

Presented on : 29.01.2001

Registered on : 07.02.2010

Decided on : 14.07.2016

Period required for disposal

15 Years 05 Months 14 Days.

IN THE COURT OF SMALL CAUSES AT BOMBAY**T.E. & R. SUIT NO. 83/90 OF 2001****Exh. 59**

THE CRICKET CLUB OF INDIA LTD.,)
a Company incorporated under)
The Indian Companies Act, 1913,)
and having its registered office at)
Brabourne Stadium, Dinshaw Vachha)
Road, Mumbai – 400 020.) Plaintiffs.

Versus

1. The unnamed heirs and legal)
representative of Shri. Hiran Kumar)
Ghose, adult Indian inhabitant of Mumbai)
who was last carrying on business at the)
last known address Royal Opera House)
Building, Opera House, Mumbai – 400 004.)
)
2. Ramendra Narayan Sinha)
Age – Not known, Occ : Business,)
adult, Indian inhabitant of Mumbai,)
residing at 17, Harvey Road,)
Mumbai – 400 007.)
)
3. Polar Finance Private Limited)
a Company carrying on business in)
Shop No. 6, Ground Floor, Stadium)
House, Veer Nariman Road, Fort,)
Mumbai – 400 020.)
)
4. K. R. Thacker (Deleted))
Full name not known.)

5. Mrs. Darshana Thacker)
 Full name not known.)
)
6. Mahendra Thacker)
 Full name not known.)
 Defendants 4, 5 and 6 all adult)
 Indian Inhabitants of Mumbai)
 carrying on business in Shop No. 6,)
 Ground Floor, Stadium House,)
 Veer Nariman Road, Mumbai – 400 020.)
)
7. Naivaidyam)
 a partnership firm carrying on business)
 of Selling Mithais from Shop No. 6,)
 Ground Floor, Stadium House,)
 Veer Nariman Road, Mumbai – 400 020.)
)
8. Rugby Hotels Ltd.)
 a Company registered under the)
 provisions of Indian Companies Act,)
 and having its office at Shop No. 6,)
 Ground Floor, Stadium House,)
 Veer Nariman Road, Mumbai – 400 020.)
)
9. M/s. Crystal Hospitality Services Pvt. Ltd.)
 a Company incorporated under the)
 provisions of Companies Act and having)
 its office at Shop No. 6, Ground Floor,)
 Stadium House,)
 Veer Nariman Road, Mumbai – 400 020.) Defendants.

Anand Gandhi : Advocate for the Plaintiffs.

Defendant Nos. 1 and 2 exparte.

Divyakant Mehta & Associates : Advocate for Defendant
 Nos. 3, 5 to 9.

Clam : Suit for possession and mesne profit.

**Coram : Pushpa N. Rao, Judge,
 Court Room No. 10
 Date : 14.07.2016**

- : J U D G M E N T :-

(Delivered on 14th July, 2016)

1. The plaintiffs are landlords and owners of property known as 'Stadium House', the part of Brabourne Stadium situated at Veer Nariman Road, Churchgate, Mumbai – 400 020. The said Stadium House is surrounded on or towards North by Veer Nariman Road, on or towards South by Brabourne Stadium Wall, on or towards East by Plot No. 202-C and on or towards West by North Stand Building.

2. In the Indenture Lease dated 3/12/1954, the plaintiffs demised unto one Hiran Kumar Ghose and Defendant No. 2, the shop No. 6 admeasuring 1,521 sq.ft. or thereabout on the ground floor of the said stadium house, forming the part of Brabourne Stadium. The said indenture of lease provided that the same could be renewed before the expiry of the period of 7 years commencing from 1/08/1954. However, the said Hiran Kumar Ghose and Defendant No. 2 did not renew the said lease and continued to be in occupation in the lease premises even after the expiry of the period of lease. The Hiran Kumar and defendant No. 2 were carrying on the business in the name and style of “Calcutta Bombay Trading Corporation”. The said Shop No. 6 hereinafter referred to as the “**suit premises**”.

