

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
Title Suit 04/2023
CNR No. WBSP18-000041-2023

Order No. 2

Date: 01.04.2023

In the matter of:

Suit for recovery of possession and mesne profit valued at Rs. 171,80,41,276/- and for injunction at Rs. 100/-.

AND

In the matter of:

Mani Square Limited.

Vs.

In the matter of:

Shri Bhabani Kumar and 05
Ors.

Order

Today the record is taken up by instigation of a put petition filed by Mr. Suddhasatva Banerjee, Ld. Counsel appearing for the Plaintiff.

Put up petition is allowed.

It appears from the record that on 30.03.2023 Plaintiff filed the instant suit for recovery of possession of the suit property and mesne profit along with other consequential reliefs. With this present suit Plaintiff also filed an application for granting leave under Section 12A of the Commercial Court Act, 2015 (for short CCA) which was registered as **I.A. No. 01 of 2022.**

Today, Plaintiff also files an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) also pleads for taking up the hearing of the said application today. The said application is duly registered as **I.A. No. 02 of 2023.**

Office notes there is no caveat against any parties to this present proceeding.

Issue summons accordingly.

The Plaintiff is also directed to issue notice relating to the instant suit/applications along with all annexure and all relevant documents at once through post and/or Email and/or Whatsapp or any other accepted modes of service.

I.A. No. 01 of 2022

Ld. Counsel, Mr. Suddhasatva Banerjee appearing on behalf of the Plaintiff moves the present application for seeking exemption from pre-institution mediation and settlement by granting of leave under Section 12A of the Commercial Court Act, as amended from time to time, on the ground that some urgent relief is sought for in order to protect the interest of the Plaintiff.

I have heard the submission as made by the Ld. Counsel in respect of this present application being no. I.A. No. 01 of 2022 on great length and perused and considered.

Mr. Banerjee, as regards refers unreported decision of the Hon'ble Telengana High Court passed in connection with Civil Revision Petition no. 3687 of 2018 wherein the Hon'ble Court states that

“8. It can be seen from what is extracted above that it is only in cases where the suit does not contemplate any urgent interim relief that there is a bar for institution of the suit without the plaintiff exhausting the remedy of pre-institution mediation. The expression used in Section 12(A)(1) of the Act is “A suit which does not contemplate any urgent relief.”

9. Unfortunately, the learned Judge has read the above expression to mean as though only in cases where the Plaintiff is entitled to urgent interim relief, the provision will not apply. The entitlement of a party to an urgent relief is a matter that would come up for consideration if the suit is numbered and several aspects taken into account. What is required to satisfy Section 12(A)(1) of the Act is the contemplation of an urgent relief.”

On *prima facie* contemplation, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC. Therefore, the leave as sought for by the Plaintiff in this instant interlocutory application is granted.

Accordingly, the instant interlocutory application being no. 01 of 2022 is hereby **disposed of**.

I.A. No. 02 of 2022

At this stage, Ld. Counsel appearing on behalf of Plaintiff moves the present interlocutory application under Order XXXIX Rule 1 and 2 read with Section 151 of CPC being registered at I.A. No. 02 of 2022, in terms of prayers expounded on the said application.

Ld. Counsel, Mr. Suddhasatva Banerjee appearing on behalf of the Plaintiff submits that one Jitendra Nath Ghosh was the sole and absolute owner of the impugned suit property as described in the plaint. The impugned suit property was periodically alienated to Jitendra Nath Ghosh's heirs and subsequently, by a registered Deed of Conveyance dated 10th September, 2007 the impugned suit property was sold out to Petitioner herein along with others six companies which were subsequently amalgamated with the Petitioner and to that effect all the assets and properties of the said six other companies vested in the Petitioner.

