

Present: Sri Utpal Misra (JO Code:WB00659)
Judge, Commercial Court at Alipore
T.S. Com No. 86 of 2024
CNR No. WBSP18-000053-2024

Order No. 02

Date: 19.04.2024

In the matter of:

Suit for recovery of khas, peaceful and vacant possession and mesne profit and damages valued at Rs. 70,35,247/- and for injunction valued at Rs. 100/- Transfer of property Act.

AND

In the matter of:

Anita Sunil Punwani.

Vs.

Sass Med Pvt. Ltd & 04 Ors.

Appearance for the Petitioners/Plaintiffs:

Mr. Pranita Bag.
Mr. Pushan Kar.
Mr. Abhidipto Tarafdar.
Mr. Sagnik Majumdar.
Ms. Sayantani Das.
Ms. Shreya Ghosh Dastidar.

...Ld. Advocates

Order

The instant record is put up today on the prayer of the plaintiff who intends to move the applications being I.A. No. 01 of 2024 and I.A. No. 02 of 2024.

At this stage, Mr. Pranita Bag, Ld. Counsel appearing for the petitioner moves the aforesaid applications.

I.A. No. 01 of 2024

Ld. Counsel appearing for the petitioner/plaintiff moves the present application seeking for 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 Petitioner.

I have heard the submission as made by the Ld. Counsel in respect of the present application being no. I.A. No. 01 of 2024 at great length and perused and considered.

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 and the plaintiff/petitioner intends to move the application forthwith in order to show urgency of the instant matter. 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 2024 is hereby disposed of.

I.A. No. 02 of 2024

1. The instant suit is filed for recovery of khas, peaceful and vacant possession of the suit property which was leased out by the petitioner being the owner of the same to the respondent no. 1 by a registered Deed of Lease dated 31st July, 2021 being Deed No. 6571 for the year 2021 for setting up a commercial venture, for a period of three years on the terms and conditions as stipulated in the said lease agreement. The respondent nos. 2 to 5 are the guarantors under the said lease deed and as such are jointly and severally liable to make good any losses suffered by the petitioner as alleged by the petitioner.

2. The respondent no.1 set up a commercial venture in the nature of a medical clinic and/or nursing home under the name and style “Zephyr Hospital” and two pharmacies namely Zephyr pharmacy and Zephyr Homeo Pharmacy.

3. Some of the terms of the lease deed as stated by the petitioner are as follows:

a) The lease would be given effected to and from the 15th of July, 2021, being the date of commencement.

b) The lease would remain valid for an initial lock-in-period of 3 years from the date of commencement, with the option of renewal of the same for two consecutive terms of three years each.

c) The respondent no. 1 (lessee) would be liable to pay the mutually agreed upon rental amount subject to the agreed upon escalation by 7th day of each English calendar month. In lieu of the agreed upon rental amount with escalation, the annual average rent was calculated for the purpose of payment of ad valorem stamp duty and the same was duly paid.

d) The respondent no. 1 (lessee) would be liable to make payment of the municipal rates, taxes and other outgoings in respect of the said premises.

e) The respondent no. 1 (lessee), at its own cost, would maintain the said premises and keep the same in a habitable condition.

f) The respondent no. 1 (lessee), for the purpose of securing payment of the rentals, will provide 12 post-dated cheques covering the rent of the initial twelve months and on expiry of the initial twelve months, will provide another 12 post-dated cheques for the subsequent twelve months and on expiry of that subsequent twelve months, and on expiry of that subsequent twelve months, will again provide another 12 post-dated cheques for the remaining twelve months.

g) The respondent nos. 2 to 5, being the guarantors, will be liable to pay the due amount to the petitioner on demand and discharge all obligations and liabilities owed or incurred by the respondent no. 1.

h) In the event of any default in making payment of rent in terms of the said lease deed, the respondent no. 1 (lessee) shall be liable to pay interest at the rate of 15% on the amounts remaining in arrears.

Also, it was a specific stipulation in the said lease deed that in the event, the respondent no.1 (lessee) committed breach of any of the covenants in the said lease deed, the petitioner (lessor) shall be entitled to terminate and/or determine the lease upon expiry of the notice period of 30 days.

