

IA GA No.52 of 2020

In

CS 696 of 1978

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SRI VIJAY KUMAR KAJARIA & ORS.
VERSUS
CHANDRA KUMAR KAJARIA & ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 3rd November, 2020.

(Vacation Bench)

Appearance:

Mr. Aniruddha Mitra, Adv.

Mr. D. Mitra, Adv.

Mr. Mainak Bose, Adv.

Mr. A. Ray, Adv.

The Court : The present application is by a registered partnership firm in whose favour the Joint Receivers granted a monthly tenancy with effect from 10th March, 1993 on certain terms and conditions. The Joint Receivers were appointed by an order of Court dated 8th April, 2004.

Learned Counsel for the petitioners submits that the monthly tenancy was granted in respect of a ground floor space in a building where the petitioners now want to operate a bar-cum-restaurant and for which the petitioners have to obtain an excise licence. Counsel submits that since the Joint Receivers have been appointed for the said property by the Court, the Joint Receivers would have to give their consent in the petitioners' obtaining the excise licence for running the bar-cum-restaurant. Counsel places a letter dated 15th January, 2020 written by the petitioners to the Joint Receivers which states that the Joint

Receivers' consent is necessary for the excise licence and further that the petitioners had applied for the licence to the concerned department but such application was rejected since the petitioners could not produce the 'No Objection' from the Joint Receivers.

Learned Counsel appearing for the defendant no. 4C, being one of the sisters of the partner/applicant of the licensee, submits that allowing the petitioners to get into the business of a bar-cum-restaurant on the designated space would amount to subletting of the concerned area. It is also submitted that the petitioners have formed a new company which would aggravate the situation of subletting of the concerned premises.

On hearing learned Counsel, this Court is of the view that the Joint Receivers appointed by the Court by order dated 8th April, 2004 have been running the premises at 6, Russel Street since the date of the order. It is hence not in dispute that the consent of the Joint Receivers is necessary for the petitioners to run a bar-cum-restaurant from the said space. The communication dated 3rd March, 1993 shows that the Joint Receivers had granted monthly tenancy to the petitioners in respect of the concerned space with effect from 10th March, 1993. Therefore, the contention of the concerned defendant with regard to subletting of the premises is not acceptable. There will not be any subletting if the present petitioner, being the partnership firm who had been granted the monthly tenancy by the Joint Receivers, is allowed to convert the space into a restaurant upon compliance of statutory requirements. The limited prayer in the application is for a direction on the Joint Receivers for issuing a 'No Objection Certificate' which had been communicated to the Joint Receivers on 15th January, 2020 but has not been responded to till date.

In view of the above, GA No.52 of 2020 is allowed in terms of prayer (b).

It is made clear that the 'No Objection Certificate' will be issued by the Joint Receivers in the name of the present petitioner, namely, Jay Luxmi Trading Company in whose name the monthly tenancy was given by the Joint Receivers on 3rd March, 1993.

(MOUSHUMI BHATTACHARYA, J.)