

**Present: Smt. Suparna Ray (JO Code:WB00711)**  
**Judge, Commercial Court at Alipore**  
**T.S. Com No. 86 of 2024**  
**CNR No. WBSP18-000053-2024**

**Order No.** 13

**Date:** 07.02.2025

**In the matter of:**

Suit for recovery of khas, peaceful and vacant possession and mesne profit and damages valued at Rs. 68,10,138/- 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.

## **Order**

Today is fixed for passing order of the application being I.A. No. 02 of 2024 and also for filing written objection to the application for acceptance of the written statement being I.A. No. 09 of 2024, if any, by the plaintiff.

Both sides file their respective haziras.

Plaintiff files an application praying for time to file written objection to the I.A. No. 09 of 2024 pertaining to the acceptance of the written statement.

Heard, considered and the prayer is allowed.

Now, the application being I.A. No. 02 of 2024 is taken up for passing necessary order.

### **I.A. No. 02 of 2024**

Plaintiff/petitioner has filed the instant suit along with the captioned application before this Court. The context suit solely pertains to recovery of khas, peaceful and vacant possession along with mesne profit and damages.

The plaintiff/petitioner moved the instant application *ex parte* before this Court on 19.04.2024 and this Court upon an elongated hearing of the petitioner, passed an *ex parte ad interim* order of injunction in respect of prayers (b) and (c) as enumerated in the said application till the next date and the said *ad interim* order has been extended from time to time. Though the defendant nos. 1 to 5 appeared in this Court yet no board resolution was filed *vide* the Order no. 07, dated 18.07.2024. However, considering the lackadaisical

conducts of the defendants in the instant proceeding, this Court by an Order dated 19.08.2024 asked for showing cause why the instant application shall not be heard *ex parte* against them. Defendants then filed their show cause and the same was accepted by this Court vide the Order dated 26.09.2024.

Said defendants filed their written statement, which was kept on record and filed their written objection to the captioned application, which has been perused and considered in this order.

The application as captioned was filed by the petitioner under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as “Code”).

The factual matrix of the instant case is as follows.

Being the legal owner of the suit property, the petitioner leased out the same to the respondent no. 1 by a registered Deed of Lease dated 31<sup>st</sup> July, 2021 (hereinafter referred to as the lease agreement) 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.

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

Some asterix covenants 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.

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 10<sup>th</sup> 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.

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 18<sup>th</sup> April, 2023 intimated the same to the respondents. Petitioner annexed the copies of the cheques dated 10<sup>th</sup> May, 2023 and 10<sup>th</sup> 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 27<sup>th</sup> June, 2023 terminating the said lease agreement 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 27<sup>th</sup> June, 2023. Though, the respondent no. 1 failed and/or neglect to vacant and/or deliver possession of the said premises to the petitioner.

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 18<sup>th</sup> April, 2023 calling upon the respondent nos. 2 to 5 to forthwith to make payment of Rs. 1,16,550/-, outstanding towards lease rentals as on March, 2023 and by a further notice dated 27<sup>th</sup> 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.

The written opposition as filed by the respondents is nothing but an evasive denial of the statements made in the instant application by the petitioner. In the said written objection, the respondents have only substantiated their contention as the petitioner by practicing fraud upon the respondents pursued the respondents to execute the alleged lease agreement with the respondents and suppressed that the petitioner did not have any fire licence as well as the petitioner also suppressed the fact that on the date of execution of the alleged lease agreement a substantial amount of tax of Kolkata Municipal Corporation is due and payable by the petitioner and the respondents recently came to know the aforesaid on or about

29.10.2024. The above fact has also been corroborated by the Ld. Counsel appearing for respondents.

From the averments of the instant application it appears that the respondent no. 1 filed a suit being T.S. No. 309 of 2023 for declaration and permanent injunction before the Learned 2<sup>nd</sup> 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.

However, it is contended by the petitioner that the said suit was filed in suppression and concealment of the facts inasmuch 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.

It further appears from the instant application that 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.

Ld. Counsel appearing for the petitioner has referred to and relied on an Order dated 05.08.2024 of the Hon'ble Court at Calcutta in connection with CC/38/2024 with WPO/1853/2023 wherein the Hon'ble Court has peremptorily directed to the authorized representatives of the respondents herein.

Ld. Counsel for the petitioner has further referred to the Memo of Communication dated 8<sup>th</sup> September, 2023 issued by the Divisional Fire Officer, South Kolkata Division, West Bengal Fire & Emergency Services. He has also referred to the Clause nos. 6.1 and 10.1 (i) and (iv) of the lease agreement.

Ld. Counsel appearing for the petitioner/plaintiff has submitted that from the aforesaid conduct of the petitioner/plaintiff, 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 hence, even otherwise, is obliged to vacate and hand over peaceful, vacant and khas possession of the said premises.

This Court heard the Ld. Counsels for both the petitioner and respondents and also perused the decisions as cited by him during the course of hearing.

The above referred Clauses of the lease agreement appear as:

*"6.1 During the term hereby granted the Lessee shall be liable and has agreed to make payment of all municipal rates, taxes and other outgoings Rs. 19,680/- yearly (presently payable and also those which may be levied in future) in respect of the said Demised Area and/or building and shall produce documentary evidence as and when required by the Lessor.*

*10.1 (i) To apply for and obtain all permissions approvals contents and/or sanctions at its own cost for running and operating a Diagnostic Centre on and from the said Demised Area and/or Building.*

*(iv) To strictly adhere to the fire safety norms for their electrical installations/wires/cables etc. as stipulated in National Building Code. IS Standard &*

*IE Rules, Materials used for internal partition walls, false ceiling, furniture, fittings and fixtures preferably be of fire resistant/retardant materials or shall be painted with fire retardant paint.”*

It appears from the aforesaid covenants that the objection raised by the respondents has no force. More so, the Order *supra* passed by the Hon'ble High Court at Calcutta has also substantially tilted in favour of not granting any relief to the respondents. Therefore, I find no merit in the defence case as made out by the respondents, so that the interim order passed by this Court on 19.04.2024 has any exigency to be interfered at all.