3. After 1989, plaintiffs came to know that Hiran Kumar Ghose and Defendant No. 2 have inducted defendant Nos. 3 to 8 in the portion of suit premises as Hiran Kumar and Defendant No.2 not using and occupying the said premises. The said act amounted to contravention of the provision of Bombay Rent Act. Plaintiffs have filed R.A.E. Suit No. 631/1263 of 1996 for eviction. Plaintiffs further

state that during pendency of suit, defendant No. 3 has inducted defendant No. 9 in the suit premises and defendant No. 9 is now in unlawful use and occupation of the entire suit premises.

4. The protection of the Maharashtra Rent Control Act have not been applicable to any premises let or sublet to companies, which have got paid-up capital of more than a Crore of rupees. Defendant Nos. 3 and 4 have got their paid-up capital of more than a Crore. They are in occupation of the suit premises and claiming right therein to defendant Nos. 1 and 2. In view of the provisions of the Maharashtra Rent Control Act are not applicable to the suit premises. The plaintiffs have **filing** the suit u/s 41 of the Presidency Small Causes Court Act.

5. The Plaintiff's Advocate by letter dated 29/07/2000 terminated the tenancy of defendant Nos. 1 and 2 in respect of suit premises. After termination of their tenancy, their possession would be wrongful and they would be liable to pay mesne profit till plaintiffs recover vacant possession of suit premises. Defendant Nos. 3 to 9 are inducted by defendant Nos. 1 and 2. Therefore, all the defendants are bound by the decree.

6. The plaintiffs have estimate the present market rate of rent of Rs. 1,52,000/- per month. The plaintiffs are entitled for decree of mesne profit against all the defendants from 1/09/2000 till plaintiffs receive vacant possession of the suit premises at such amount as this Court may deem fit after an inquiry under Order 20 Rule 12 of the Code of Civil Procedure.

7. Plaintiffs prays defendants be ordered and decreed to handover vacant and peaceful possession of suit premises i.e. Shop

No. 6 on the ground floor of 'Stadium House' to the plaintiffs. Defendants be ordered and decreed mesne profit from 1/09/2000 till they handover the vacant possession of suit premises to the plaintiffs at such amount as this Court may deem fit after an inquiry under Order 20 Rule 12 of the Code of Civil Procedure.

8. Suit was proceeded without written statement of defendant Nos. 1 and 2 as per order dated 7/07/2004.

9. Defendant Nos. 3, 4, 5 and 6 have filed their written statement at Exh. 17 and contended that the present suit of the plaintiffs is misconceived and not maintainable, hence liable to be dismissed with costs.

10. The suit premises is protected under the Bombay Rent Act, 1947 i.e. Bombay Act 57 of 47, Section 2(2) of the Maharashtra Rent Control Act specified that notwithstanding anything contain in sub-section 1. The said Act shall also apply to the premises as the case may be, houses let out in the area to which Bombay Rent Act, 1947 were extended and applied before the date of commencement of said Act. It is denied by the defendant that defendant No. 1 has unlawfully parted with the possession of suit premises to defendant Nos. 3 to 6. By Deed of assignment dated 2/02/1989 and by deed of Rectification dated 29/09/1989, the Proprietor of M/s. Calcutta Trading Corporation have assigned their business and goodwill together with tenancy right to defendant No. 3 and lawfully put defendant No. 3 in possession of suit premises. The defendant Nos. 4, 5 and 6 are Directors of defendant No. 3. These defendants have denied that the present market rate is Rs.1,52,000/- per month and plaintiffs are entitled the mesne profit against all the defendants as

per the market rate. Remaining all the averments in the plaint are specifically denied by the defendants and prays that the suit be dismissed with costs.

11. Considering the pleading of both the parties, following issues were re-casted by Ld. Predecessor of this Court below Exh. 18 and I have recorded my findings as per the reasons given below.

