

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

Present:

The Hon'ble Justice Krishna Rao

**IA No. GA 1 of 2003
(Old No. GA 3506 of 2003)**

In

CS 1034 of 1987

S.T.P. Limited

Versus

Smt. Pritam Kaur & ORS.

Mr. Utpal Bose, Sr. Adv.

Mr. D.N. Sharma

Mr. Gaurav Khaitan

Mr. Anurag Basu

Mr. Anunoy Basu

... for the plaintiff.

Hearing Concluded On : 17.01.2024

Judgment on : 24.01.2024

Krishna Rao, J.:

1. The plaintiff has filed the suit against the defendant for recovery of vacant and peaceful possession of the suit premises and for mesne profits. The plaintiff was a Public Limited Company by shares until 19th January, 1985, the name of the plaintiff was "*Shalimar Tar Products (1935) Limited*". With effect from 20th January, 1985, the name of the plaintiff company was changed to "STP Limited". The defendant no. 3 at all material times was the subsidiary of the plaintiff.
2. The Premises Nos. 33 and 34, Park Street, Calcutta, consists of a large plot of open land and several adjoining buildings all forming part of the Estate of the Late T.M. Thaddeus. The building comprised within the said property have several blocks of flats and the entire complex is looked after and administered on behalf of the owners by M/s Talbot & Company, a firm of property agents and estate brokers carrying on business at "Tower House", Chowringhee Square, Calcutta.
3. The defendant no. 3 was a monthly tenant of the Flat No.16, situated at second floor of the Park Mansions, Nos. 33 and 34, Park Street, Calcutta. The said flat consists of two large bed rooms, with attached baths, kitchen, balconies etc. and is spread over an area of about 2,800 sq.ft. The said premises was furnished and equipped with various furniture and fixtures such as a dining-table, wardrobes, sofas, writing tables, ceiling fans etc.

4. On 24th May, 1984, the plaintiff agreed to appoint the defendant no.1 as Adviser for new project of the plaintiff for a salary of Rs. 4000/- per month and also agreed to provide a car, residential accommodation and other facilities. In view of the arrangement with the defendant no.1 to provide him accommodation, the plaintiff entered into an agreement with the defendant no. 3 with effect from 24th May, 1984. The defendant no. 3 had granted leave and license to the plaintiff to use and occupy the flat in connection with the business in consideration of payment of a license fee of Rs. 379.50/- per month.
5. Immediately with the grant of the license by the defendant no. 3 to the plaintiff, the plaintiff and the defendant no. 1 entered into an arrangement whereby it was agreed by and between the parties that the leave and license further would be granted by the plaintiff to the defendant no. 1 to use and occupy the said flat as Licensee of the plaintiff during his employment as Adviser of the plaintiff. The grant of permission to defendant no.1 was a personal privilege accorded to him in furtherance of his appointment as advisor and did not confer any right, title and interest of the said flat.
6. The license granted to the defendant no.1 was subject to express conditions that the defendant no.1 would only enjoy the benefit thereof during the tenure of his employment with the plaintiff and the license would stand forthwith extinguished and will be determined upon the termination of the employment of the defendant no.1. The plaintiff at all material times since May 1984, paid the license fees of the suit property

to the defendant no. 3 from its own funds. The defendant no. 1 at all material times has enjoyed the said flat without making any payment whatsoever in respect of the same to anybody.

7. The defendant no.1 had permitted one Laxman Dass Walia since deceased to live in the said flat with his family. The said deceased had no connection with the plaintiff. The occupation of the said deceased was with the permission of the defendant no.1. The said deceased had the knowledge of the arrangements made between the plaintiff and the defendant no.1 with regard to the said flat. The deceased was residing in the said flat with his wife Pritam Kaur. Their daughter Smt. Saroj Mehra was married and was residing with her husband in Jamaica, West Indies. The deceased died intestate in Calcutta on 31st January, 1990 leaving behind the defendant nos. 2 and 2A as his legal heirs and legal representatives. After the death of the deceased, the defendant no. 2, Ms. Pritam Kaur, being the wife of the deceased, is in exclusive possession of the suit property. The defendant no. 2A is in Jamaica and is not in possession of the suit property.

8. Neither the defendant no.1 nor the defendant no.2 has paid any consideration on account of their occupation of the suit property either to the plaintiff or to the defendant no. 3. On 20th March, 1985, the plaintiff duly determined the employment of the defendant no.1 as Adviser with immediate effect by paying one month's salary in lieu of the notice. The termination of the defendant no.1 was also intimated to the Reserve Bank of India and has also been done by publishing notices

in various newspapers. The license granted to the defendant no.1 with respect of the suit premises stood automatically determined by reason of termination of the employment of the defendant no.1.

- 9.** The defendant nos.1 and 2 wrongfully and illegally remained in the possession of the suit premises and also failed, neglected and refused to deliver, quiet, vacant and peaceful possession of the flat to the plaintiff inspite of the demands made by the plaintiff. Since 20th March, 1985, the defendant Nos. 1 and 2 are trespassers and they have no right, title, claim and interest in the suit premises after termination of employment of the defendant no.1.
- 10.** At the time of filing the suit, the plaintiff had filed an interlocutory application for appointment of a Receiver and also for injunction restraining the defendants in any manner from transferring or otherwise parting with possession or creating any third-party interest in the said suit premises.
- 11.** By an order dated 17th September, 1987, this Court appointed Sri Debasish Das, Advocate, as Receiver and directed the Receiver to take symbolic possession of the premises and restricted the defendant nos. 1 and 2 from transferring or creating any third party interest in the flat. By an order dated 27th October, 1987, this Court clarified the order dated 17th September, 1987 by saying that the Receiver shall make an inventory and to report before this Hon'ble Court.

- 12.** As directed by an order dated 17th September, 1987 to be read with the order dated 27th October, 1987, the Receiver visited the said suit premises on 31st October, 1987 and had submitted a detailed report before this Court.
- 13.** By an order dated 15th February, 1988, this Court disposed of the said application by directing the Receiver to continue to be in formal possession of the said Flat. This Court also restricted the defendants from creating any third party interest over the flat and to maintain status quo over the property. This Court directed the defendant nos. 1 and 2 to deposit a sum of Rs. 10,000/- with the Receiver. This Court also clarified that if the defendant nos. 1 and 2 default in making payment, the Receiver will immediately take possession of the flat and put chain lock on the doors.
- 14.** On 1st July, 1992, the plaintiff discovered that the original defendant no. 2, namely Laxmandas Walia since deceased was no longer in possession of the suit premises and at the main entrance the following five names were displayed as occupiers of the said suit premises:
- (i) *Turner Morrison & Grahams Groups of Companies Ltd.;*
 - (ii) *N S Hoon;*
 - (iii) *Calcutta Veener Industries Pvt. Ltd.;*
 - (iv) *Enertech Engineering; and*
 - (v) *Hungerford Investment Trust Limited.*

Upon knowing this, the plaintiff had filed another application, wherein the Receiver was asked to visit the suit premises again and to take inspection of the same. On 10th July, 1992, the Receiver visited the suit premises and found the name of the parties mentioned above and along with them, found two other persons who were allegedly in possession of the suit premises, namely, Dinesh Prodhan and Phani Bhusan Chakraborty, claiming to be employees of M/s. Enertek Engineering and M/s. Calcutta Veener Industries Private Limited.

- 15.** By an order dated 28th July, 1992, after perusing the reports submitted by the Receiver, this Court directed the Receiver to take actual physical possession of the said suit premises.
- 16.** Before the Receiver could take actual and physical possession of the said suit premises, the defendant no.1 preferred an appeal therefrom on 23rd July, 1992 and the Appellate Court was pleased to stay the order dated 21st July, 1992.
- 17.** On or about 25th August 2000, the plaintiff came to know from the defendant no. 3, namely, M/s. Grahams Trading Company (India) Limited, that on or about August, 1999, an application under Section 144(2) Cr.P.C was filed on behalf of the owner of the suit premises wherein it was alleged that one Mrs. Neepa Bhattacharjee was in occupation of the said suit premises and she had allegedly brought men and materials to make illegal constructions on the suit premises.

- 18.** In view thereof on or about 31st August, 2000, the plaintiff had filed an application in the said appeal, numbered as GA. No. 3600 of 2000 for vacating the said interim order dated 23rd July, 1992 and also for dismissal of the same.
- 19.** The said application being GA No. 3600 of 2000 was heard by the Hon'ble Division Bench of this Court and by an order dated 21st June, 2001 after hearing both the parties vacated the said interim order which was passed on 23rd July, 1992.
- 20.** Against the order dated 21st June, 2001, passed by the Hon'ble Division Bench, the defendant no. 1 filed a Special Leave Petition before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Supreme Court on 19th November, 2001.
- 21.** Thereafter the Receiver visited the suit premises once again on 5th July, 2001 and found that in the outer door of the suit premises, the following names were affixed:
- (i) *R.P. Digitronix Pvt. Ltd.;*
 - (ii) *Turner Morrison & Grahams Group of Companies Ltd.;*
 - (iii) *Calcutta Veener Industries Ltd.;*
 - (iv) *S.R. Incorporated Enterprises (India) Private Limited.*

It was also submitted by the plaintiff that during the Receiver's visit on 10th July, 1992, he did not find the names of R.P. Digitornix Pvt. Ltd. and S.R. Incorporated Enterprises (India) Private Limited.

- 22.** In the year 2003, the plaintiff has again filed an application being G.A. No. 3506 of 2003 for a direction upon the Receiver for taking actual and physical possession of the suit premises and by an order dated 29th September, 2003, this Court directed the Receiver to take actual and physical possession of the suit premises and accordingly the Receiver has taken actual and possession of the premises on 5th November, 2003 by putting his padlock on the main outer and entrance door of the flat by recording a minutes of meeting and a report was submitted before this Court and till date the key of the premises is with the Receiver.
- 23.** The plaintiff has examined one witness, namely, Mr. Krishna Kumar Biyani, who worked with the Plaintiff Company as its Vice-President and Company's Secretary, herein after referred as PW-1 in the present suit and during his evidence, the plaintiff has adduced altogether 13 documents as Exhibit-A to Exhibit-M.

Exhibit – A: *Copy of a Letter dated 24th May, 1984, written by Grahams Trading Company (India) Limited addressed to Shalimar Tar Products (1935) Ltd. regarding grant of license in respect of the suit premises with effect from 1st June, 1984 at a monthly rent of Rs. 460/-.*

Exhibit – B: *Copy of a letter dated 24th May, 1984, written by the PW-1 addressed to Shri N.S. Hoon regarding appointment of him, as an Adviser to the plaintiff company at a monthly fee of Rs. 4,000/- and also*

that company will provide company's flat only for residential use as well as a car with telephone during the court of employment.

Exhibit – C: *Copy of a Letter dated 20th March, 1985, written by the PW-1, addressed to Mr. N.S. Hoon regarding termination of his service from the company and the plaintiff had asked for peaceful and vacant possession of the flat allotted to Mr. N.S. Hoon as well as company's car.*

Exhibit – D: *Copy of postal receipt and acknowledgment card, for the letter dated 20th March, 1985, which was sent through registered post to Mr. N.S. Hoon, and also an envelope with a remark of the postal authority saying 'addressee out of Cal hence left' and the remark was given on 22nd March, 1985.*

Exhibit – E: *Copy of newspaper publishment by the Plaintiff Company, one in English Newspaper, namely 'Business Standard' on 8th April, 1985 and another in a Bengali Newspaper, regarding the termination of Mr. N.S. Hoon.*

Exhibit – F: *Copy of the Bengali Newspaper, namely 'Aajkal', where the same termination notice was published by the Plaintiff Company, regarding the termination of Mr. N.S. Hoon.*

Exhibit – G: *Copies of Two documents, one is a fresh certificate of incorporation consequent on change of name from Shalimar Tar Products (1935) Limited to S.T.P. Limited and another document is certificate of incorporation in the name of Shalimar Tar Products (1935) Limited.*

Exhibit – H: Copy of an application for permission under Section 30 of the Foreign Exchange Regulation Act, 1973 seeking appointment of foreign national in the company, since Mr. N.S. Hoon was a foreign national.

