

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 363 OF 2017

M/s Dazzler Confectionery Co. Pvt. Ltd.
Rep. by it's Director, Mr. Francisco Mayoral ... Petitioner

Versus

M/s Sat Kabir Logistics Pvt. Ltd., Rep. by
it's Director, Mr. Ravindra Singh Suhag ... Respondent

Shri Ashwin D. Bhobe, Advocate for the Petitioner.

Shri Sahish Mahambrey, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 10th OCTOBER, 2017.

ORAL ORDER:

The challenge in this petition under Article 227 of the Constitution of India is to the order dated 08.03.2017, passed by the learned Senior Civil Judge at Margao in Special Civil Suit No. 63/16/II. By the impugned order, application filed by the respondent under Order XV-A of the Code of Civil Procedure (CPC, for short) has been allowed, directing the petitioner to deposit an amount of Rs.1,40,15,895/- alongwith arrears of rent from the date of filing the application, till the passing of the order.

2. The brief facts are that the respondent is a lessee of the Goa Industrial Development Corporation (GIDC) (original defendant no. 2 since deleted). The petitioner is a sub lessee of the respondent in respect of the subject building/shed as per the Memorandum of Understanding (MOU) dated 15.01.2013, which has subsequently been modified on 25.03.2015.

3. Clause 6 of the MOU speaks about the rent and the schedule of it's payment. As per Clause 10(b) of the MOU, the petitioner has undertaken to pay the rent regularly and punctually. The said agreement was subject to obtaining of necessary approvals of the GIDC. As per Clause 15 of the MOU, if the respondent fails to obtain necessary approvals of the GIDC for the sub lease, the agreement was to be terminated forthwith and the respondent was liable to return all money paid to them, if any, under the agreement.

4. According to the petitioner, the respondent started interfering with the possession of the premises, which led the petitioner to file the aforesaid suit for injunction, restraining the respondent from evicting the petitioner from the subject building/shed and restraining the respondent or anybody on his behalf from interfering with the said premises.

5. The respondent filed a written statement and raised a counter claim seeking eviction and recovery of arrears of rent. The respondent filed an application under Order XV-A of CPC, for a direction to the petitioner to deposit an amount of Rs.1,40,15,895/- as the amount due and payable till April, 2016 and the further amounts till date.

6. The petitioner filed a reply and resisted the application. It was contended that the respondent has failed to adhere to the conditions of the agreement dated 25.03.2015, in particular about obtaining the approval from the GIDC. It was further contended that an inquiry is necessary in the matter of payment of rent.

7. The learned Trial Court by the impugned order has directed the petitioner to pay the aforesaid amount and to deposit the subsequent arrears from the date of filing of the application till the passing of the order. It is this order which is subject matter of challenge in this petition.

8. I have heard Shri Bhobe, the learned Counsel for the petitioner and Shri Mahambrey, the learned Counsel for the

respondent. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned order passed.

9. It is submitted by Shri Bhobe, the learned Counsel for the petitioner that the MOU dated 15.01.2013 as modified by the agreement dated 25.03.2015 was subject to the respondent obtaining the necessary approval of the GIDC, which has not been done. It is submitted that as a result of this, the petitioner is unable to use the premises profitably and for the purpose for which the petitioner has obtained the premises on sub lease. It is next submitted that the respondent is also interfering with the user of the premises by the petitioner, which compelled the petitioner to file the civil suit. It is submitted that as such, the respondent is not entitled to a direction under Order XV-A of CPC. It is submitted that there is a prayer for mesne profits made by the respondent in the counter claim and thus, the interest of the respondent, if any, is protected.

10. The learned Counsel for the petitioner, on instructions, states that the petitioner is ready and willing to hand over/surrender the possession of the building/shed on the said plot, subject to the petitioner being permitted to

remove/shift the machinery therein. It is submitted that the respondent is in fact creating obstruction in surrendering the possession of the building/plot.

11. On the contrary, it is submitted by Shri Mahambrey, the learned Counsel for the respondent that the petitioner has agreed to pay the arrears as also the liability to pay the sub lease fees of Rs.16,50,000/-. The learned Counsel has referred to a communication dated 10.10.2015 from the petitioner, in which the petitioner has admitted the total dues from 10.10.2015 to be Rs.85,41,128/- and shown willingness to clear the sum by paying Rs.5 lakhs per month, alongwith the current monthly fees. It is contended that it is the petitioner who has breached the said contract and thus, cannot be heard to say that there is breach of the conditions of the MOU/agreement, by the respondent.

12. I have carefully considered the rival circumstances and the submissions made. Under Order XV-A of CPC, in any suit by a lessor against the lessee for eviction with or without the arrears of rent and future mesne profits, the defendant is required to deposit such amount as the Court may direct on account of arrears up to the date of the order and thereafter, to continue to deposit the rent in each succeeding month, the rent

claimed as the Court may direct. It can thus be seen that all that is required while passing an order under Order XV-A of CPC is that there has to be a suit by a lessor or a licensor against a lessee or a licensee, for eviction, which may be with or without the claim for arrears of rent with future mesne profits. In such a case, the Court can direct the defendant to deposit such amount on account of arrears towards rent or license fees. Normally, where the monthly rent/license fee is admitted, such deposit is directed to be made at the admitted rate of rent/license fees.

13. In the present case, it is not in dispute that the petitioner is in possession of the building/shed on the said plot as a sub lessee of the respondent. The quantum of arrears is also not in dispute. In that view of the matter, no exception can be taken to the order passed by the learned Trial Court, directing payment of such arrears. The dispute regarding compliance with certain conditions of the MOU/agreement, cannot come in the way of the learned Trial Court in directing payment of such arrears. That apart, *prima facie* at this stage, it appears that the petitioner has admitted the total dues till 10.10.2015 of Rs.85,41,128/- (see the letter at page 106 of the compilation), which includes the sub lease fees and the rent. I have carefully gone through the impugned order and I do not find that it suffers

from any infirmity so as to require interference. The petition is without any merits and is accordingly dismissed. The amount deposited before this Court alongwith interest, if any, shall be transferred to the learned Trial Court, which shall pass appropriate orders in accordance with law and in view of the provisions of Order XV-A of CPC. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.

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