corporation Ltd.** (supra) and came to the conclusion that all terms in the agreement would stand extended *sub silentio* and by necessary implication including the arbitration clause.

24. Learned Single Judge in the case of **Anoop Maheshwari** (supra) has principally relied on the determination made in the case of **Kishori Lal Gupta** (supra) and did not take into consideration the law which has developed subsequent to the said judgment, as discussed hereinbefore and as such the said judgement does not lay down good law.

25. In view of the law as laid down by Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation Ltd.** (supra) and as discussed hereinbefore, the plea sought to be raised for the first time before this Court regarding non availability of the arbitration clause, apparently has no substance.

26. Coming to the merits of the order passed by the Commercial Court, a perusal of the order impugned dated 12.6.2025 reveals that though the Tribunal has delivered a judgement running into 94 paras, the determination is indicated in 4 paras only, which is followed by the order, which reads as under:

"91. उभय पक्षों के विद्वान अधिवक्तागण को सुनने एवं पत्रावली पर उपलब्ध समस्त अभिलेखों, साक्ष्यों व माननीय न्यायालय के निर्णयज, विधियों के अवलोकन व परिशीलन से यह स्पष्ट होता है कि आवेदक व विपक्षी के मध्य जो एग्रीमेन्ट/ लाईसेन्स डीड सितम्बर 2013 व 24.09.2016 को निष्पादित की गयी थी, वह दिनांक 10.10.2023 तक प्रभावी रहा है। इस तथ्य के सम्बन्ध में पक्षकारों के मध्य कोई विवाद नहीं है। दिनांक 11.10.2023 को विपक्षी की तरफ से unilateral एग्रीमेन्ट हस्ताक्षरित दिनांक 01.04.2023 से 31.03.2024 तक की अवधि के लिए प्रेषित किया गया था। उक्त एग्रीमेन्ट में दिनांक 01.04.2023 से नये दर मु0-8854970+GST से किराये की मांग की गयी थी। जबकि दिनांक 10.10.2023 तक का किराया पूर्ण रूप से अदा किया जा चुका था। उक्त किराया करीब-करीब दो गुना कर दिया गया है। आवेदक एग्रीमेन्ट हस्ताक्षरित करने की तिथि 11.10.2023 से किराया बढ़ाने के लिए तैयार था किन्तु पिछली तिथि 01.04.2023 से जो किराया जमा कर दिया गया था उसके सम्बन्ध में उसे आपत्ति थी।

92. यदि आवेदक के द्वारा आपत्ति की जा रही थी तो निश्चित रूप में मामला आर्बिट्रेशन का बनता है। विपक्षी को आर्बिट्रेशन के माध्यम से इस मामले को निस्तारित कराना चाहिए था किन्तु उसके द्वारा ऐसा नहीं करके बिजली, पानी काटने जैसी उत्पीड़नात्मक प्रक्रिया अमल में लाई गयी जिसे कदापि विधि सम्मत नहीं कहा जा सकता है।

93. यहां पर यह भी उल्लेखनीय है कि एग्रीमेन्ट लाईसेन्स डीड तो रजिस्ट्रार BHU निष्पादित करते हैं किन्तु नोटिस आदि देने का कार्य या शपथ-पत्र आदि देने का कार्य असिस्टेंट रजिस्ट्रार या मेडिकल सुपरिटेन्डेंट के स्तर से किया जाता है। इस प्रकार से स्पष्ट होता है कि वास्तविक तथ्यों से अपने को बचाने के लिए रजिस्ट्रार BHU द्वारा इस प्रकार की कार्यवाही अमल में लाई जा रही हैं। रजिस्ट्रार BHU को स्वयं शपथ-पत्र देकर इस बात को स्पष्ट करना चाहिए था कि क्यों किराया पिछले 6

माह की तिथि से बढ़ाया जा रहा है किन्तु विपक्षीगण द्वारा कोई स्पष्टीकरण कहीं भी पत्रावली में प्रस्तुत नहीं किया गया है। एनेक्चर 4 कागज संख्या 17ग/48 पत्रावली पर उपलब्ध है, जिसके अवलोकन से स्पष्ट होता है कि रजिस्ट्रार द्वारा एग्रीमेण्ट/एकपक्षीय हस्ताक्षरित करते हुए आवेदक को प्रेषित कर दिया गया है। इसमें यह भी अंकित है कि नया किराया मु0 88,54,970/- रुपये मय GST होगा। जबकि कोई अनुबन्ध-पत्र या लाईसेन्स डीड दोनों पक्षों की उपस्थिति में ही निष्पादित होनी चाहिए थी। यह स्थिति विपक्षीगण की गैरकानूनी, मनमानापन एवं उत्पीड़नात्मक प्रक्रिया को दर्शित करता है।

94. इस प्रकार से स्पष्ट होता है कि जो प्रार्थना-पत्र आवेदक द्वारा प्रस्तुत किया गया है, उसमें बल प्रतीत होता है। अतः प्रार्थना-पत्र 4क स्वीकार किये जाने योग्य है।

आदेश

आवेदक द्वारा प्रस्तुत Arbitration Misc. Case No. 14/2025 प्रार्थना-पत्र कागज संख्या 4क अन्तर्गत धारा 9 माध्यस्थम् वं सुलह अधिनियम 1996-स्वीकार किया जाता है।

विपक्षीगण को निषेधित किया जाता है कि माध्यस्थम् अधिकरण के गठन एवं आवेदक की तरफ से उक्त अधिकरण के समक्ष प्रस्तुत प्रार्थना-पत्र के निस्तारण तक आवेदक को प्रश्नगत सम्पत्ति (लाईसेन्स डीड में अंकित) से न तो बेदखल करेंगे और न ही किसी प्रकार की उत्पीड़नात्मक कार्यवाही अमल में लायेंगे।”

(emphasis supplied)

27. A perusal of the above judgement would reveal that the fundamental requirements of granting an injunction under Section 9 of the Act of 1996 wherein existence of a prima facie case, balance of convenience and irreparable injury was required to be determined by the Commercial Court, not a word has been indicated on the said aspects of the matter.

28. The most outstanding feature rather the deficiency of the judgement impugned is that though at the end of para 91 (underlined hereinbefore), it was observed by the Commercial Court that the respondent was prepared to enhance the rent from 11.10.2023 and had only objection qua the retrospective enhancement, no order has been passed for paying the enhanced license fee, which as noticed, was volunteered/offered to be paid with effect from 11.10.2023 and a blanket order has been granted not to evict the respondent and further not to take any coercive measures. The manner in which the order has been passed, cannot be countenanced/approved.

29. None of the settled parameters have been complied with / adhered to and to top it all despite noticing the concession/offer/volunteering

enhanced payment, no direction in this regard has been issued which is wholly unjustified.

30. Consequently, the appeal is partly allowed. The order dated 12.6.2025 passed by the Tribunal is set aside. The matter is remanded back to the Commercial Court to hear and decide the application afresh, keeping in view the observations made hereinbefore, complying with the requirements for passing an order under Section 9 of the Act of 1996 as well as keeping in view the offer made by the respondent, which aspect has not been disputed by the respondent.

31. However, till such time that a fresh order is passed by the Commercial Court, status quo as it exists on the date of passing of this order, shall be maintained. The parties shall appear before the Commercial Court on 5.1.2026 and the Commercial Court is directed to pass a fresh order after hearing the parties before 31.01.2026.

(Kshitij Shailendra, J.) (Arun Bhansali, CJ.)

December 17, 2025

RK/