4. As per the covenant as stipulated hereinabove, the respondents made over twelve nos. of post dated cheques (PDC) towards monthly rent for the year along with a cheque for a sum of Rs. 3,60,000/- on account of the Security Deposit as stipulated under Clause 5.1 of the lease deed. The respondents had paid monthly rent from July, 2022 till 10th February, 2023, which was duly been accepted and/or acknowledged by the petitioner by way of encashment of PDC for that particular period as mentioned.

5. It is alleged by the petitioner that the respondent no. 1 paid rental amount up to the month of February, 2023, but from the months of March respondent no. 1 failed to pay its rental amount as the PDC given by the respondents to the petitioner was dishonored upon presentation for encashment for the payment of the rent. The petitioner by a letter dated 18th April, 2023 intimated the same to the respondents. Petitioner annexed the copies of the cheques dated 10th April, 2023, 10th May, 2023 and 10th June, 2023 with this application. As such, a sum of Rs. 3,88,500/- became due and payable for the period between March, 2023 to May 2023 towards payment of the monthly lease rentals. As it is alleged, the petitioner made several requests to the respondents for clearance of the rental dues but the respondents did not pay any heed to that effect. Therefore, the petitioner was compelled to issue a letter dated 27th June, 2023 terminated the lease on account of default in payment of rents and the respondent no. 1 was asked to hand over peaceful, vacant and khas possession of the subject premises to the petitioner upon expiry of 30 days from receipt of the notice dated 27th June, 2023. Though, the respondent no. 1 failed and/or neglected to vacant and/or deliver possession of the said premises to the petitioner.

6. It is further alleged that as the respondent nos. 2 to 5 are the guarantors of the said lease agreement, so the petitioner issued notice dated 18th April, 2023 calling upon the respondent nos. 2 to 5 to forthwith to make payment of Rs. 1,16,550/ (excluding TDS), outstanding towards lease rentals as on March, 2023 and by a further notice dated 27th June, 2023, the petitioner has also called upon the respondent nos. 2 to 5 as guarantors to make payment towards the outstanding lease rentals for a sum of Rs. 3,60,283/- for the period from 01.03.2023 to 31.05.2023 but the respondent nos. 2 to 5 in spite of receiving the same had failed to make payment.

7. Mr. Bag, Ld. Counsel for the petitioner submits that the respondent no. 1 filed a suit being T.S. No. 309 of 2023 for declaration and permanent injunction before the Learned 2nd Civil Judge (Junior Division) at Sealdah, together with an application praying for an order of temporary injunction on the petitioner restraining the petitioners from dispossession the respondents from the said premises. Mr. Bag further submits that the said suit has been field in suppression and concealment of the facts in as much as the respondents deliberately concealed receipt of the notice calling upon the respondents to deliver, quit and vacate the schedule premises. However, the respondent no. 1 being a plaintiff therein failed to obtain orders in the said suit.

8. Mr. Bag further refers to an Order dated February 13, 2024 passed by the Hon'ble High Court at Calcutta wherein the Hon'ble Court has been pleased to direct the respondent no. 1 to stop the functioning of the hospital/clinical establishment by the name and style of the "Zephyr" from the said premises. He then submits that it is evident that the respondent no. 1 had clearly failed to comply with the terms of the said lease deed and had breached several conditions of the said lease deed and had breached several conditions of the said lease deed and hence, even otherwise, is obliged to vacate and hand over peaceful, vacant and khas possession of the said premises.

9. Mr. Bag draws the attention of this Court to sub-clause (xii) of clause 10.2 of the Deed of Lease and submits that there is extreme urgency in the matter in view of the fact that the respondents are trying to deal with or dispose of or alienate or encumber or create any third party rights or change the nature and character of the suit property which is totally adverse to the expressed covenant of the said lease deed. Therefore, he prays for an order in respect of prayers (b) and (c) at this stage.

10. Considering all, this court views that the plaintiff/petitioner has made out a *prima facie* case laying the balance of convenience and/or inconvenience in its favour. Therefore, it is needed to pass some protective order at this stage for the ends of justice.

11. So, let there be an order of ad-interim injunction in respect of prayers (b) and (c) as stipulated in the instant application till the next date as fixed hereunder.

Issue notice calling upon the Respondents.

Petitioneris directed to serve the copy of this order along with the injunction application containing all annexure thereof upon the respondent at once and file the affidavit of service within 24 hours (excluding holiday).

To date i.e. 09.05.2024 at 11:00 a.m. for S/R. and appearance of defendants.

Parties 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 Medinipur,
Paschim Medinipur&Jhargram

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram