IN THE COURT OF SENIOR CIVIL JUDGE
(L.R & L.T.V), BHUBANESWAR

Present:

Sri Bimal Raul, LL.M
Senior Civil Judge (L.R & L.T.V),
Bhubaneswar.

JO Code-OD0442

C.S.No.579 of 2022

M/S.Singery Marines Private Limited,
a Pvt. Ltd. Company represented
by its Managing Director
Mr. Naushad Zackeria Sait,
S/o-Late Zaskeria A.L.Sait,
Having its registered office
at Titan House, Santi Nagar,
Balugaon-752030, Dist-Khura,
Odisha **….**Plaintiff

-Versus-

1. Mr. Narinder Pal Singh,
aged about 65 years,
S/o-Late Bagh Singh,
Managing Partner of M/s.Capital Freezing Complex, Plot No.139, Sector-A, Zone-B,
Mancheswar Industrial Estate, P.S-Mancheswar, Bhubaneswar,
Dist-Khurda, Odisha
Residing at Plot No.111, Budheswari Colony, Cuttack Road,P.O- Budheswari,
P.S-Laxmisagar, Bhubaneswar-751006,
Dist-Khurda
2. Smt. Lokeswari Devi,
aged about not known,
W/o-Gyanendra Chhotaray,
Partner of M/s. Capital Freezing Complex,
Plot No.139, Sector-A, Zone-B,
Mancheswar Industrial Estate, P.S-Mancheswar, Bhubaneswar ,

Dist-Khurda, Odisha,
Residing at Suprava Niwas, near Radha Gobinda Temple, Bhubaneswar,
Dist-Khurda ....Defendants

COUNSELS APPEARED

For the Plaintiff	: Sri Mahamad Allam and associates
For the defendants	: Sri Ajaya Nayak and associates
Date of Argument	: 15.12.2023
Date of Judgment	: 19.12.2023

J U D G E M E N T

This is a suit for permanent injunction and other reliefs.

2. The concise case of the plaintiff, who claims expertise in marine processing, manufacturing and export of Frozen Marine Products in and outside India, runs its business in the name and style of M/s.Singery Marines Private Ltd. It is having its registered office at Titan House at Shanti Nagar, Balugaon-752030 in the district of Khurda. The defendants on the other hand have a Marine Product Processing Plant in the name and style of M/s. Capital Freezing Complex at plot no.139, sector-A, Zone-B, Mancheswar Industrial Estate, Bhubaneswar and this property is also referred to as the subject matter of the suit. In order to improve its business, the plaintiff after due discussion with the defendants entered into a lease agreement with the defendant no. 1 on 12.04.2017 for a period of five years from 12.04.2017 to 11.04.2022 at monthly rent of ₹3,00,000/- besides interest free security of ₹30,00,000/- (Rupees thirty lakhs only). On that very day a supervision agreement was also executed for three years validity from 12.04.2017 to 11.04.2020. On expiry of the period of the supervision agreement, the parties further entered into another agreement on 01.07.2020 by enhancing the monthly rent from ₹3,00,000/-(Rupees three lakhs only) to ₹5,00,000/- (Rupees five lakhs only) alongwith the validity of the supervision agreement up-to 31.03.2022. In compliance with the terms of the lease agreement, the plaintiff shall obtain all statutory compliance of Marine Products Export Development Authority Rules, 1972 (MPEDA Rules), Export Inspection Agency and other allied Rules of Industries Act and Factories Act. It is the further case of the plaintiff that all the statutory compliance is valid up-to 2024. It is further case of the plaintiff that another amendment to the lease agreement was executed on 16.04.2021 for extending validity of lease agreement from 12.04.2022 to 11.04.2024. For over the period 22.04.2017 to 22.08.2022 the plaintiff incurred expenses including payment of rent to the tune of ₹10,92,38,993/- (Rupees ten crores ninety-two lakhs thirty-eight thousands nine hundred ninety-three only) for the sake of running his business and in turn the plaintiff company has made export sale of ₹6,70,08,186.16/- only. In other words, it has suffered a loss to the tune of ₹4,22,30,807/- only.

