

Title Suit 1323 of 2021
(CNR No. WBCC01-5122-2021)

Present: Sri Subhash Kumar Kar, Judge, Bench-V (WB00592)

Order No. 27 / Dated 13.03.2024

Parties have taken their respective steps.

The date is fixed for hearing of the petition under Order VI Rule 17 of the C.P.C and petition under Order XXXIX Rules 1 and 2 of the C.P.C.

The petition under Order XXXIX Rules 1 and 2 of the C.P.C. is taken up first.

It is the case of the plaintiff that the plaintiff is a tenant under the defendant no. 2 in respect of one shop room in the suit premises and it was not within the knowledge of the plaintiff that the defendant no.2 has created a mortgage in respect of the suit property with the defendant no. 1 after the date of creating the said tenancy and since the defendant no. 1 has proceeded against the defendant no.2 for taking possession of the suit property the plaintiff has approached this court with the prayer for temporary injunction for protection of his possession and if he is allowed to be evicted from the suit property he will suffer irreparable loss and injury.

The defendant no. 1 appeared and contested the claim by filing written objection wherein it is denied and disputed all the allegations made in the petition and inter-alia stated that the defendant no. 2 has created a mortgage on the suit property for availing a cash credit limit from the defendant no. 1 amounting to Rs. 3,37,00,000/- and it was extended to Rs. 4,75,00,000/- and while the said mortgage was created the defendant no. 1 carried out search in all relevant offices of the government and found that the the properties are owned by defendant no. 2 and it was not encumbered at the time of creation of the mortgage and the defendant no. 2 has made default in repayment of the said dues

and accordingly while the defendant no. 1 has proceed against the defendant no. 2 under the SARFAECI Act, the plaintiff has filed this suit only to resist the same and it is further submitted that the defendant no. 2 has already appeared before the DRT with a prayer to set aside the sale order and during the pendency of the said application the plaintiff has filed this suit.

At the time of hearing Ld. Advocate appearing for the plaintiff submitted that plaintiff is a bonafide tenant in respect of the suit property and the defendant no. 1 cannot evict him without due process of law and it is prayed to made absolute the ad-interim order of temporary injunction already granted in favour of the plaintiff.

The Ld. Advocated appearing for the defendant no. 1 submitted that the plaintiff is at liberty to approach the DRT for relief and under Section 34 of SAFRAECI Act civil court has no jurisdiction to determine any issue involving the application of the SARFAECI Act and she prayed to reject the same.

It appears from the document submitted by the defendant no. 1 that the defendant no.2 has approached the DRT concerned for setting aside the sale order promulgated under the provisions of SARFAECI Act and during the pendency of the same the plaintiff has approached the court and there is no dispute over the title of the suit property.

On further perusal of the record it appears that the plaintiff has filed rent receipts upto December, 2020 and the suit has been filed on 16.11.2021 and no rent receipt beyond the said period has been submitted by the plaintiff and he had also raised no dispute against the landlord in respect of payment of rent.

It further appears that he has submitted the trade license for the year 2020-21; but the current trade license was not tendered at the time of filing of this suit and no other document has come from plaintiff to

show his possession on the suit property on the date of filing of this suit.

Therefore, I am of the view that the plaintiff has failed to make out a prima facie case in support of his possession in respect of the suit property and therefore he is not entitled to any relief as prayed for under this petition.

Hence the petition under Order XXXIX Rules 1 and 2 of the C.P.C. stands rejected on contest but without any cost.

D/c by me,

Judge, Bench-V,
City Civil Court, Calcutta.

Judge.

Later / Dated 13.03.2024

The petition under Order VI Rule 17 of the C.P.C is taken up for order.

Heard on the petition.

The amendment sought for being in formal in nature, leave is granted to the plaintiff to amend the plaint with the proposed amendment.

Fix 18.07.2024 for filing amended plaint and framing of issues.

D/c by me,

Judge, Bench-V,
City Civil Court, Calcutta.

Judge.