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ORDER SHEET

IA NO.GA-COM/7/2024

In

CS-COM/1/2024

IN THE HIGH COURT AT CALCUTTA  
ORIGINAL SIDE  
(COMMERCIAL DIVISION)

KONSORTIA PROJECT PRIVATE LIMITED  
VS.  
MOHIT LAL SEAL & ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 6<sup>th</sup> August, 2024.

Mr. Krishnaraj Thaker, Mr. Chayan Gupta, Mr. R.  
Chowdhury, Mr. Dwip Raj Basu, Advocates for the plaintiff/petitioner.

Mr. Shounak Mukhopadhyay, Mr. Kallol Saha, Mr. Akash Ghosh, Ms.  
Monika Roy, Advocates for defendant no.12.

Mr. Debnath Ghosh, Mr. Debayan Ghosh, Mr. Deep  
Narayan Mukherjee, Advocates for defendant nos.1 to 9.

Mr. S. K. Poddar, Mr. Abir Lal Chakravarty,  
Advocates for defendant nos.10 & 11.

The Court : Affidavit of service filed in Court today is taken on  
record.

The plaintiff in a suit for declaration and perpetual injunction  
has taken out this application *inter alia* to restrain the respondent nos.1, 2  
to 9, their servants, agents and assigns from executing any document which  
would enable the respondent no.12 to apply for or any approval, permission,

licence or sanction from the Kolkata Municipal Corporation or any other public body.

The background of filing the suit is as follows :

The plaintiff and the defendant nos.1, 2 to 9 entered into two development agreements both dated 27<sup>th</sup> October, 2023. The two development agreements were followed by two power of attorneys executed to proceed with the development work in connection with premises no. 39, Bentinck Street, Kolkata-700069 more popularly known as Paradise Cinema Hall. At the time when the plaintiff entered into the two development agreements there were two subsisting lease deeds dated 11<sup>th</sup> October, 2013 entered by and between the defendant nos.1, 2 to 9 with the defendant no.10. Under the said two lease deeds the defendant nos.1, 2 to 9 for valuable consideration had let out land together with building and structure comprising the premises no.39, Bentinck Street, Kolkata – 700 069 (hereinafter referred to as the said premises). The said two leases are to continue upto 10<sup>th</sup> October, 2042 and there appears to be no termination till date. The plaintiff was under the development agreements obliged to have the occupied portions of the said premises vacated to commence the development work. The development agreements according to the plaintiff have been acted upon. The plaintiff has altered its position and as such the defendants no. 1, 2 to 9 should not be allowed to commit breach of the terms of the said agreements.

The plaintiff/petitioner says that during the pendency of the suit including the applications made therein, a writ petition being WPO 414 of 2024 (Bhagwatdas Jaiswal Vs. The Kolkata Municipal Corporation and Ors.) was initiated by an outsider alleging that the lessee and its sub-lessee are carrying on business from the said premises in an illegal and unauthorized manner without complying with the statutory requirements. The said writ petition was disposed of on 22<sup>nd</sup> May, 2024 with the following directions :

*“The Commissioner of the Kolkata Municipal Corporation or his delegate is directed to grant an opportunity of hearing to all the necessary parties to ascertain whether the business is run in accordance with law or not. If the concerned party fails to produce the requisite documents for running the business from the subject premises, then steps shall be taken by the official respondent to stop the business forthwith.*

*A decision shall be taken in the matter at the earliest but positively within 30<sup>th</sup> June, 2024.”*

The plaintiff/petitioner says that a proceedings has been initiated by the Kolkata Municipal Corporation in terms of the said order dated 22<sup>nd</sup> May, 2024. The plaintiff/petitioner apprehends that in order to regularize the admitted default of the lessee and/or the sub-lessee the defendant nos.1, 2 to 9 may execute such document which will be in breach of the obligation of the defendant nos.1, 2 to 9 under the two development agreements dated 27<sup>th</sup> October, 2023 and the two power of attorneys

executed in terms thereof. The plaintiff/petitioner also says that the right, the plaintiff/petitioner acquired under the two development agreements and the power of attorneys, is a right coupled with interest in the land and as such execution of any document filed by the defendant nos.1, 2 to 9 to regularize the illegal activities of the lessee (defendant no.10) or its sub-lessee will jeopardize the right of the plaintiff/petitioner under the two development agreements which includes the right to have the occupied portions vacated. The chain of events as aforesaid has prompted the plaintiff/petitioner to approach this Court to seek necessary remedy by filing the instant application. Although, not pleaded in the application, the plaintiff/petitioner has relied upon two orders passed by the Division Bench in appeal arising out of an interim order passed in the plaintiff's first application. The appeal was filed by the defendants/respondents.

After hearing the parties and considering the materials on record, I am prima facie of the view that no injunction at this stage can be granted in favour of the plaintiff/petitioner restraining the defendant/respondent nos.1, 2 to 9 from executing any document in favour of any third party. This will amount to restraining the defendants/respondents no.1, 2 to 9 from use and enjoyment of their property thereby infringing their legal right and/or character. The plaintiff/petitioner was a party in the writ petition and as such is also a party before the proceedings initiated by the Kolkata Municipal Corporation. The entire proceedings, therefore, as directed by this Court is taking place in the presence of the plaintiff/petitioner. Moreover,

the possession of the lessee (defendant no.10) through its sub-lessee has also been noted down by the Hon'ble Division Bench. After recording such fact, the Hon'ble Division Bench has permitted the lessee/sub-lessee to carry out certain repairs. The appeal is pending. The application filed by the plaintiff/petitioner for clarification of the order dated 3<sup>rd</sup> April, 2024 passed by the Hon'ble Division Bench has been disposed of by order dated 29<sup>th</sup> July, 2024. On a perusal of the said order it also does not persuade this Court to pass an order of injunction at this stage as prayed for by the plaintiff. Furthermore, any order of injunction that may be passed may stall the proceedings before the municipal authorities. The preponderance of balance of convenience and inconvenience in favour of defendants no. 1, 2 to 9 overshadow the plaintiff's claim for interim injunction at this stage.

Let affidavits be filed. Affidavit-in-opposition be filed by 27<sup>th</sup> August, 2024; reply thereto, if any, be filed by 9<sup>th</sup> September, 2024.

Let this matter appear under the heading 'Adjourned Motion' on 17<sup>th</sup> September, 2024.

(ARINDAM MUKHERJEE, J.)

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