As against the aforesaid facts and business losses, it is further asserted that during the covid-19 pandemic in 2021 when nationwide lockdown and shutdown came in, the company was put down to its shutters. As per oral discussion, the defendants agreed to receive ½ of monthly rent and accordingly it was paying rent to the defendants. It was further orally and mutually agreed between the parties that when the situation normalizes and the company recommences its business, it will pay the monthly rent as per the agreement. As per the supervision agreement, when the plaintiff company suggested in July, 2021 for repairing of the factory after the covid-19 pandemic, the defendants assured him for maintenance of the plant machinery but failed to undertake the repairs of the machinery. Since the plaintiff company had earlier invested huge money, it found no alternative than undertaking repair of the factory incurring expenses to the tune of ₹71,30,000/- for running the business smoothly. In the factual background when the plaintiff company was trying to recover his losses, the defendants without considering the investments of the plaintiff issued notice on 17.01.2022 for vacation of the factory on or before 31.03.2022 while the agreement was still in force until 11.04.2024. In case, the defendants evict him without following the due procedure of law, it will suffer from huge loss and its labourers will also be affected. It is also the case of the plaintiff that when it has been paying the EMIs with interest of the bank which financed the company, its eviction will cause it suffer from huge financial loss and incompensable injury. In their notice dated 17.01.2022 the defendants threatened the plaintiff's company by showing the notice of termination to the concerned statutory authorities like MPEDA, EIC, EIA, etc., and if the defendants succeed in their illegal and evil design for cancellation of statutory compliance, it will sustain irreparable loss or injury. In the factual circumstances, since the agreement was executed at Bhubaneswar and the subject matter of the suit situates in Bhubaneswar, the suit has been filed in the learned court of Senior Civil Judge, Bhubaneswar at a valuation of ₹51,000/- with the payment of the court fee and in the suit the plaintiff has sought for a decree for permanent injunction against the defendants from evicting the plaintiff forcefully, restraining the defendants, their heirs, executors, legal representatives, successors and assigns and administrators from creating any disturbance over the suit factory and for restraining the defendants from sending termination notice to the statutory bodies or authorities and for other reliefs including cost of the suit. This suit has been received on transfer from the learned court of Senior Civil Judge, Bhubaneswar for trial as per law.

3. In their written statement, besides raising the formal points of non-maintainability of the suit like non-availability of cause of action, bar of limitation, non-impletion of necessary parties and non-compliance with the order of the court for paying rent as per the order of the court, the defendants have partly conceded to the claim of the plaintiff as to the lease agreement and Supervision agreement and denied several of the facts in the plaint. The defendant nos.1 and 2 are partners of M/s. Capital Freezing Complex but the firm has not impleaded as a party. The lease agreement dated 12.04.2017 has been executed between M/s. Capital Freezing Complex and the plaintiff company and therefore without impleading the firm of the defendants, the suit is not maintainable. Under the requirement of MPEDA for obtaining one license of being Merchant Exporter, the plaintiff requested the defendants to help him for their business. The defendants accordingly as per the request letter of the plaintiff company dated 10.04.2021 signed an agreement for MPEDA purpose on 16.04.2021 which incorporated a clause that the agreement would be terminated within three months' prior notice by either party indicating therein such termination. The terms and conditions of the agreement remained same as the terms and conditions of the agreement dated 12.04.2017. Laying stress upon non-impletion of their firm, the defendants claimed that the plaintiff has not only suppressed the fact in the Interim

Application but also did not file a single document showing the rent and the charges paid or payable by the plaintiff in lieu of the agreement dated 12.04.2017 and the supervision agreement executed on that very day. In conceding to the aforesaid agreement executed on 12.04.2017 for a period of five years at the monthly rent of ₹3,00,000/-(Rupees three lakhs only) and other conditions as claimed by the plaintiff, these defendants assert that the plaintiff also entered into a supervision agreement for the entire export oriented Marine Products. Admitting the extension of the lease agreement to 11.04.2022 with the enhancement in supervision charges, the defendants claimed that the supervision charges under the enhanced period of supervision agreement had been fixed at ₹5 lakhs payable from 1st July, 2020 till 31.03.2022. In the result, the plaintiff has to pay a sum of ₹3 lakhs per month as per the lease agreement till 11.04.2022 and another ₹3 lakhs under the supervision agreement until 30th June, 2020 and ₹5,00,000/-(Rupees five lakhs only) from July, 2020 to 31.03.2022 under the enhanced charges of supervision under the agreement. It is alleged that on 15.03.2020 the plaintiff in his letter to the Managing Partner of Capital Freezing requested for renewal and extension of the lease period till 31.03.2022 and the plaintiff had undertaken to vacate after that deadline the premises for renovation. On 16.03.2021 the Managing Partners of Capital Freezing sent the notice vide post seeking for vacation of the factory for non-payment of dues from August, 2020 till March, 2021, i.e, for a period of seven months. For the purpose of production of the agreement before the MPEDA for a new Merchant Exporter approval of the factory, the plaintiff wrote a letter on 10.04.2021 to the defendants and as per the request the defendants intimated the renewal on 17.06.2021 under a letter wherein the clearance of the dues were also sought to be made before 30.06.2021. As no payment was made, the defendants sent another registered letter on 07.09.2021 intimating the plaintiff to clear the dues as stated earlier. In the similar manner, the defendants also sent letters on 01.11.2021 and 16.11.2021 respectively seeking for clearance of the unpaid dues and for vacating the factory. Neither did the plaintiff answer any of the notices nor responded to these notices for which the defendants finally got compelled to issue a notice on 17.01.2022 seeking for vacating the factory for non-payment of dues of 10 months until 17.01.2022. In all, the defendants received a sum of ₹94,42,000/- (Rupees ninety four lakhs and fourty-two thousands only) from the plaintiff for the financial years 2020-21, 2021-22 and in this regard the defendants have shown the receipt of money from the account of the plaintiff in the following table:-

