

CIS Registration No. T.S. 506/2022
CNR:WBSP09-000824-2022
JO Code: WB01315

Order Dated – 24.03.2023

Today is fixed for passing order in respect of temporary injunction petition dated 28.11.2022.

Both parties file their respective haziras.

The record is now taken up for passing order in respect of temporary injunction petition dated 28.11.2022.

The case of the plaintiff in brief is that she has instituted this suit for recovery of possession and permanent injunction. One meat shop room on the North-western side of ground floor of premises no. formerly 40/3, Tangra Road, thereafter Pulin Khatick Road and presently numbered as 1A, Atal Sur Road, Tangra, Kolkata 700015 is the subject matter of this suit. The defendant was the owner of the structure at the said premises and on the request of the plaintiff, the defendant agreed to grant lease of the suit property to the plaintiff for a period of ninety-nine years. Accordingly, an agreement dated 15.12.2006 was executed by and between the plaintiff and defendant and thereafter, by virtue of registered Deed of Lease dated 18.01.2007; being no. 9474/2022, the defendant handed over possession of the suit property to the plaintiff. Since 18.01.2007, the plaintiff is in possession of the suit property and is running a shop under the name and style 'M/S Noor Md. Meat Shop' after obtaining Trade License from KMC. There was no dispute between the parties till the month of April, 2022 but on 28.04.2022, the defendant, in absence of the plaintiff, locked the front side iron shutter of the suit shop room by putting a padlock with a view to take forceful and illegal possession of the same. The plaintiff lodged a complaint before the Tangra P.S. and through intervention of the Police, the defendant was compelled to return the keys of the padlock to the plaintiff. However, the defendant continued threatening the plaintiff. On 02.09.2022, the plaintiff went to her native village in Bihar and came back on 06.09.2022. When she went to the suit property on 07.09.2022, she found that the defendant had taken illegal possession of the same. A complaint was lodged before the Tangra P.S. and the proceeding was initiated before the Executive Magistrate at Sealdah but the plaintiff has not yet received back the possession of the suit property. On 22.11.2022, the defendant let some strangers to inspect the suit property and the plaintiff apprehends that the defendant will create third party interest over the suit property. So, the plaintiff has prayed for an order of temporary injunction restraining the defendant from transferring the suit property to any third party.

The plaintiff has filed copies of following documents in support of his contentions:- Agreement for Lease dated 15.12.2006, Deed of Lease being No. 9474/2022, Aadhar Card, KMC Trade License for 2007-2008, 2015-2016 and 2022, Copy of complaint dated 07.09.2022 etc.

By filing written objection, the defendant stated that the plaintiff has suppressed material facts before this court and so, the petition is liable to be rejected. The defendant and her sister-in-

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law, Bina Dasi were the joint owners of Thika property and they entered into a development agreement on 11.10.2022 with Mahesh Roy, Md. Babu and Md. Nasim, i.e. the son of the plaintiff for development of premises no. 1/A, Atal Sur Lane, previously known as 40/3, Tangra Road. It was agreed that the developers would construct a three storied building and would hand-over possession to the defendant after completion of the construction work within 12 months from the date of the execution of the development agreement. Due to dispute between the developers, Md. Nasim alone undertook the responsibility of developing the building and the period for the same was extended for further two more years from 01.09.2003 to 30.09.2005. It was also agreed that if the developer failed to complete the construction work then the agreement would stand cancelled and accordingly, another agreement was executed on 10.04.2003.

The developer raised G+2 building but did not complete the construction work of the entire building and only ten shop rooms on the ground floor were constructed which were handed over to the tenants. The plaintiff's son got on shop room by way of Registered Deed of Lease in the name of his mother i.e. the plaintiff for a period of ninety nine years at a premium of Rs. 1,50,000/- but only Rs. 24,000/- was paid by the plaintiff for the shop room measuring 120 sq. feet and not 160 sq. feet as alleged. Again on 12.02.2004, the plaintiff's son and husband took a loan of Rs. 5,00,000/- from the defendant with undertaking that they will complete the construction work with that amount. They issued a receipt stating that if they failed to refund the said amount within six months, then the defendant shall take possession of the shop room from them. However, they failed to refund the amount and accordingly, the plaintiff, by virtue of a written surrender letter dated 17.12.2017, handed over possession of the shop room to the defendant. Since 17.12.2017, the defendant is in possession of the shop room and the plaintiff was never in possession of this shop room. On 10.06.2015, the plaintiff's son, Md. Nasim also executed a declaration cancelling the development agreement on his failure to complete the construction work.

The plaintiff has obtained receipt of license fee on 10.05.2022 whereby she has paid arrear for the period of 2009-2010 to 2021-2022 which shows that it was obtained only for the purpose of the suit. Moreover, though the plaintiff has claimed that she was in possession of the suit shop room since 2007, the Deed of Lease was obtained in the year 2022 for the purpose of this suit. The plaintiff has suppressed material facts and has no prima facie case and so, her prayer for temporary injunction is liable to be rejected.

The defendant has filed copies of the following documents in support of her contentions:- Development Agreement dated 11.10.2002 and 10.04.2003, Money Receipt and cancellation of booking, Electricity Bills, Agreement dated 04.06.2003, Agreement Letter, NOC dated 10.06.2015, Money Receipt dated 12.02.2004, document of Surrender of Possession dated 17.12.2017, Rent Bills etc.

The defendant relied upon the following decisions in support of his contentions :-

- *Abdul Rashid v/s Calcutta Municipal Corporation and others, AIR 1990, CAL 37*
- *Kashi Math Samsthan and Anr. v/s Sudhindra Tirtha Swamy and Anr., AIR 2010 SC 296*
- *Newtech Estate and Industries Private Limited and Anr. v/s Inder Singh Oberoi and others, 2004 (72) DRJ 420*

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By filing affidavit-in-reply, the plaintiff denied the execution of surrender letter dated 17.12.2017 and stated that she has been possession of the shop room by virtue of Deed of Lease and there has been no suppression of material facts by her as the development of suit building by the son of the plaintiff has no nexus with the claim of the plaintiff and so, she is entitled to get order of temporary injunction.

Heard. Considered.

Perused the petition and materials on record. On perusal, it is seen from the documents filed by the plaintiff that a Deed of Lease was executed by the defendant in favour of the plaintiff in respect of the suit shop room for a period of ninety-nine years. The said Deed was registered on 22.06.2022 and it was executed on 18.01.2007. The defendant has relied upon a notarized document showing surrender of possession of the suit shop room in favour of the defendant on 17.12.2017 and has contended that since 17.12.2017, the defendant is in possession of the suit shop room. However, by filing affidavit, the plaintiff has strongly denied the execution of any such document. On the other hand, the execution of the Deed of Lease has not been denied by the defendant. Whether the plaintiff surrendered possession of the suit shop room to the defendant in 2017 can be adjudicated only by way of trial. At this stage, by virtue of the Deed of Lease, the plaintiff has been able to make out a strong prima facie, arguable and triable case and as such, the balance of convenience and inconvenience also lies in favour of grant of temporary injunction.

Whether the plaintiff is entitled to get decree as prayed for is a matter of trial.

Hence, it is

ORDERED

that the petition for temporary injunction dated 28.11.2022 (IA 02/2023) is allowed on contest but without costs. Both the parties are directed to maintain status quo in respect of nature, character and possession of the suit shop room as it is on this day, until further order in this regard.

Fix **30.05.2023** for P.H.

D/C by me:

Civil Judge (Jr. Div.), Addl. Court, Sealdah

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