Exhibit – I: Copy of a letter dated 27th July, 1984 by which the Reserve Bank of India has granted permission regarding engagement of Foreign Nationals Mr. Nirmaljit Singh Hoon.

Exhibit – J: Copy of a letter dated 22nd May, 1985, which was sent through registered post with A/D written by the PW-1 to Mr. N.S. Hoon regarding reminder for handing over the peaceful possession of the suit premises as well as company's car which was allotted to him.

Exhibit – K & Exhibit – L: Copy of a Letter dated by 28th August, 1985, written by the PW-1 and sent to Mr. N.S. Hoon, asking for peaceful and vacant possession of the company's flat, this was marked as 'Exhibit-K' and this letter was sent to Mr. Hoon in two addresses – one is 16, Park Mansion, Park Street Calcutta and the same was returned 'undelivered' with the remark addressee 'out of Calcutta hence left' and there was another address was A-1/63, Azad Apartments, Sri Aurobindo Marg, New Delhi – 110016 which was received by some S. Hoon on 31st August, 1985, and this was marked as 'Exhibit-L'.

Exhibit – M: Receiver's report dated 31st October, 1987, and minutes of the proceedings held by the Receiver on 31st October, 1987 exhibited collectively.

24. (i) Exhibit – B proves that the Plaintiff Company had appointed Mr. Nirmaljit Singh Hoon, as the company adviser on 24th May, 1984, at a monthly fee of Rs. 4,000/-, wherein the Plaintiff company had also provided Mr. N.S. Hoon a company flat and a car.

(ii) Exhibit – C proves that the Plaintiff Company had issued a termination letter dated 20th March, 1985, to terminate the services of Mr. N.S. Hoon, and also asking for peaceful possession and hand over of the suit premises provided to him.

(iii) Exhibit–D is the acknowledgment card and postal receipt of the same letter sent to Mr. N.S. Hoon with a remark from the postal authority saying '*addressee out of Cal hence left*'. Therefore it is proved by the plaintiff company, that they have sent the termination letter to Mr. Nirmaljit Singh Hoon but the same wasn't received by him.

(iv) Exhibit - E and Exhibit – F prove that after the unsuccessful attempt by the plaintiff company to send the termination letter to Mr. N.S. Hoon, the plaintiff company had done paper publications, one was on a English Daily Newspaper namely '*Business Standard*' on 8th April, 1985 and the other one was on a Bengali Daily Newspaper namely '*Aajkal*'. Thereafter on 22nd May, 1985, the plaintiff company had again tried to send a reminder letter to Mr. N.S Hoon, reminding him regarding the termination of his service in the plaintiff company through post to his two addresses; one is 16, Park Mansion, Park Street Calcutta and the same was returned 'undelivered' with the remark

addressee 'out of Calcutta hence left' and there was another address was A-1/63, Azad Apartments, Sri Aurobindo Marg, New Delhi – 110016 which was received by some S. Hoon on 31st August, 1985.

(v) Exhibit - H and Exhibit - I are two documents, one is an application sent by the plaintiff company, seeking permission under Section 30 from the Foreign Exchange Regulation Act, 1973, for appointment of a Foreign National since Mr. Hoon was a foreign national and the other document is a letter dated 27th July, 1984, sent by the Reserve Bank of India to the plaintiff company approving the appointment of the same.

(vi) Exhibit - M is the Receiver's report dated 31st October, 1987, through which the plaintiff proves that the defendant no. 2 was in exclusive possession of the flat and defendant no.1 was not in occupation of the flat.

25. The plaintiff has obtained certificate from the Suit Registry Department of this Court wherein it was certified that the defendant no. 3 has once entered appearance on 24th November, 1987, through its Advocate and thereafter have not entered appearance either in person or through any Advocate, thereafter by an order dated 3rd February, 2023, this Court has allowed the plaintiff to publish the Special Citation in the English Newspaper 'The Statesman'. Despite service of several notices, and also publication in a newspaper, none of the defendants or their Advocates have appeared to proceed with the present case. As none appeared on

behalf of the defendants, this Court had fixed the matter in the list of 'undefended suits'.