Sl.No.	Date	Period	Amount
1	05.05.2020	01.04.2020 to 31.03.2021	₹6,00,000/-

2	30.07.2020	01.04.2020 to 31.03.2021	₹11,88,000/-
3	24.09.2020	01.04.2020 to 31.03.2021	₹14,04,000/-
4	17.04.2021	01.04.2021 to 10.02.2022	₹9,00,000/-
5	30.06.2021	01.04.2021 to 10.02.2022	₹15,00,000/-
6	20.07.2021	01.04.2021 to 10.02.2022	₹15,00,000/-
7	15.09.2021	01.04.2021 to 10.02.2022	₹10,00,000/-
8	12.12.2021	01.04.2021 to 10.02.2022	₹7,50,000/-

It is further case of the defendants that until 10.08.2020 a sum of ₹12,00,000/-(Rupees twelve lakhs only) was payable to the defendants and the same has been certified by the plaintiff. It is alleged that since the plaintiff did not make payment of supervision charges, it became difficult on their part to maintain the machinery and the plant which required complete renovation because of the old machinery in its corrosive condition. Refuting the allegation of covid-19 time concession in the rent, it is asserted that none of the letters of the defendants discloses any such concession for the plaintiff. The plaintiff rather in its various letters admitted to pay the rent in terms of the agreement and the renewal agreement alongwith the renewed supervision agreement with enhancement of charges from ₹3 lakhs to ₹5,00,000/-(Rupees five lakhs only). In the similar manner, refuting the expense of ₹71,30,000/- (Rupees seventy-one lakh thirty thousand only) by the plaintiff , the defendants claimed that no such document or bill, either filed or produced before this court to support such claim. Neither do any of the letters addressed to the defendants disclose any such expenditure. In addition, neither the supervision agreement nor the lease agreement does empower the plaintiff to incur any expenditure. The defendants alone incurred expenses, not the plaintiff to the aforesaid tune of ₹71,30,000/-. In case any such expense has been incurred or investment has been made in the machinery, let the plaintiff take back such machinery after termination of the agreements of the years 2017 and 2020. The defendants have further claimed that the supervision agreement has not been extended since March, 2022 as the plaintiff did not pay the charges. The lease agreement has been extended with the condition that the agreement can be terminated by issuance of three months' notice by either of the parties. In the factual background, the plaintiff cannot claim that during the subsistence of the agreement, the defendants cannot evict him and such claim is false. Denying any possibility of alienation of factory, it is further asserted that the plaintiff has not cleared the outstanding charges to the tune of ₹74,40,621/-.For their supervision agreement from 12.04.2017 to 31.03.2020, they have been raising supervision bills from 12.04.2017 till date and have never raised any bill at any earlier point of time. In case, the plaintiff insists on continuance of agreement for five years, then the plaintiff is liable to pay supervision charges alongwith the dues under the lease agreement for five years, which amounts to ₹2,54,40,621/-. Or else the defendants shall suffer from more irreparable loss and injury in comparison to the claim of the plaintiff. To settle the issue with them, after filing of the suit, the plaintiff proposed that in case it failed to settle all the dues before 30.05.2022, it would withdraw the case and vacate the factory. But the plaintiff has failed to do so and in the process they have been lying for the last five years. Upon the aforesaid factual background, the defendants claim for dismissal of the suit and a direction to the plaintiff to pay the unpaid dues of ₹74,44,000/-(Rupees seventy four lakhs fourty-four thousand only) up-to April, 2022.

4. Upon the basis of the pleadings of the parties, the following issues have been taken up for adjudication of the suit.

(i) Whether the suit is maintainable?