Prior to selling out as referred aforesaid of the impugned property, on 15th December, 1973 Jitendra Nath Ghosh himself leased out the impugned property to Badri Narayan Kumar the Nemai Chandra Kumar for a term of 20 years for commercial purpose. Thereafter, issues and/or heirs of the said Badri Narayan Kumar the Nemai Chandra Kumar came in naturally be the part of the instant litigation. As such for the sake of conveniently understand the facts of the case in a nut shell, hereinafter it is to be referred to as Kumar's brothers. The tenure of said lease was exhausted by efflux of time on 30th November, 1993. Whereas, Kumar's brothers became otiose to hand over the possession of the impugned property to the then owners. In the meantime, the West Bengal Thika Tenancy Act, 2001 was promulgated and came into effect from 1st March, 2003. Kumar's Brothers then got a severe tool in their hand to defend themselves by not handing over the possession on the pretext of provisos as contemplated in the said Thika Tenancy Act, 2001 claiming themselves as Thika Tenant. Whether they are entitled to a Thika Tenant or not, this issue started to be settled by climbing up one by one rung. Ultimately, by a Judgment and Order dated 27th July, 2022 Hon'ble Supreme Court of India settled the

said issue. Upholding the Judgment passed by the Hon'ble Division Bench of the High Court at Calcutta on 10th March, 2014, the Hon'ble Apex Court ruined the demand of Kumar's Brothers as Thika Tenant.

As such, Mr. Banerjee claims that the Plaintiff's title in the property stood adjudicated finally and thus the Plaintiff is liable to recover possession of the suit property along with mesne profit on and from 1st December, 1993 till the actual recovery of the possession.

Mr. Banerjee further claims that in respect of a letter dated 15th September, 2022 written by the West Bengal State Beverage Corporation Limited in response to an application dated 12th September, 2022 under the RTI Act, 2005 has come to know that Defendants on and from 10th January, 2018 let out the said impugned property to the said West Bengal State Beverage Corporation Limited at a monthly rent of Rs. 18,30,224/-. The said step clearly sings the wrongful act of the Defendants. Then, Plaintiff has been able to ascertain that West Bengal State Beverage Corporation Limited after termination of the arrangement between itself and the Defendants, has since vacated the suit property. As such the Defendants are unauthorized and wrongful and illegal occupation of the suit property and are trespasser thereon.

Mr. Banerjee further submits that Plaintiff has come to learn that the Defendants are seeking to create further third party interest and/or alienate and/or encumber the remaining portion of the suit property in favour of the third party. The same is also exposted from the letter dated 21st March, 2023 received by the Plaintiff on 23rd March, 2023 that the Defendants are seeking to alienate and/or encumber and/or create third party interest or dealing with the suit property in favour of the third party. This is grossly prejudicial to the right, title and interest of the Plaintiff in respect of the suit property.

During the course of submission, Mr. Banerjee resorts to submit a decision of the Hon'ble High Court at Calcutta in connection with **FMAT No. 419 of 2010** wherein the Hon'ble Court viewed as, “ *...we are of the view that the appellants have made out a strong prima facie case to have an ad interim order of injunction restraining Mr. Chatterjee's client from transferring, alienating and/or encumbering or parting*

with the possession of the tenanted property, which is the subject matter of the suit, till the disposal of the application.”

I have heard Ld. Counsel on behalf of the Plaintiff as well as perused all relevant documents as annexed with the plaint and with the instant application.

Contemplated and considered the present application.

On perusal of the decision of the Hon’ble Apex Court on 27th July, 2022 it is niche to refer the apropos averment in *verbatim et literatim*, “*Before closing, we may also take note of the fact that by way of interim orders dated 15.04.2014 and 22.07.2014, the appellants were directed to make payment towards occupancy charges. The appellants have made certain deposits and by the order dated 27.08.2021, we had directed the appellants to deposit further an amount of Rs. 20,00,000/- in the registry of this Court of which, the contesting Respondents were held entitled to withdraw an amount of Rs. 16,50,000/- by way of the occupancy charges and the remaining amount was ordered to be invested in a fixed deposit with periodical renewal, to be disbursed subject to the outcome of this appeal. The said deposited amount together with accrued interest is ordered to be disbursed to be respondent no. 1 while we otherwise leave it open for the said respondent in taking recourse to appropriate remedies, strictly in accordance with law, in relating to any other claim/relief.”*