Sr. No.	ISSUES	FINDINGS
1)	Does plaintiff prove that tenancy of defendant No. 1 and 2 has been terminated by letter dtd. 29 th July, 2000 ?	No
2)	Are plaintiff entitled for the mesne profit of the suit premises ?	Does not survive.
3)	Whether this Court has jurisdiction to try this suit ?	Yes
3A)	Whether suit is maintainable in the present form ?	Yes
4)	Whether plaintiff is entitled to recover vacant possession of the suit premises from the defendants as alleged ?	Yes
5)	What order and decree ?	Suit is partly decreed.

12. On behalf of plaintiffs, evidence of Shri. Navneet Shivshankar Jani below Exh. 10 and 26 and closed his evidence on 26/10/2010 and thereafter matter was fixed for the evidence of defendants.

13. The plaintiffs and defendant Nos. 3, 5 to 9 have amicably settled all the issues and arrived at consent terms. The consent terms

is filed on record below Exh. 58. The defendant Nos. 3, 5 to 8 admit, confirm and declare that defendant No. 9 is in exclusive use and occupation of the suit premises being Shop No. 6 admeasuring 1,412 sq.ft. inclusive of mezzanine floor as measured by the plaintiffs on the ground floor of 'Stadium House' situate at Veer Nariman Road, Churchgate, Mumbai – 400 020.

: REASONS :

AS TO ISSUE NO. 1 : (Termination of tenancy)

14. On behalf of plaintiffs, the affidavit in evidence of Shri. Navneet Jani is filed on record below Exh. 26 stated on oath that the plaintiffs are owners of building known as “Stadium House”. Shop No. 6 in the building was let out to defendant No. 2 and one Hiran Kumar Ghose by executing Indenture of Lease dated 3/12/1954 on the monthly rent of Rs. 486.80 and that Lease Deed was registered below Exh. 30. The defendant No. 2 and Hiran Kumar Ghose were carrying out the business under partnership in the name of 'M/s. Calcutta Bombay Trading Corporation'. Under the lease agreement, defendant No. 2 and Hiran Ghose were allowed to use the said shop premises for a period of 7 years.

15. Plaintiffs had filed R.A.E. Suit No. 631/1263 of 1996 for possession of Shop No. 6 against the defendants, but that suit was withdrawn by the plaintiffs on 12/01/2005. The plaintiffs had issued a notice dated 29/07/2000 to the defendants contending that their tenancy was terminated and directed the defendants to handover vacant possession of suit premises to the plaintiffs, but after the notice dated 29/07/2000, plaintiffs had accepted the monthly rent from the defendants and also issued the rent receipt to that effect.

Therefore, in the absence of an agreement to the contrary, the lease was renewed from year to year and therefore, plaintiffs failed to prove that by notice dated 29/07/2000, tenancy of defendant Nos. 1 and 2 was terminated, which leads to answer Issue No. 1 in the negative.

AS TO ISSUE NO. 2 : (Mesne Profit)

16. In view of the Consent Terms, plaintiffs have specifically waive the claim of mesne profit against defendants. Therefore, the issue is not required to be answered as issue does not survive. Hence, Issue No. 2 is answered accordingly.

AS TO ISSUE NOS. 3 & 3A : (Jurisdiction & maintainability of suit)

17. Issue Nos. 3 and 3A are connected with each other. Hence, reasons recorded together.

18. Defendant No. 2 and Hiran Ghose were in possession of suit premises under the Indenture of Lease below Exh. 30 dated 3/12/1954, which was for the period of 7 years, but after expiry of that period, no fresh lease agreement was executed between the parties. The defendant Nos. 1 and 2 remain in possession of suit premises as a tenant under the Bombay Rent Act.

19. The suit is filed by the plaintiffs in a capacity as landlords and owners of suit premises against tenants for eviction. Therefore, suit is maintainable before this Court, which leads to answer Issue Nos. 3 and 3A in the affirmative.