(ii) Whether there is cause of action for the plaintiff to file the suit?

(iii) Whether the suit of the plaintiff is barred by limitation?

(iv) Whether the rent agreement between the plaintiff company and the defendants is in subsistence until 11.04.2024 ?

(v) Whether the plaintiff is entitled to a decree for permanent injunction against the defendants as sought for?

(vi) Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants and their heirs, executors, administrators, legal representatives, successors, assigns and agents from creating any disturbance over the schedule factory/property and from disconnecting the supply of electric line and water to the factory by any means ?

(vii) Whether the plaintiff is entitled to a decree for restraining the defendants from sending termination notice to the respective statutory bodies or authorities for cancellation of the permission and license?

(viii) To what other relief(s) the plaintiff is entitled?

5. In order to establish his case, the plaintiff has examined himself as P.W.1 and has relied on the original agreement dated 12.04.2017 under Ext.1 and the original certificate of approval issued by Director (I & Q/C),Ministry of Commerce and Industry, Govt. of India vide Ext.2.

On the other hand, the defendants have examined defendant no.1 as D.W.1 and has adduced documentary evidence in the shape of the original supervision agreement dated 12.04.2017 under Ext.A, the original letter dated 15.03.2020 vide Ext.B, the original agreement for supervision dated 01.07.2020 vide Ext.C, the original letter of the TPCODL dated 31.08.2023 under Ext.D and the original letter dated 30.03.2022 of

M/s Singery Marine Pvt. Ltd vide Ext.E. No other oral or documentary evidence has been adduced on behalf of either of the parties.

6. In the argument, I have heard the learned counsels for the plaintiff and the defendants at length.

FINDINGS

7. Issue nos. (iv) and (v)

In this suit, these issues have been taken up together for discussion since they are interrelated to each other and constitute the substantial issues for adjudication of the suit.

In consideration of the factual circumstances raised on behalf of the parties as well as the evidence on record, it is relevant to lay down here the undisputed factual position. The plaintiff claims to have expertise in the field of processing, manufacturing and export of frozen marine products both inside and outside of India under the name and style of its company M/s. Singery Marines Products Private Ltd. It is a registered company. In the similar manner, the defendants own a marine product processing plant in the name and style of M/s. Capital Freezing Complex which is situated at plot no.139, sector-A, zone-B, Mancheswar Industrial Estate, Bhubaneswar. This is again a registered partnership firm and as per the admission of the defendant no.1 as D.W.1, the defendant no.2 is only a partner therein. Despite of the fact that the plaintiff has tried to raise question on the genuineness of the partnership firm in the cross-examination of the D.W.1 the case of the plaintiff in its pleading does not raise any such allegation and therefore such afterthought allegation merits no consideration. The plaintiff for the sake of improvement of its business entered into a rent agreement executed on 12.04.2017 with defendant no.1. As per the agreement, it will remain in force for 5 years from 12.04.2017 to 11.04.2022 and the lessee shall pay rent of ₹3 lakhs per month. On the very same day, a supervision agreement for a period of three years, i.e, from 12.04.2017 to 11.04.2020 was also executed between the parties for the sake of utilization of the experience and expertise of the defendants in the field of processing of marine products. In the meantime, the parties on 01.07.2020 after expiration of the supervision agreement entered into another supervision agreement for a period of two years, i.e, from 01.07.2020 to 31.03.2022. As against the admitted factual position, the plaintiff claims that it procured the statutory compliance required in his business from the Marine Products Expert Development Authority (MPEDA), Export Inspection Council or Export Inspection Agency and under the Industries Act and the Factories Act as well. Such compliance as per the case of the plaintiff remains valid till 2024. As against such factual circumstances, the plaintiff claims that the defendant executed an amendment to the subsisting rent agreement on

16.04.2021 for continuation of the lease under the agreement dated 12.04.2017 till 11.04.2024. In other words, the second agreement which is admitted by the defendants to have been extended up-to 31.03.2022 was further extended till 11.04.2024. This claim is stiffly resisted by the defendants. The defendants in order to object the claim of the plaintiff as to any amended lease agreement as stated herein, has claimed that as per the request of the plaintiff on 15.03.2020 for extension of the lease agreement for another two years, the defendants intimated the extension on 01.07.2020 with the specific mention at para-13 regarding vacation of the premises by 31.03.2022. In this regard, the defendants have relied on Ext.B which confirms their claim. No material available on record to disbelieve this letter.

