

T.S 25 of 2017 (Reg. 25 of 2017)
CNRWBSP07-003028-2017
J.O.Code No. WB01066

Order dtd. 03/12/2025.

Today is fixed for hearing of application under Section 151 of CPC filed by defendant no. 5 to 34 dated 07.02.2025 with the prayer to accept cheque tendered by the above named defendants in the Court towards lease rent and to direct the plaintiff to accept the same.

Both parties are present by filing hazira through their Ld. Advocate.

Having heard submission of both sides and upon considering the application in hand and the written objection against the application and the copy of the lease deed dated 27.04.2004 executed in between the plaintiff and defendant no. 1, the Court finds that though the lessee i.e. defendant no. 1 shall be at liberty to assign whole or in part transfer, mortgage or sub let or to grant sub lease of its lease hold interest in the premises, herein the suit property during leasehold period under terms of the lease deed, but the lessee shall be liable for payment of rent as per lease deed (relied paragraph 3(f) at page 14 of the deed of lease bearing registration no. 3915 of 2004).

Learned Advocate for defendant no. 5 to 34 has failed to establish before the Court that the liability of the original lessee i.e. defendant no. 1 has been shifted to defendant nos. 5 to 34 being sub lessee as alleged. Ld. Advocate for the defendant no. 5 to 34 also failed to show that the original lease between the plaintiff and defendant no. 1 has been terminated or surrendered in writing or by necessary implications.

Ld. Advocate for the defendant no. 5 to 34 cited one judgment of the Hon'ble Calcutta High Court passed in Narthun Prasad Shaw and Ors – versus – Asit Baran De and Ors (ref 2021 (3) (ICC) 746) and pleaded that the assignees who are at present in possession of the premises cannot be excluded even after having applied for defendant in the suit.

In the instant suit the defendant no. 5 to 34 have already been added as defendants and are contesting the same. Thus, in my considered view the judgment cited above is not relevant in the case in the present scenario.

As the suit is clearly based on the lease deed dated 27.04.2004 executed in between the plaintiff as lessor and defendant no. 1 as lessee and as there is expressed provision regarding the duties of the lessee, therefore, in my considered opinion the plaintiff is not obliged to make any transaction in the present scenario with defendant nos. 5 to 34 who are allegedly sub lessee. According to clause 3 (f) of the lease deed lessee himself is liable for payment of rent to the lessor during subsistence of the lease agreement.

In premise of above discussion it is held that the Court cannot direct the plaintiff to take allegedly due rent from defendant nos. 5 to 34, by violating expressed terms of the contract (the lease deed).

The Court is of further opinion that if defendant no. 5 to 34 have any genuine intention to pay the arrear rent, if any, then they may follow the terms of the lease and should not file any such frivolous application to establish their right over the shoulder of the Court.

The petition under Section 151 of CPC dated 07.02.2025 filed by defendant no. 5 to 34 is hereby rejected without any costs.

Fix 08.01.2026 for further cross examination of PW 1.

Defendant nos. 5 to 34 are directed to get back the original cheques on proper receipt.

D/C by me,

Sd/-
Civil Judge (Sr. Divn.)
Small Causes Court, Sealdah

Sd/-
Civil Judge (Sr. Divn.),
Small Causes Court, Sealdah