

AD-86
Ct No.16
22.05.2025
TN

FMAT 146 of 2025
IA No: CAN 1 of 2025

Avishar Shopping Complex Owner's
Welfare Association
Vs.
Libberton Healthcare Private Limited and another

Mr. Biswajib Ghosh,
Mr. Shuvasish Sengupta,
Mr. S. Dasgupta

....for the appellant

1. The present appeal arises out of the grant of an interim injunction in favour of the plaintiffs/respondents in a suit filed by the latter for declaration of their rights in respect of a lease agreement between the parties and for protective orders ancillary thereto.
2. Learned counsel for the appellant points out that by the impugned order, the learned Trial Judge has restrained the defendant no.1/appellant from giving effect to two notices, respectively dated February 19, 2025 and March 10, 2025, without due process of law and/or from disconnection of the electricity supply to the glow-sign board on payment of requisite monthly rent by the plaintiffs and/or from dismantling the glow-sign board of the plaintiffs till May 06, 2025.
3. Learned counsel for the appellant submits that the notices-in-question merely indicated that in the event the proper affixation of the glow-sign boards as

mentioned therein was not done by the plaintiffs/respondents, the agreement between the parties would be terminated by the appellant.

4. It is contended that although there is no present intention on the part of the appellant to disconnect the electricity supply subject, to payment of rent by the respondents, and/or from dismantling the glow-sign board immediately, in the event the appellant is enjoined from giving effect to the notices, the same would tantamount to decreeing the suit before it is decided.
5. That apart, it is submitted that the said notices, although captioned as 'notices of termination', do not purport to terminate the jural relationship between the parties immediately but give an option to the respondents to comply with the directions therein in terms of the agreement between the parties and only in default, further steps for termination of the jural relationship of lessor-lessee shall be taken.
6. We find substance in the contention of the appellant inasmuch as the learned Trial Judge ought not to have granted injunction restraining the defendant no.1/appellant from giving effect to the notices, in view of the said notices being merely containing prior warning to the plaintiffs/respondents to comply with the terms of the agreement between the parties and informing the plaintiffs that in the event the terms

were not complied with, the jural relationship between the parties and the agreement would be terminated.

7. The court cannot grant an injunction in respect of contracts which by their very nature are terminable.
8. Although it is always open to the plaintiffs to challenge any future termination, if effected by the appellant, the mere notices asking the plaintiff to comply with the terms of the agreement, and a threat of future termination in default, cannot be construed to be a present termination for the purpose of grant of injunction.
9. The impugned notices are merely precursors of future termination of the agreement between the parties and, by themselves, do not purport to be termination notices.
10. Accordingly, we admit the appeal for being heard on the grounds as taken in the memorandum.
11. There shall be stay of operation of the impugned order dated March 21, 2025 to the limited extent that the defendant no.1/appellant and its men and agents have been restrained from giving effect to the notices dated February 19, 2025 and March 10, 2025.
12. It is made clear that the other part of the impugned order, whereby the defendant no.1/appellant has been restrained from disconnecting the electricity supply to the glow-sign board of the plaintiffs on payment of requisite monthly rent by the plaintiffs and/or from

dismantling the glow-sign board of the plaintiffs till May 06, 2025, are not interfered with or stayed.

13. The above limited order of stay granted by us shall continue till July 15, 2025 or until further order, whichever is earlier.
14. The appellant shall serve copies of the memorandum of appeal and the application on the respondents, indicating that the application shall next be listed on June 23, 2025 under the heading “Application”.
15. Affidavit(s)-in-opposition, if any, shall be filed by June 13, 2025; reply/replies thereto, if any, shall be filed by June 20, 2025.
16. An affidavit-of-service shall be filed on the next returnable date by the appellant, showing such service.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)