It is incorporated in the plaint that over the period 12.04.2017 to 28.02.2022 the plaintiff company incurred huge expenses of ₹10,92,38,993/- for its business and received only return of ₹6,70,08,186/- and thereby suffered a loss of ₹4,22,30,807/-. In spite of its closure of the business during covid-19 in 2021, under an oral agreement the defendants agreed to receive half of the rent amount. This aspect of the case has also been resisted by the defendants. It is also relevant to lay down here that these factual circumstances as to profit or loss of the plaintiff do not constitute any ground for any extension of the lease agreement under Ext.1. In that view of the matter, when the plaintiff has claimed to have invested ₹71,30,000/- in the repair and maintenance of the machinery, the defendants on the contrary claim that the plaintiff never made such investment alongwith payment of security of ₹40 lakhs in the factory. It is rather the plaintiff made communication by his own handwriting under Ext.E for fixing the price of the factory of the defendants for purchasing the same. In his cross-examination, the plaintiff has clearly admitted to have made communication through his sister's son who is one of the Executive Directors in the plaintiff's company for purchase of the processing and manufacturing unit from the defendants. Thus, in view of these admitted facts the case of the plaintiff receives a great jolt of incredibility.

8. In addition to the above grounds of defence, the defendant no.1 has further claimed to have received a letter no.2938 dated 31.08.2023 (Ext.D) from the Tata Power Central Odisha Distribution Limited (TPCODL) as to disconnection of the electricity supply to the processing and manufacturing unit which is the subject matter of the suit. In his evidence, the plaintiff has clearly admitted that his cheque no.035029 dated 27.07.2023 for a sum of ₹10,55,220/- was dishonored. These facts substantiate the allegation of the defendants that the plaintiff company was committing default in payment of electricity bill even if a claim has been made by the plaintiff's witness (P.W.1) that around ₹3 to 4,00,000/-(Rupees four lakhs only) have been paid towards electricity consumption dues in the factory. In evidence, the P.W.1 has clearly admitted that except two documents (Exts.1 and 2), i.e, the first lease agreement and the original certificate of approval from the Director (I & Q/C), Ministry of Commerce and Industry, Govt. of India respectively the plaintiff has not relied on any document. In the long line of defaults committed by the plaintiff, the defendants further invited the attention of the court to the fact that in spite of the specific direction of the court in I.A.No.01/2022 for payment of the arrear rent in installments within the specified time limit as ordered therein, the plaintiff did not comply with the order of the court. A contention has therefore been raised on behalf of the defendants that had there been any written agreement between the plaintiff and the defendant no.1 for any extension of the lease agreement until 2024, the plaintiff could have either paid the arrear rent or challenged the order of the Court in the higher forums. The defendants therefore claim that the plaintiff does not have any ground for instituting the suit for permanent injunction upon the basis of any amended lease agreement. On giving advertence to the contentions of the parties, this court finds it reasonable to extend credibility to the contentions raised on behalf of the defendants. In that view of the matter, the facts and the evidence on record do not support the claim of the plaintiff that there is any subsistence of the rent agreement until 11.04.2024.

9. It is of no dispute in law that as per section 37 of the Specific Relief Act, 1963 a perpetual injunction can be granted by the decree made at the hearing of the suit on merits. In case any permanent injunction is granted, the defendant perpetually stands enjoined from the assertion of a right or from the commission of an act which would be contrary to the right of the plaintiff. It is also settled in law that when the defendant invades or threatens to invade the plaintiff's right to or enjoyment of property involved in the suit, the court may grant a perpetual injunction in the following cases:-

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief; and

(d) where the injunction is necessary to prevent a multiplicity to judicial proceedings.

10. In the present case, in order to strengthen its case, the plaintiff has relied on in the decisions of the Hon'ble High Court of Odisha in Naba Diganta Educational Trust vs. Managing Director, IDCO and another, 2005(1) OLR 575 and in Smt. Jeebanamayee Patnaik vs. Smt. Padmabati Mohapatra, 1999 (II) OLR 276. In Naba Diganta Educational Trust case, the appellant plaintiff, which is established by M/s. Konark

Cement and Asbestos Ltd was allotted with a piece of land measuring Ac 20.20 decimals under plot no.69, in 1991 in Chandaka Industrial Estate. But it was granted with a lease of only Ac 17.15 decimals by the IDCO. Over and above the leasehold property the plaintiff claims to be in possession over the adjacent plot measuring Ac 3.00 decimals being used as playground for the institution. In the factual background, the IDCO attempted to demolish the boundary over the playground for which the plaintiff appellant filed the suit wherein the I.A for temporary injunction u/o.39 rules 1 & 2 CPC was rejected. In the appeal against this order, the Hon'ble High Court held as follows:-