After that, this Court perused the catena of orders and/or decisions as referred to by the Ld. Counsel for the petitioner. In the decision of the Hon'ble Delhi High Court reported in *1999 SCC Online Del 92*, the Hon'ble Court in a suit for ejection of lessee along with non-payment of damages or rent by the lessee for the occupation of the premises directed for payment of rent from the date of institution of the suit. The decisions reported in *2022 SCC Online Cal 4551*, *2024 SCC Online Cal 7290*, *C.O. 2960 of 2018* and *2024 SCC Online Cal 7468* as passed by the Hon'ble High Court at Calcutta have also been perused.

Ld. Counsel for the petitioner has verily referred to an Order of the Hon'ble Apex Court in a *Civil Appeal No. 8264 of 2016*, wherein the Hon'ble Apex Court directed the respondent, who is in possession of the suit property, to pay occupational charges to the petitioner who is the lawful owner of the said property.

Besides the decisions as cited above, this Court further inclines to the case reported in *2021 SCC Online Cal 428*, though the said case was relied on by the Hon'ble High Court in *2024 SCC Online Cal 7468*, wherein the Hon'ble High Court held as follows:

*“23. The income of the landlord by renting out a valuable property should not be put on hold till the final decision in the suit. The said amount of rent paid during the pendency of the suit can always be adjusted with the mesne profits and damages, in the event the suit succeeds and if the suit fails, the same shall be adjusted against rent upto the date of vacation of the suit property.*

*24. In my opinion, the opposite parties/defendants Nos.1 to 4 are liable to pay the agreed monthly rent at the last paid rate with all arrears payable from the month of September 2016, (the month following the month for which rent was last paid), upto February 2021. The payment of arrears will carry interest at the rate of 6 % per annum payable proportionately with the instalments. The arrears are to be paid in 15 equal monthly instalments to the plaintiffs along with the current monthly rent till the liquidation thereof. The current rent will be paid from the month of March, 2021 within April 10, 2021 and the same arrangement will continue for all succeeding months till the disposal of the suit. The mode of payment will be the same as was followed prior to filing of the suit. All payments and acceptance will be without prejudice to the rights and contentions of the parties and shall be adjusted with the damages/mesne profits if awarded at the time of disposal the suit and against the rent if the suit fails.”*

From the instant application, it is appeared that the petitioner is praying for payment of monthly occupation charges at the rate of Rs. 1,41,921/- per month from 31<sup>st</sup> July, 2023 and the arrears of lease rent for the period from March, 2023 to 30<sup>th</sup> July, 2023 for amount of Rs. 6,47,500/- along with 15% interest thereon till the disposal of the instant suit.

It appears to me that the fact of the case as delineated in the *2021 SCC Online Cal 428* is squarely applicable to the instant case. Therefore, this Court has heavily relied on the said case (supra), wherein the Hon'ble High Court at Calcutta viewed as "*The income of the landlord by renting out a valuable property should not be put on hold till the final decision in the suit. The said amount of rent paid during the pendency of the suit can always be adjusted with the mesne profits and damages, in the event the suit succeeds and if the suit fails, the same shall be adjusted against rent upto the date of vacation or the suit property*".

Relying on the aforesaid view of the Hon'ble Court, this Court directed the respondents/defendants to pay the agreed monthly occupational charges at the rate of Rs. 1,41,921/- per month from 31<sup>st</sup> July, 2023 and the arrears of lease rent for the period from 1<sup>st</sup> March, 2023 to 30<sup>th</sup> July 2023 for an amount of Rs. 6,47,500/- and also the occupational charges and lease rent being arrears from the month of August, 2023 to February, 2025. The payment of all aforesaid arrears will carry interest at the rate of 6% per annum payable proportionately with the installments. The arrears are to be paid in 20 equal monthly installments to the plaintiff/petitioner along with the current monthly rent till the liquidation thereof. The current rent (occupational charges and lease rent) will be paid from the month of March, 2025 for all succeeding months till the disposal of the suit. All payments and acceptance will be the same as was followed prior to filing of the suit. All payments and acceptance will be without prejudice to the rights and contentions of the parties and shall be adjusted with the damages/mesne profits, if awarded, at the time of disposal the suit and against the rent if the suit fails.

The respondents/defendants are further directed to abide by the Order dated 19.04.2024 till the disposal of the instant suit.

Accordingly, the I.A. No. 02 of 2024 is hereby **disposed of**.

Fix the matter on **5<sup>th</sup> March, 2025 at 11:00 a.m.** for written objection to the I.A. No. 09 of 2024 pertaining to the acceptance of the written statement.

The petitioner files an application praying for extension of the ad interim order of injunction dated 19.04.2024 till the next date. The said application is registered as I.A. No. 13 of 2025.

Considering above, it is stated that in respect of the instant order the aforesaid application becomes redundant and as such dismissed. Accordingly, the I.A. No. 13 of 2025 is hereby disposed of.

Parties to act 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

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