

T.S.-28/21(CC)

CNR NO. WBNP19-000113 -2021)

J.O : WB01398

**Present : Neyaz Alam
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

**02
26.11.002021**

No caveat is filed as per note of the office.

The petitioner filed a put up petition praying for moving injunction application U/O 39 Rule 1 & 2 read with section 151 CPC on the ground of urgency. Leave is also sought to move the injunction application without exploring the mandate of section 12(A) of Commercial Court Act on the ground of urgency. Leave is granted.

Heard. Considered and allowed.

The application U/O 39 Rule 1 & 2 read with section 151 of C.P.C is taken up for hearing.

Issue notice upon the respondent calling upon them to show cause within 15 days from the date of receipt of the notice as to why the temporary injunction as prayed for shall not be granted against them.

Perused the plaint, injunction application and the annexures filed on behalf of the petitioner.

Considered the submissions advanced by the Ld.Counsel for the petitioner.

The petitioner files the present suit for eviction and also seeks to recover arrears of rent and other charges along with interest and mesne profits.

The petitioner is a company registered under the Companies Act, 1956 is the absolute owner of the Premises with complete and unfettered rights to let out the Leased Area.

The respondent is a company registered under the Companies Act, 1956 and engaged in the business of running restaurants, bars, and canteens.

Brief facts of the case is that the petitioner in October 2016 leased the suit property to the respondent for the purpose of running a Guest House and other allied services.

Petitioner alleged that it was agreed that the respondent would pay Rs.35/- (Rupees Thirty-Five only) per square feet, i.e., a total sum of Rs. 26,75,010/- (Rupees Twenty-Six Lakhs Seventy-Five Thousand and Ten only) per month as rent to the petitioner for the Leased Area, in addition to service tax and all other applicable taxes and fees imposed by Government authorities from time to time. The Lease Rent was to be paid in advance, on or before the 10th day of every calendar month. It was also agreed that the respondent would be allowed a rent-free period of 9 months from the commencement of the Lease and the Lease Rent was to be

paid with effect from 1 August 2017 or the date of commencement of the respondent's operation in the Leased Area, whichever was earlier.

The Parties had also agreed that the respondent would pay Air Condition Charges (HVAC) to the petitioner at the actual cost plus 20%, based on its actual monthly consumption of HVAC. Similarly, based on the readings from a water meter measuring the usage of treated water in the Leased Area, the respondent was required to pay water charges at the actual cost plus 20% depending on its actual monthly consumption of treated water.

It is submitted that there is no registered lease agreement between the parties, and therefore, the respondent has been occupying the Leased Area as a monthly tenant. The respondent took over possession of the Leased Area on 20th December 2016 and 16th December 2016 for Blocks A and B respectively.

However, despite being in occupation and enjoyment of the Leased Area since December 2016, the respondent did not make any payment to the petitioner towards Lease Rent. The petitioner made multiple requests to the respondent, orally as well as through its emails dated 1st April 2019 and 10th April 2019 to pay the Lease Rent. It was only in May 2019 that the respondent paid a total sum of Rs. 28,89,010.80/- as Lease Rent for the month of May.

It is contended that the respondent repeatedly delayed the payment of Lease Rent as well as other charges, including HVAC charges. The petitioner sent an email to the respondent on 5th August 2019, requesting it to pay the Lease Rent within the due date as well as the outstanding HVAC charges for the months of May and June 2019. Further, in acknowledgment and admission of its liability to pay the Lease Rent for the month of August 2019, the respondent thereafter issued a cheque dated 10th September 2019 bearing no. 294848 for a sum of Rs. 28,89,010/- drawn on Axis Bank.

The petitioner further contended that he sent an email on 2nd November 2019 requesting the respondent to regularise its default and putting it to notice to not violate the terms of the Lease. The respondent was categorically informed that the Lease Rent for the month of August 2019 and other charges set out in the email were to be paid within one week from the date of the email. After such continued demands and reminders, the respondent finally paid a sum of Rs. 16,28,746/- to the petitioner in respect of HVAC charges for August 2019 and September 2019 and electricity and water charges for the month of September 2019 vide a cheque dated 7 November 2019.

However, even after this payment, the respondent continued to remain in default for the Lease Rent payable from August 2019 onwards. As a result, a legal notice dated 25th November 2019 was issued by the petitioner, duly pointing out this lapse and calling upon the respondent to pay a total sum of Rs. 1,33,40,274/- (Rupees One Crore Thirty Three Lakhs Forty Thousand Two Hundred and Seventy Four only) towards the outstanding

Lease Rent for the months of August - November 2019. Later, vide email dated 28th November 2019, it was clarified that in addition to the amount stated in the legal notice, a further sum of Rs. 8,10,620/- was due from the respondent on account of the electricity, water, and HVAC charges for the month of October, 2019.

The petitioner states that in October 2018, the respondent sought to erect an iron fencing at the back side of the parking area in the Premises without the approval of the petitioner. Further the respondent made an unauthorized access to the rooftop of the Premises by breaking the engaged lock and key at the rooftop gate and carried out the rectification work which had not been approved by the petitioner.

The petitioner further contends that in violation of its obligation to ensure that no nuisance or annoyance is caused to other occupants of the Premises, the respondent's personnel constantly created an obstruction in common areas such as the staircases, the entry to the fire exit as well as the entry to the main elevator of the Premises.

From March 2019 onwards, the respondent's staff began dumping huge amounts of debris and highly inflammable dry grass beside the parking lot of Block-B of the Premises.

From March 2020 onwards, the respondent began obstructing the petitioner's staff from entering the Leased Area in order to prevent them from taking the meter readings for computation of the HVAC, water and electricity charges for the premises.

At last the petitioner was constrained to issue a legal notice dated 6th April 2021 through its counsel terminating the lease as per the provisions of Section 106 of the Transfer of Property Act, 1882, seeking handover of the possession of the Leased Area to the petitioner and recovery of arrears of Lease Rent and other charges along with interest.

The petitioner has also come to learn that the respondent has been wrongfully and unlawfully holding itself out to be the holder of a lawful, valid and subsisting lease over the leased Area and is purporting to alienate possession of the leased area in favour of third parties and to created third party interest over the leased area, hence injunction is prayed for.

:: Findings of the court ::

Deducing the factual matrix, it transpires that the petitioner is the owner of the suit property and it inducted the respondent on the basis of the lease agreement to be used as guest house and accordingly the lease rent was fixed at Rs. 28,89,010.80/- payable within 10th of each next month. The respondent was inducted in the lease property in October, 2016 and the lease rent was to come into effect on and from 1st August, 2017. It is submitted that the respondent paid few months rent and thereafter stopped paying the monthly rent inspite of sending periodical reminders. The total accumulated arrear rent comes to the figure Rs. 9,06,06,635/- at the time of filing of the suit. Further, the respondent has committed various mischief at the suit property by changing the nature and character, nuisance and annoyance and and other stuffs.

The petitioner sent legal notice terminating the lease and since then the respondent/ lessee has been in possession of the suit property illegally and also are on a lookout to create 3rd party interest .

It appears that the parties to the suit have defined legal relationship and further reveals huge arrear of lease rent is pending and apparently the petitioner has made out a good prima facie case in its favour. The balance of convenience and inconvenience is also inclined in favour of the petitioner and admittedly petitioner has been suffering loss and injury over huge arrear of rent which is still continuing.

However, from the facts as alleged above I do not find immediacy urgency and exceptional in the grant of ad-interim relief without giving opportunity of hearing the other side.

At this preliminary stage the court is restricted to the plaint, sworn statement of the petitioner with annexed documents, together with the averment made therein. Thus, the law on the issue emerges to the effect that an ad-interim injunction shall be granted by the Court after considering all the pros and cons and preferably after issuing short notice but in exceptional cases, equitable and discretionary injunction can be exercised where by protective order can to be passed.

Grant of temporary injunction is governed by three basic principles, that is, prima facie case, balance of convenience and inconvenience and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case.

The petitioner has come before the court seeking preventive relief with an ad-interim prayer which this court feels after assessing the totality of facts and circumstances of the case, the petitioner be not warranted with an ad-interim order at this stage without hearing the opposite party/respondent.

Hence, ad-interim relief sought for in the injunction application is hereby refused.

Issue notice upon the opposite parties/respondents to show cause within 15 days from the date of receipt of notice as to why the petitioner prayer for temporary injunction as prayed for shall not be granted.

Requisite forthwith.

To date.

Sd/- Neyaz Alam

Judge

Commercial Court at Rajarhat
North 24 Parganas