> " 10. In the case of Krishna Ram Mahale v. Mrs. Sobha Venkat Rao (AIR 1989 SC 2097) the Supreme Court being posed with a similar question held that it is a well settled law in this country that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. The Supreme Court has cited with approval the well known passage from the leading Privy Council case of Midnapur Zamindary Co. Ltd. v. Naresh Narayan Roy (51 Indian Appeal 293) wherein it has been observed as follows :
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> "In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court."
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> 11. This proposition was also accepted in the case of Ram Tattan v. State of Uttar Pradesh (AIR 1977 SC 619) where it has been held that a true owner has every right to dispossess or throw out a

> trespasser while he is the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. The Supreme Court has thus held that possession of a trespasser in these circumstances can be protected by grant of an interim order of injunction during pendency of the lis even against the true owner till he is evicted in due process of law."

In the other decision cited supra, the plaintiff being a tenant under the opposite party apprehended her eviction and accordingly filed a suit for permanent injunction and in that suit the opposite party being the defendant made counter-claim of recovery of possession of the disputed house on the ground that the plaintiff was a trespasser. In relying on this judgment, the plaintiff desires to bring to the notice of the court that in that decision the trial court directed the plaintiff under its order for payment of arrear rent. On adjournment sought for by the plaintiff, the trial court further directed for payment of the entire outstanding house rent alongwith cost of ₹100/- and the further application of the plaintiff for adjournment and reduction of cost was rejected in the trial court and the trial court proceeded with the trial after closing the case of the plaintiff. Thus, the factual circumstances in this decision being absolutely discrete from the factual circumstances herein, the said decision wherein the plaintiff was relieved from depositing any amount and for examining her witness, is not applicable to the present case. The legal position as enunciated in the aforesaid Naba Diganta Educational Trust case has its application to the present case of the plaintiff.

11. In so far as the case of the defendants is concerned, it is relevant to lay down here that the defendants claim that the plaintiff defaulted in payment of the supervision charges under the supervision agreement from 2017 to 2022. It is specifically pleaded on behalf of the defendants that the defendants, in particular the partners of M/s. Capital Freezing Complex issued notice to the plaintiff calling on him for vacating the factory for non-payment of dues from August, 2020 till March, 2021, i.e, for a period of 7 months. Nevertheless, in consideration of the request letter of the plaintiff dated 10.04.2021, the defendants renewed the agreement for production of the same before the MPEDA for approval of the plaintiff as a Merchant Exporter. In that letter, the defendants made request for clearance of the dues before 30.06.2021.On failure of the plaintiff to make payment, a further letter dated 07.09.2021 and another letter on 01.11.2021 were issued for payment of dues for 8 months as well as for vacation of the demised premises. In spite of such notices on failure of the plaintiff to pay off the dues, the defendants issued legal notice on 16.11.2021 to vacate the factory. As there was no response from the plaintiff to these letters, the defendant issued for the last time a notice on 17.01.2022 for vacation of the factory for non-payment of dues from 17.01.2022. The defendants have however refuted the claim of the plaintiff that the defendants orally agreed for any concession to the plaintiff in payment of rent. Instead of raising any bill of rent, the defendants have claimed to have raised the supervision dues at ₹2,54,40,621/- and therefore the defendants claim that when the defendants have issued notice for vacation of the suit house, the suit of the plaintiff for permanent injunction be dismissed. It is of no dispute that the plaintiff has pleaded that the defendant has issued notice on 17.01.2022 for vacating the factory and also putting the plaintiff under threat for forcible termination of the lease agreement. No doubt, the defendants have not adduced any documentary evidence except the claim of the amount paid by the plaintiff towards the charges as enlisted in the written statement. It is settled in law that fact admitted need not be proved. When the plaintiff has admitted that the defendant has issued notice for vacation of the factory, even if the defendants do not adduce any documentary evidence, it can be concluded that the plaintiff has not resisted as to the arrears remaining in respect of the supervision charges. As per the latest rent agreement of 2021, the parties are at liberty to give a three months' notice for termination of the lease. In the present case, when the defendant no.1 has given notice on