AS TO ISSUE NOS. 4 & 5 : (Possession)

20. By Indenture of Lease dated 3/12/1954 let out the suit

premises to one Hiran Kumar Ghose and Defendant No. 2. the said Hiran Kumar Ghose and defendant No. 2 were conducting their partnership business in the name and style of 'M/s. Calcutta Bombay Trading Corporation'. Defendant No. 2 was retired as a partner from this partnership firm on 4/06/1956 and this partnership was dissolved by Deed of Dissolution on 4/06/1956. Thereafter, Hiran Ghose took over the business of the partnership alongwith its assets and liabilities and since then he was carried on business of 'M/s. Calcutta Bombay Trading Corporation' as its sole Proprietor.

21. By registered Deed of Assignment dated 2/02/1989, Hiran Kumar Ghose assigned all his right, title, beneficial interest and goodwill of the trade and business of 'M/s. Calcutta Bombay Trading Corporation' with its assets and liabilities in favour of defendant No. 3 on execution of said Deed of Assignment, Hiran Kumar Ghose inducted defendant No. 2 in exclusive use and occupation of the said premises.

22. Deed of Rectification dated 29/09/1989 executed between the said Hiran Kumar Ghose and defendant No.3. It was agreed, declared and confirmed that the said Hiran Kumar Ghose under the Deed of Assignment conveyed all his rights, title, beneficial interest of trade and goodwill in favour of 'M/s. Calcutta Bombay Trading Corporation'.

23. Since June 1989, defendant No. 3 alongwith his directors i.e. No. 5 and 6 and defendant No. 4 (since deceased) as also defendant Nos. 7 and 8 jointly used and occupied the suit premises for their business including that of 'M/s. Calcutta Bombay Trading Corporation'.

24. The Deed of Assignment dated 9/05/2000, the defendant No. 3 assigned and transferred all its rights, title, interest and goodwill of 'M/s. Calcutta Bombay Trading Corporation' alongwith tenancy rights in respect of suit premises in favour of defendant No. 9. However, suit premises continued to be in use and occupied by defendant Nos. 3, 5 to 9 jointly till 2013 and since then the defendant No. 9 is in exclusive use and occupation of the suit premises and interalia conducting the business of 'M/s. Calcutta Bombay Trading Corporation'.

25. It is also confirmed by the defendant Nos. 3 and 5 to 9 that they have received the consideration of Rs. 1,50,00,000/- from the plaintiffs and defendants have removed all their belongings and all staff, personnel and employees from the suit premises prior to execution of consent terms and handed over the key of suit premises to the plaintiffs. The defendants also declared that the tenancy rights of the suit premises or any part thereof stands finally and irrevocably determined and extinguished and plaintiffs not to claim or demand from the defendants in the nature of damages, mesne profit or compensation otherwise any head of claim whatsoever nature in respect of the suit premises.

26. Both the parties have amicably settled the dispute raised with the suit by entering the consent terms on 6/05/2016. This consent terms were accepted and read and recorded on 24/06/2016.

27. In view of above discussion, plaintiffs are entitled for possession of suit shop from the defendants, which leads to answer Issue Nos. 4 and 5 accordingly and proceed to pass following order.:

ORDER :

- i) Suit is partly decreed with proportionate cost.
- ii) Defendant Nos. 3, 5 to 8 have admitted the Consent Terms and defendant No. 9, who is in actual possession has to handover possession of Shop No. 6 on the ground floor of 'Stadium House' situate at Veer Nariman Road, Churchgate, Mumbai to the plaintiffs within 3 months from the date of this order.
- iii) The claim of mesne profit is hereby stands rejected.
- iv) Decree be drawn up as per the Consent Terms.

Bombay
Date : 14/07/2016

(P. N. Rao)
Judge, C. R. No. 10

Order dictated on : 14/07/2016
Order checked & Signed on : 14/07/2016