On further perusal of the application being M.A. No. 2107 of 2022 made by the Plaintiff herein before the Hon’ble Apex Court of India for a direction on the Defendants herein being the appellants therein to forthwith hand over/deliver vacant and peaceful possession of the suit property and for further direction on the Defendants herein to pay occupation charges, observed as follows: “*...Needless to reiterate, that the applicant is otherwise free to take recourse to appropriate remedies in accordance with law.”*

The granting of a temporary and/or *ad interim* injunction is covered by three well established principles, **i.** Whether the petitioner/plaintiff(s) has made out a *prima facie* case, **ii.** Whether the balance of conveniences is in his favour, **iii.** Whether the petitioner will suffer irreparable injury if temporary/*ad interim* injunction is not granted.

From the copious decision of the Hon'ble Supreme Court of India as well as Hon'ble High Courts it is indoctrinated that the party seeking the aid of the Court for an injunction must establish that the act complained of is in violation of his right or is at least an act which if carried into effect will necessarily result in a violation of the right.

The instant case in hand it is proved that Plaintiff's right somehow has been violated as per delineation stated in the above averment of this Order. In view of the Order as passed by the Hon'ble Supreme Court it is expounded that Defendants has no *locus standi* to be a Thika Tenant in the impugned suit property. As such Defendants is not able to lease out the impugned suit property to any other third party.

After that, balance of convenience may mean the convenience and inconvenience of the parties contesting an application for temporary injunction/ad interim injunction and the same may be equated with what had been left out after weighing the *prima facie* case of both sides. In this case by relying on the document it is opined that Plaintiff has *prima facie* case in its favour and the balance of convenience also lies entirely in favour of the Plaintiff and against the Defendants.

It is also *prima facie* proved that there is extreme urgency in the matter in as much as the Plaintiff unable to get some reliefs it may create a serious threat to it to oust the third party from the impugned suit property. As such, it is evident to grant some reliefs by way of ad interim injunction to the Plaintiff for the ultimatum of justice.

Therefore, I have heard Ld. Counsel contemplatively and in such a situation, I am of the opinion that the Plaintiff has merit to decide the present case in its favour as the balance of convenience is in favour of Plaintiff. As such there is exigent to partly grant some limited reliefs by way of *ad interim* form in respect of prayers (a) read with (c) as expounded in the injunction application being I.A. No. 02 of 2023 herein.

Accordingly, it is

Ordered

- a) That, Defendants and/or the men, agents and assings be restrained to deal with and/or encumber and/or create any third party interest in respect of the suit property as described in the schedule of the plaint and the schedule of the instant injunction application upto the next date i.e. 11.04.2023.
- b) Other prayers are not granted at this stage and be considered after hearing of other sides.

In such situation issue notice calling upon the Defendants to show cause as to why the prayers of the Plaintiffs shall not be allowed.

The Plaintiff is directed to file affidavit of service within 48 hours.

However, liberty is given to the Defendants to file any application for modification of this order if they feel prejudice and aggrieved upon service of notice.

Issue notice accordingly, along with the instant petition and all annexure within 48 hours and the Petitioner is also directed to file the affidavit of service within 48 hours.

The above order is passed relied on the documents as referred by the Ld. Counsel appearing on behalf of the Petitioner and also annexed with this present application. Therefore, if on the way of propagation of this case any concealment of fact is proven, Petitioner shall be liable to pay exemplary costs for that.

To date i.e. 11.04.2023 at 2:00 p.m. for S/R, A/D and appearance of the Defendants.

Both the parties are to act forthwith on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram