

Present: Sri Dev Kumar Sukul (JO Code- WB00766)

Judge, Commercial Court at Alipore.

Title Suit 22/2022

(CNR no. WBSP18-000185-2022)

Order no. 02

02.01.2023

In the matter of :

*Suit for recovery of
possession, damages and
mesne profits valued at
Rs.11,31,30,000/-.*

And

In the matter of :

Macneill Properties LLP.

Vs.

In the matter of :

Orient Beverages Ltd. & ors.

Appearance for the Plaintiff/Petitioner:

Mr. Arindam Banerjee ... Ld. Sr. Counsel.

Mr. Chunky Agarwal ... Ld. Counsel.


Ms. Sanchali Bhowmik ... Ld. Counsel.

ORDERED

- 1. The record is put-up today by a petition on behalf of the Plaintiff.*
- 2. It further appears from the record that no requisites have been filed
by the Plaintiff.*
- 3. Accordingly, Plaintiff is once again directed to file requisites at once.*

I.A. no. 01/2022


- 1. The Ld. Sr. Counsel appearing on behalf of the Plaintiff/Petitioner,
moves the present application for granting of leave under Section 12A
of the Commercial Courts 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/Petitioner.*


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2. *Heard. Considered.*
3. *It is pertinent to mention here that the Hon'ble Apex Court in SLP(C) no. 14697 of 2021 has been pleased to hold that pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 is mandatory and suits filed violating the same are liable to be rejected, except in cases where urgent relief is sought for.*
4. *However, it appears that the suit contemplates an urgent relief by filing necessary application under Order XXXIX Rules 1 & 2 read with Section 151 CPC and hence, the leave as sought for is granted.*
5. *Accordingly, the instant I.A. is disposed of.*

I.A. No. 02/2022

1. *At this stage, the Ld. Sr. Counsel of the Plaintiff/Petitioner moves the application under Order XXXIX Rules 1 & 2 read with Section 151 CPC, being registered as I.A. no. 02/2022, in terms of prayers of the said application.*
2. *Office noted that there is no caveat against any party in the instant case.*
3. *I have heard the Ld. Sr. Counsel for the Plaintiff/Petitioner as well as perused all relevant documents as annexed with the plaint as well as with the instant application.*
4. *Perused and considered the present application.*
5. *From the submission of the Ld. Counsel for the Petitioner, it appears that:*
 - i. *Petitioner is a Limited Liability Partnership under the LLP Act, 2008 and is a juristic person and Defendant nos. 1, 6, 7, 8, 9, 18*


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& 20 are juristic persons as well. Defendants no. 2, 3, 4, 5, 10, 11, 12, 13, 14, 15, 16, 17 & 19 are natural persons. Defendant no. 10 is a deity/idol being a perpetual minor represented through its trustees/shebait.

- ii. By a registered indenture of lease dated 07.01.1961, Defendant no. 20 through its then shebait, demised all that parcel of land containing an area of 2 bighas 15 cottahs more or less being the North West portion of the premises no. 225B/225C, Lower Circular Road, Kolkata with one storied brick bungalow and cottage and/or structure standing thereon (hereinafter referred to as the "larger premises") for a term of 58 years commencing from 12.05.1961 till 11.05.2019 on the terms and conditions mentioned therein. Copy of the said indenture of lease is annexed as Annexure-"A".
- iii. Thereafter, the aforesaid parties executed and registered a deed of rectification dated 12.01.1961 thereby rectifying the land area as 2 bighas 16 cottahs 5 chittacks and 21 sq. ft. instead of 2 bighas 15 cottahs and revising the rent for the increased land area.
- iv. In terms of the head lease, one Orient Properties Pvt. Ltd. constructed a building comprising a ground floor and eight upper floors at the premises no. 225B & 225 C, Acharya Jagadish Chandra Bose Road (formerly Lower Circular Road), Kolkata-700020 in accordance with a sanction plan granted by the then Corporation of Calcutta.
- v. Subsequently, the above premises were renumbered by the Corporation of Calcutta as premises no. 225C, 225D, 225E & 225F, AJC Bose Road, Kolkata-700020 and the four aforesaid renumbered premises were comprised within the land area of the larger premises.
- vi. Subsequently, the name of the said Orient Properties Pvt. Ltd. was changed to the Defendant no. 1. Copy of certificate of incorporation is annexed as Annexure-"B".
- vii. Pursuant to and during the currency of the said head lease, Defendant no. 1 subleased the various parts of the demised


premises in favour of Defendants no. 2 to 19, as mentioned in Paragraph-11 of the instant application.