26. The defendant no.1 was appointed as Adviser by the plaintiff with the condition that the plaintiff will provide car and residential accommodation to the defendant no.1 for his official purpose. It was also clarified that upon termination of the service of the defendant no.1, the defendant no.1 shall hand over the possession of the residential premises to the plaintiff. The plaintiff has taken the said premises from the defendant no. 3 against which the plaintiff paid the monthly rent to the defendant no. 3. The plaintiff came to know that the defendant no.1 had permitted the defendant no. 2, Laxman Dass Walia to live in the said flat with his family though the defendant no. 2 had the knowledge with regard to the arrangements made between the plaintiff and the defendant no. 1. The defendant no. 2 was residing in the said premises with his wife. The daughter of the deceased was married and is residing with her husband at Jamaica. During the pendency of the suit, the defendant no. 2 died and after his death his legal heirs were substituted as defendant no. 2 and 2A.

27. At the time of argument of the case, it was informed to this Court that during the pendency of the suit, the defendant no. 1 also passed away though there is no documents with respect to the death of the defendant no.1 but in other Company proceeding which was pending before this Court, the date of death of the defendant no. 1 was recorded

as 16th March 2016 and accordingly by an order dated 12th December, 2023, this Court has recorded the death of the defendant no.1.

28. Considering the evidence of the P.W.1, documents exhibited during the evidence of the plaintiff witness, contents of the plaint and the report of the Receiver, this Court finds that the deceased defendant no.1 had illegally permitted the defendant no. 2 to occupy the residential premises which was allotted by the plaintiff to the defendant no. 1 for his official residence and even after the termination of the service of the defendant no. 1, neither the defendant no. 1 nor the defendant no. 2 or his legal heirs have vacated the residential premises and handed over to the plaintiff and have also not paid any monthly rent or the occupational charges to the plaintiff. During the pendency of the suit, defendant no.1 and original defendant no. 2 have expired. The occupation of the defendant nos. 1, 2 and legal heirs of the defendant no. 2 in the suit premises is illegal and without any authority and thus the defendants have no right to retain the suit property further. From the report of the Receiver, it is also proved that since 5th November, 2003, the suit premises is in actual and physical possession of the Receiver and keys of the suit premises is with the Receiver till date and the defendants are not in actual physical possession of the premises.

29. In view of the above, this Court finds that the plaintiff is entitled to get decree for recovery of vacant and peaceful possession of the flat being flat Nos. 33 and 34, Park Street, Calcutta. As per the report of the Receiver appointed by this Court, the Receiver has taken actual and

physical possession of the suit premises on 5th November, 2003 and the flat is under lock and key and till date the key of the flat is with the Receiver. The Receiver is directed to hand over the key and peaceful physical possession of the flat Nos. 33 and 34, Park Street to the plaintiff within two weeks.

- 30.** As regard the mesne profits as claimed by the plaintiff, this Court is of the view, an enquiry is to be conducted to ascertain the mesne profit with respect to flat Nos. 33 and 34, Park Street, Calcutta by appointing an Special Referee. Shri Gautam Banerjee, Advocate, Bar Association, Room No. 4, Mobile No. 8617588624, is appointed a Special Referee to conduct an enquiry to ascertain the mesne profit. The remuneration of the Special Referee is fixed Rs. 3,00,000/- Initially the plaintiff shall pay the remuneration to the Special Referee and the plaintiff is entitled to recover the same from the defendants. The Special Referee is directed to complete the enquiry within four months from the date of receipt of this order and to submit report by 20th June, 2024.
- 31.** It is found that since 5th November, 2003, the Receiver has kept the Suit premises under lock and key and till date the key is with the Receiver and thus the plaintiff is directed to pay Rs. 1,00,000/- as remuneration to the Receiver upon handing over the peaceful possession of the suit premises along with the key. After handing over key and possession of the suit flat by the Receiver to the plaintiff, the Receiver shall be treated as discharged.

(Krishna Rao, J.)