17.01.2022, the lease therefore comes to an end after expiry of three months. The suit has been filed in 22.03.2022. In other words, it is long after issuance of notice by the defendants. In the result, as per section 111(h) of the Transfer of Property Act, 1882, the defendants have now every right to evict the plaintiff from the suit factory since more than the required three months have elapsed during the pendency of the suit. It is the plaintiff who has failed to prove any subsistence of any lease agreement until 11.04.2022 and therefore his possession over the suit factory is not lawful. No material is available on record, to establish that the defendant no. 1 has given any consent, express or implied for continuance of the plaintiff over the suit factory. So is the case with the other defendant. In other words, there is no question of any holding over of the plaintiff over the suit factory. The agreement which in the factual circumstances is a month to month agreement cannot be held to have created any effect of holding over by the plaintiff over the factory of the defendants. As a result, even if the defendant cannot be evicted forcefully by the defendants, the plaintiff is simply a tenant-at-sufferance and the defendants are at liberty to evict the plaintiff at any time by resorting to the procedure establish by law for eviction of the plaintiff. This process as per the discussion herein is already started but the commencement of the proceeding for ejectment is not complete until an order has been made in a competent civil court for the purpose of eviction of the plaintiff. In that view of the matter, even if the plaintiff cannot be perpetually protected for his possession over the factory, his possession is to be protected until the plaintiff is evicted as per law.

12. In order to strengthen its case, the defendant has relied on the decision of the Hon'ble High Court of Orissa in K.Taviti Raju vs. Govinda Ram Dhanji, AIR 2018 Orissa 50, wherein it has been held that as per section 106 of the T.P Act, the month to month tenancy continuing between the parties can be terminated by 15 days' notice. It is also held that mere acceptance of rent at an enhanced rate by the lessor cannot continue tenancy with erstwhile relationship as landlord and tenant. The factual circumstances in this decision do not have any similarity to the case at hand. Nevertheless, the legal position is applicable to the present case. But the fact remains that in the present suit the defendants have simply initiated the process for termination of the tenancy but they have neither claimed any counter-claim in the present suit nor initiated any suit for eviction against the plaintiff. Thus, mere initiation of process of eviction and termination of tenancy cannot be held as sufficient ground for forcible eviction of the plaintiff from the suit factory. As a result, the other decisions like Maheswar Singh vs. Radha Madhab Jew Thakur, AIR 2007 Orissa 190 and Yelamati Veera Venkata Jaganadha Gupta and another vs. Vejju

Venkanteswara Rao and others, AIR 2002 Andhra Pradesh 369 relied on by the defendants which reiterate the aforesaid legal position are respectfully noted down to have no application to the present case.

Hence, the issue no.(iv) stands decided in the negative and against the plaintiff whereas the issue no.(v) stands decided partly in favour of the plaintiff.

13. Issue nos.(vi) and (vii)

In view of the foregoing analysis and on consideration of the factual circumstances, it is not beyond context to lay down here that in case the defendants and their executors or legal representatives, etc be able to cause any disturbance in the possession of the plaintiff over the suit factory until the plaintiff stands ejected therefrom as per the procedure established by law, the grant of permanent injunction in favour of the plaintiff will be turned into meaningless. Similarly, unless the defendants and their agents and such other representatives be restrained from either disconnecting electricity and water supply to the factory or from producing the termination of the tenancy to the statutory authorities wherefrom the plaintiff has secured his compliance for carrying on his business, the grant of permanent injunction until lawful ejectment of the plaintiff will have no worth. It is not disputed in law that ejectment of the tenant from the demised premises follows termination of tenancy. In the present case, in view of the aforesaid analysis, the tenancy of the plaintiff has already been determined. Nevertheless, the defendants have not obtained any order from any court of law for ejectment of the plaintiff from the suit property and therefore the forcible ejectment, as is discussed above, merits to be prevented. In the result, in the considered opinion of this court, the plaintiff needs to be protected from any disturbance in his possession over the suit schedule property including any disruption to the supply of electricity and water to the schedule property. So also the production of termination notice before the statutory bodies or authorities like MPEDA, EIC and EIA needs to be warded off. Otherwise, grant of permanent injunction preventing forcible ejectment will not result in any fruitful purpose. Such restraint however shall be in force until the plaintiff stands legally ejected from the suit factory.

Hence issue nos. (vi) and (vii) stand decided in the affirmative and in favour of the plaintiff.