- viii. The head lease granted by the Defendant no. 20 expired on 11.05.2019 due to efflux of time. The Petitioner has been able to ascertain through reliable sources that the sub-lessees have agreed to transfer their respective possessions to third parties. However, there are various illegal obstructions and/or hindrances from the respective lessors of the sub-lessees causing delay in transferring of the said premises to the Petitioner. Even after expiration of the lease period, Defendants no. 1-19 are in khas possession of the suit premises till date.
- ix. Thereafter, by a registered indenture of lease dated 31.03.2021, Defendant no. 20 demised the suit premises in favour of the Petitioner for a term of 28 years commencing from 01.04.2021 till 31.03.2049 on the terms and conditions mentioned therein. Copy of the said indenture of lease dated 31.03.2021 is annexed as Annexure-"C".
- x. Simultaneously with the grant of the above lease, Defendant no. 20 delivered symbolic possession of the suit premises to the Petitioner with the right to proceed against all occupants of the suit premises, whether by legal action or otherwise.
- xi. Petitioner has recently come to learn from reliable sources that most of the Defendants are illegally trying to create third party rights and part with possession of their respective occupied portions in the suit premises in favour of the said third parties.
- xii. Accordingly, Petitioner has prayed for an ad-interim of injunction restraining the Defendants no. 1 to 19 from parting with possession of any part of the suit premises in favour of any third party alongwith other consequential reliefs.
- xiii. In course of hearing, Ld. Sr. Counsel for the Plaintiff/Petitioner referred the decisions of the Hon'ble High Court of Allahabad in **Md. Fazihzzaman vs. Anwar Hussain** as reported in **1931 SCC OnLine All 240** and also in **Bishen**

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Sarup vs. M. Abdul Samad as reported in **1931 SCC OnLine All 99.**

6. *I have heard the Ld. Counsel on behalf of the Petitioner and also perused and considered all the annexures attached with the present application.*
7. *On perusal of the decision cited by the Ld. Counsel for the Plaintiff/Petitioner in **Md. Fazihzzaman vs. Anwar Hussain** as reported in **1931 SCC OnLine All 240** , I find that the Hon'ble Court has been pleased to observe therein that Section 108 of the Transfer of Property Act provides that the lessor is bound on the lessee's request to put him/her in possession of the property and further provides that the benefit of contract shall be annexed to and go with the lessee's interest as such, and may be enforced to every person in whom such interest for the whole or any part thereof from time to time is vested. Therefore, the lessee is entitled to enforce his right to obtain possession of the land leased to him so that he may enjoy the same.*
8. *Further, the Hon'ble High Court at Allahabad in **Bishen Sarup vs. M. Abdul Samad** as reported in **1931 SCC OnLine All 99**, has held that Section 106 of the TP Act does not apply to the case of a lessee when the term has expired.*
9. *At this stage, from the submissions of the Ld. Sr. Counsel for the Plaintiff/Petitioner as well as the materials on record, it appears that there was a lease agreement dated 07.01.1961 between Defendant no. 20 and Defendant no. 1 relating to the suit property for 58 years expiring on 11.05.2019 and in terms of Clause-6 of the said lease deed, the lessee was permitted to construct building on the suit premises and after construction of the said building, Defendant no. 1 subleased various parts of the said premises in favour of Defendants no. 2 to 19. After expiry of the said lease deed on 11.05.2019, all erections and/or constructions existing in the suit*


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property reverted back to the lessors in terms of Clause 8 of the lease deed dated 07.01.1961.

10. Subsequently, a new lease agreement was executed by and between Defendant no. 20 and the Plaintiff/Petitioner on 31.03.2021 for a period of 28 years expiring on 31.03.2049, in relation to the suit property. In terms of Clause III(a) of the agreement dated 31.03.2021, Plaintiff/Petitioner has symbolic possession of the demised premises. Further, as per Clause III(b) of the said agreement, Plaintiff/Petitioner has the right to sublet the demised premises or any part thereof. Clause-III(e) entitles Plaintiff/Petitioner to recover vacant and/or peaceful possession from all the occupants of the demised premises.

11. However, even after expiry of the earlier lease deed dated 07.01.1961, Defendants no. 2 to 19 i.e. the sub-lessees have not vacated the premises and are continuing to overstay without paying rents which is completely illegal and wrongful. The Defendants no. 2 to 19 are causing illegal obstructions and/or hindrances which is delaying the process of transfer of the demised premises in favour of the Plaintiff/Petitioner even more. Further, Plaintiff/Petitioner has come to know from reliable sources that the Defendants are trying to create third party rights in respect of their respective portions in the demised premises.

12. At this stage, the Petitioner is able to establish a triable issue which requires trial by this Court and the balance of convenience and inconvenience is also in favour of the Petitioner as the Petitioner is in symbolic possession of the suit property and in spite of expiry of the earlier lease agreement dated 07.01.1961, Defendants are still occupying the suit premises. There is also urgency in the suit application as the Defendants are at an advanced stage of negotiations relating to the suit premises with third parties and if no ad-interim injunction is granted, Defendants may create such third

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party rights, the moment notice relating to the instant application is served upon them.

13. **Accordingly, ad-interim orders in terms of prayer-(a) of the instant injunction application is allowed till 18.01.2023.**

14. Both sides have the liberty to make necessary application for modification of this order in case of emergency after service of notice upon the other side.

15. Issue notice accordingly to show cause as to why the instant injunction application being I.A. no. 02/2022 shall not be allowed alongwith copy of the said injunction application as well as all annexures within 24 hours and the Plaintiff/Petitioner is also directed to file the affidavit of service within 48 hours.

16. Accordingly, the date fixed vide order dated 23.12.2022 is hereby modified to the following effect:

Fix **18.01.2023 at 1 p.m.** for S/R, appearance, filing affidavit-in-opposition, if any, to the injunction application being I.A. no. 02/2022 by the Defendants/Respondents.

17. Both sides shall act on the basis of downloaded copy of this order from the website/Ecourts App.

Dictated and corrected by me,

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

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Judge, Commercial Court at Alipore,
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