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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1625 OF 2015
IN
SUIT NO. 499 OF 2015

Alliance Restaurant and Bar Private Limited .. Applicant

In the matter between

Alliance Restaurant and Bar Private Limited ... Plaintiff

Vs.

Sanjay Puri ... Defendant

Mr.M.M.Vashi, Senior Counsel a/w Ms.Aparna Devkar i/b M/s.M.PVashi & Associates, for the Plaintiff.

Ms.Rajani Iyer, Senior Counsel a/w Mr.Paresh Shah i/b M/s.Shah & Sanghavi, for the Defendant.

CORAM : A.K.MENON, J.

DATE : 15th OCTOBER, 2015

P.C. :

. This Notice of Motion seeks an order of injunction restraining the defendant from alienating, encumbering, creating third party rights in the suit property which is described in the leave and license agreement, being portion of a structure bearing No. 1B consisting of part ground floor and part first floor in aggregate admeasuring 3814 sq.feet of carpet area together with open space in front of the structure on the ground floor admeasuring approximately 600 sq.feet situate lying and being at Plot No. 1A(part), Plot No.3 of Mahalaxmi Flats Estates of Municipal

Corporation of Greater Mumbai bearing New survey No. 2728 (part) and C.S.No. 689. The defendant has filed an affidavit in reply to which a rejoinder is filed by the plaintiff. Ms.Iyer learned Senior Counsel appearing for the defendant has proceeded on the basis of the denials of the contents of the affidavit in rejoinder.

2. It is the case of the plaintiff that the plaintiff and defendant entered into the leave and license agreement dated 25/03/2011 copy of which appears at Exhibit 'A' to the plaint whereunder the defendant as a licensor granted license to the plaintiff as a licensee to use and occupy the suit premises for running a restaurant, temporarily, for a period of 60 months. It was inter alia agreed between the parties that there would be lock in period of 36 months commencing from 09/04/2012 and ending on 08/04/2015 during which neither party could terminate the agreement.

3. Mr.Vashi, learned Senior Counsel appearing on behalf of the plaintiff submitted that apart from the leave and license agreement, the parties also executed separate agreement dated 17/04/2012 whereunder the defendant granted to the plaintiff the right to use and enjoy certain furniture, fixtures and fittings as set out in annexure 'B' to the agreement. According to Mr.Vashi, what was agreed between the parties was not in order to run the restaurant business. The premises would require substantial refurbishing and the defendant being an Architect by profession had

offered to carry out the work at his cost. According to Mr.Vashi and as set out in the plaint, the obligation to carry out refurbishing and renovation work of the interior of the premises was that of the defendant and defendant has failed and neglected to do so. Mr.Vashi submitted that the plaintiff has carried out the work of renovation and refurbishing and has spent an amount of Rs.2.56 crores for making the premises usable for the purposes of the plaintiffs business.

4. Mr.Vashi further submitted that although it was the defendant's obligation to renovate the premises as aforesaid, the defendant failed and neglected to reimburse the plaintiff of the cost of such renovation. This according to Mr.Vashi is a breach of obligation under the amenities agreement which was executed in respect of the same premises albeit on a later date. He submitted that the amenities agreement contains an annexure which detailed the nature of the amenities to be provided by the defendant. The perusal of the said annexure reveals that the amenities/facilities to be provided are i) all fixed furniture ii) false ceiling and air conditioning ducts iii) all loose furniture iv) all electrical wiring v) all lights. These are the amenities which according to the plaintiff are to be provided in the suit premises in order to enable the plaintiff to utilize the same. He submitted that in view of the fact that the defendant was in breach of his obligation to provide the amenities as

agreed and the plaintiff having been spent the amount of Rs.3,11,68,331/-.

5. In the particulars of claim in the plaint, the plaintiff has detailed the manner in which it claims to have spent the amount for amenities. According to the plaintiff, an amount of Rs.4,75,88,916/- is now due to the plaintiff from the defendant. However, in the Motion, the plaintiff has now claimed a charge to the extent of Rs.3,11,68,331/- and further interest thereon.

6. Ms. Iyer, the learned Senior Counsel appearing on behalf of the defendant submitted that the plaintiff's case is entirely misconceived inasmuch as the leave and license agreement although executed in March 2011, in fact took effect from April 2012 and even during the tenure of the business, the plaintiff had been a defaulter and had failed to honour the various payments of license fee due from time to time. She further submitted that plaintiff's contention that the defendant was liable to refurbish the premises was entirely incorrect inasmuch as the amenities agreement on which the plaintiff itself relies in its operative clause (1) sets out as follows:

“The Licensor hereby grants unto the Licensees, the License, right to the use and enjoyment of the furniture, fixtures and fittings etc.set out in Annexure B hereto, and hereinafter collectively referred to as the “Said Amenities” installed in the said premises, at the compensation of Rs.5,00,000/- (Rupees Five Lakhs only) per month for a period of 36 months commencing from 09th April 2012 to 8th April 2015.”

7. A specific reference has been made in the aforesaid clause to the amenities to be provided as per annexure 'B' which we have already seen the contains list of basic facilities which the defendant had agreed to provide.

8. On a query from the Court to the learned Counsel for the plaintiff as to whether the agreement between the parties to refurbish the premises to the extent claimed was recorded in writing, he conceded that there is no written record of any such understanding either in the two agreements executed between the parties or in any correspondence between the parties. It is his case, however, in the plaint that the underlying understanding was that the defendant would in fact make the premises habitable for use as a restaurant and as such, defendant was bound to carry out the refurbishing work which he failed to do so. On account of the failure on the part of the defendant, according to Mr.Vashi the plaintiff was entitled to carry out the work which he did.

9. Ms.Iyer has also seriously disputed the quantum of the amounts said to have been spent by the plaintiff for the aforesaid refurbishment. This is a matter which cannot be decided and/or gone into at this stage. At present, what the Court only considering is the prayer in the Notice of Motion which reads as follows :

a) Pending the hearing and final disposal of the suit, the defendant be restrained by and order and injunction of this Hon'ble Court from alienating encumbering or creating third

party rights in favour of any third party till the defendant refunds and/or reimbursement and/or give adjustment for the said amounts of Rs.3,11,68,331/- with 24% interest thereon.”

10. In the absence of any written contract/agreement between the parties which entitled the plaintiff to seek reimbursement or refund or adjustment or to claim any lien or charge against the property in respect of the amount allegedly spent by the plaintiff, I do not find how the plaintiff can seek or obtain any relief against the defendant in respect of the property which admittedly belongs to the defendant. The affidavit in support of the Notice of Motion also does not contain any averment which supports the contention of the plaintiff or any averment conveying an apprehension that plaintiff is about to dispose of or alienate or create third party interest in the suit property. In any event, as a matter of fact, the plaintiff has failed to make out any case that he is entitled to claim any lien or charge in respect of the amount that is now claimed in the Suit against the suit property. In the circumstance, the present Notice of Motion fails. Hence, I pass the following order :

- i) Notice of Motion is dismissed.
- ii) There will be no order as to costs.

(A.K.MENON, J.)