

T.A. no. 367 of 2017

Order no.7 dated 5.4.2018 .

Both parties filed haziras. Today is fixed for hearing of the petition U/o.39 rule 1 & 2 read with Section 151 of C.P.C. filed by the appellant. Seen the petition for temporary injunction.

It appears that the instant appeal has been preferred against the order no. 43 dated 16.11.17 passed by the Ld.Civil Judge(Jr.Divn)2nd Court, Serampore in connection with T.S. No. 4579-14. The appellant/ plaintiff filed the above mention suit against the respondent for declaration and permanent injunction.

According to the appellant he is in possession of the suit premises and running his business till today. His further contention is that the respondent no.1 is the owner and landlord of the A and B schedule properties and the appellant for the purpose of his professional business took the A schedule property in the month of September, 2008 from the respondent no.1 of a monthly rental of Rs.1000/- payable according to English calendar month excluding electric charges which is payable according to the consumption. It was settled that the said rate of rent will be increased @ 20% in every 5 years . The appellant also deposit Rs.1 lakh towards security money to the land lord which will be refunded without any interest at the time of eviction peaceful possession of the respondent no.1 at the end of tenancy. It is further alleged that by dint of another agreement executed between the appellant and respondent no.1 in respect of the B schedule premises which was duly notarized on 4.10.11 and at the time of agreement the appellant deposited Rs.75,000/- to the respondent no.1 towards the security money which is also refundable.

According to the plaintiff/ appellant that he is doing his business in the schedule mentioned properties and the same is also registered with the income tax and sale tax authorities and also making payment of monthly rent including enhanced rate after 5 years along with the electricity charges and there is no default on the part of the appellant since its inception of tenancy in September,2008.

It is further contention of the appellant that the respondent the time of receiving rent for the month of September 2014 he claimed that the rent of the schedule premises is to be enhanced Rs.4,000/- and Rs.6000/- for the A and B schedule property p.m. from the next month and appellant was astonished for such claim and he also asked respondent no.1 that as per the agreement the rent should be increased. According to the appellant such claim of the respondent no.1 is arbitrary, illegal and unauthorized.

He further submits that the respondent no.1 is rich man and very influential person in the locality and the appellant is apprehending unauthorized eviction of the appellant and also restraining from any unlawful disturbance in the peaceful possession in the suit premises.

Moreover the appellant has further contended that on 1.1.14 some unknown persons came to the schedule premises and ask the appellant and his men and they will take possession of the schedule premises very soon and oust the appellant therefrom and on query they disclosed that they were representatives of respondent no.2 who also stated that respondent no.1 took loan from the Bank by showing the schedule premises, but he failed to repay the amount. So, the bank would take possession of the schedule premises immediately. When the appellant contacted with the respondent no.1 about the same he could not give any satisfactory reply to the appellant. According to the

appellant he is bonafide monthly tenant and regularly paying monthly rent. The respondent no.1 cannot take law in his own hand and his tenancy cannot be disturbed arbitrarily without taking any legal process.

The appellant also filed the copies of agreement (Annexure A) in respect of the A schedule property and agreement(Annexure B) in respect of the B schedule property and xerox copies of the deposit of Rs.75,000/-(Annexure B) and xerox copies of rent receipt (Annexure C series). According to the appellant if no temporary order of injunction is passed in respect of the schedule suit property then he will suffer irreparable loss and injury.

He further submits that balance of convenience and inconvenience is in his favour and he has strong case to succeed.

ld.lawyer for the appellant also submitted before this court that the respondents are required to be restrained from evicting in peaceful possession of the appellant in the schedule suit premises and also restrained from ousting the appellant in any manner whatsoever during the pendency of the appeal, otherwise the appellant will suffer irreparable loss and injury and the instant appeal will be frustrated.

Ld. Lawyer for the respondent on the otherhand submits before this court that the ld. Trial court has already dismissed the suit filed by the appellant U/o.7 rule 11 of C.P.C. after going through the all provision of law as the suit was not maintainable. He further submits before this court that the suit filed by the plaintiff/appellant was barred by the relevant provision as laid down under the SARFAESI Act 2002. So, the appellant is not entitled to get any temporary injunction.

Having heard the submission of both sides and after going through the copies of the document supplied by the appellant I am of

the view that the balance of convenience and inconvenience are in favour of the appellant and if no order of temporary injunction is passed at this stage then the purpose of filing of the instant appeal will be frustrated. So, considering all I am in favour of allowing the instant temporary injunction petition filed by the appellant.

Hence, it is

o r d e r e d

that both the parties are directed to maintain status quo as on this day till disposal of the instant appeal in respect of the schedule suit properties.

The appellant is directed to comply U/o.39 rule 3(a)(b) of C.P.C. at once.

Fix 26.6.2018 for awaiting S.R. upon respondent no.1 and also awaiting L.C.R. Call for L.C.R. at once.

Let a copy of this order be sent down to the ld. Court below for his information and taking necessary action.

Dictated & corrected by me,

A.D.J.

Addl.District Judge,1st Court,  
Serampore, Hooghly.