14. Issue nos.(i) to (iii)

In view of the aforesaid analysis, the plaintiff has cause of action for bringing up the suit for the relief as held hereinabove. His suit is maintainable in the present format. The contention of the defendants as to non-impletion of the defendants' firm is not fatal to the case of the plaintiff since the plaintiff has brought the suit against the partners of the defendants' firm which in the opinion of this court is sufficient representation by the M/s.Capital Freezing Complex in this suit for permanent injunction and ancillary relief. Order 30 rule 1 CPC provides that any two or more persons claiming or being liable as partner and carrying on business in India may sue or be sued in the name of the firm of which they were partners at the time of accrual of cause of action. In Porushottam and Co. v. Mani Lal and Sons, AIR 1961 SC 325, it is held that the provisions of order 30 rules1 & 2 CPC are enabling provisions to permit several persons, who are doing business as partners to sue or be sued in the name of the firm. Order 30 rule 2 CPC would not have been in the form it is if the suit instituted in the name of the firm was not regarded as, in fact, a suit by the partners of the firm. The provisions of these rules of order 30 being enabling provisions do not prevent the partners of a firm from suing or being sued in their individual names. Order 30 rule 2 CPC provides for disclosure of partners' names in case a suit is instituted by the partners in the name of the firm, on the demand made to the plaintiff for such disclosure. In view of the settled legal position and in the factual circumstances, non-impletion of the M/s. Capital Freezing Complex is therefore not fatal to the case of the plaintiff. In spite of the entire factual circumstances as discussed in the previous paragraphs herein, one thing that troubles the conscience of the court that the plaintiff has not complied with the order of the court in I.A.No.01/2022 for payment of 50% of the arrear rent to the defendants within a period of 15 days from the date of the order, i.e, 16.09.2022 and the remaining 50% within the validity period of the amendment to the lease agreement dated 16.04.2021, i.e, within 11.04.2024. In view of the earlier discussion in the preceding paragraphs, this court has negated the subsistence of any rent agreement until 11.04.2024. In that perspective of the factual circumstances, non-compliance with the order of the court does not exactly deprive the plaintiff his right to protect his possession over the suit factory from forcible eviction by the defendants. In the result, the suit of the plaintiff cannot be stated to be adversely affected by non-compliance of the aforesaid order of the court. The plaintiff has filed the suit in 2022 after issuance of notice by the defendants on 17.01.2022. A suit for permanent injunction can be filed within a period of three years from the time when the right to sue accrues. In the result, the suit of the plaintiff is well within the period of limitation.

Hence issue nos. (i) and (ii) stand decided in the affirmative and in favour of the plaintiff whereas the issue no.(iii) stands decided in the negative but in favour of the plaintiff.

15. Point no. (viii)

In view of the aforesaid analysis and taking into account the factual circumstances involved in this suit, the plaintiff is not entitled to either cost of the suit or any other relief.

Hence this issue is decided in the negative and against the plaintiff.

16. In view of the forgoing analysis and in the factual circumstances, the plaintiff has successfully established his case in part for a relief of injunction against the defendants until the latter lawfully evict the plaintiff from the suit factory. Hence ordered.

O R D E R

Without any order on costs, the suit of the plaintiff be and same is partly decreed on contest against the defendants. The defendants are hereby restrained from forcibly evicting the plaintiff from their factory until the former get the plaintiff evicted therefrom by following due procedure established by law. Until the aforesaid lawful eviction of the plaintiff, the defendants and their heirs, executors, administrators, legal representatives, successors, assigns and agents are also stand restrained from causing disturbance to the plaintiff in its possession over the schedule property/ factory and disconnecting electricity and water supply to the said factory. Until the aforesaid lawful eviction of the plaintiff, the defendants are further restrained from sending termination notice to the statutory bodies or authorities for cancellation of the plaintiff's permission and license.

Senior Civil Judge (LR & LTV),
Bhubaneswar.

The judgment is electronically typed to my dictation by the stenographer attached to this Court, corrected and pronounced by me in the open Court today, i.e., on this 19th day of December, 2023 under my seal and signature.

Senior Civil Judge (LR & LTV),
Bhubaneswar.

List of witness examined from the side of the Plaintiff:-

P.W.1 Mr. Naushad Zackaria Sait

List of witness examined from the side of the defendants:

D.W.1 Narinder Pal Singh

List of documents exhibited from the side of the plaintiff.

Ext.1 : Original agreement dated 12.04.2017

Ext.2 : Original certificate of approval issued by Director (I & Q/C),Ministry of Commerce and Industry, Govt. of India.

List of documents exhibited from the side of the defendants:-

Ext.A	Original supervision agreement dated 12.04.2017
Ext.B	Original letter dated 15.03.2020
Ext.C	Original agreement for supervision dated 01.07.2020
Ext.D	Original letter of the TPCODL dated 31.08.2023
Ext.E	Original letter dated 30.03.2022

Senior Civil Judge (LR & LTV),
Bhubaneswar