

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 434 OF 2018**

1. Mrs. Saloni Subhashchandra Nagzarkar,
w/o late Dr. Subhashchandra Nagzarkar,
major of age, Indian National, Resident
of House No. 401, 1st Palvem,
Chinchinim, Salcete-Goa.
2. Sudaiva Subhashchandra Nagzarkar,
son of late Dr. Subhashchandra
Nagzarkar, major of age, Doctor, Indian
National, Resident of House No. 401, 1st
Palvem, Chinchinim, Salcete-Goa. Petitioners

Versus

Dr. Suyog Samuel Arawattigi, son of Samuel
S. Arawattigi, aged 45 years, Indian
National, residing at House No. 401, Dr.
Nagzarkar Hospital Building, opposite St.
Mary's High School, 1st Palvem, Chinchinim-
Goa. Respondent

Shri S.D. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate
for the Petitioners.

Shri Ashwin D. Bhobe with Ms. Shradha Bhobe, Advocates for
the Respondent.

CORAM : C.V. BHADANG, J.

Reserved on : 27th JUNE 2018

Pronounced on : 5th JULY 2018

JUDGMENT:

Rule made returnable forthwith. The learned Counsel
for the respondent, waives service. Heard finally by consent of
parties.

2. By this petition, the petitioners/defendants are challenging the judgment and order dated 20.03.2018, passed by the learned District Judge at Margao, in Miscellaneous Civil Appeal No. 13/2018. By the impugned judgment, the learned District Judge, while allowing the appeal, has granted temporary injunction in favour of the respondent/plaintiff. As a result of the same, the petitioners have been restrained from dispossessing the respondent or his family members, from the suit hospital or interfering with the activities of the suit hospital, in any manner.

3. The brief facts necessary for the disposal of the petition may be stated thus:

Dr. Subhashchandra Nagzarkar (since deceased) was running Dr. Nagzarkar Hospital at Margao-Canacona road (hereinafter referred to as the suit hospital). Dr. Subhashchandra Nagzarkar met with an accidental death, after which, the suit hospital remained closed for some time. The petitioner no. 1 happens to be the widow, while the petitioner no. 2 is the son of Dr. Subhashchandra Nagzarkar. It appears that some time in August 2004, the petitioner no. 1 published an advertisement in daily "Mid-Day", requiring the interested parties to contact her for the purpose of running the suit hospital. It may be mentioned that at the relevant time, petitioner no. 2 was taking

education and has since obtained M.S. Degree and is a Doctor by profession. The respondent, at the relevant time, was working as a Doctor at a hospital in Mumbai. The respondent showed interest in running the suit hospital as a general hospital. Accordingly, petitioner no. 1 and the respondent entered into an agreement dated 07.10.2004, which was for a period of five years i.e. from 07.10.2004 to 07.10.2009. Undisputedly, another agreement, for a period of five years was executed for further period from 07.10.2009 to 07.10.2014. Thereafter, a third agreement was executed on 12.11.2014, which was for a period of three years commencing from November 2014. According to the petitioners, the third agreement was restricted for a period of three years, looking to the fact that the petitioner no. 2 would complete his medical education and then could run the hospital on his own.

4. According to the respondent, certain conditions in the agreements were not meticulously followed by the parties, while running the suit hospital. Owing to the cordial relationship between the parties, at that time, nobody bothered to look into the issue of failure on the part of the parties to meticulously adhere to the terms of the agreements. In short, according to the respondent, right from the year 2004, till the filing of the

suit, no net profits have been taken or distributed in the manner stated in clause no. 4 of the agreements. Although, clause no. 4, stipulates that the management of the suit hospital is handed over to the respondent, which is subject to overall supervision and control of the petitioner no. 1, the same was never exercised by the petitioner no. 1. Although, clause no. 5 provides that the staff members shall be appointed by the petitioner no. 1, however, the entire staff was appointed and paid by the respondent. In short, according to the respondent, he is independently running the suit hospital, without any participation from the petitioner no. 1. The respondent, in such circumstances, filed the aforesaid suit, *inter alia*, restraining the petitioners from interfering with the activities in the suit hospital.

5. The petitioners filed their written statement and have raised a counterclaim. It is contended that the respondent was a mere manager and thus, cannot be said to be in settled possession, of the suit hospital. After the expiry of the third agreement, by efflux of time, the respondent is a rank trespasser, who is not entitled to any injunction, as the possession of the respondent was on behalf of the petitioners. It was contended that the conduction of the hospital activities by the respondent

after November 2017 are ex facie illegal and violative of proprietary rights of the petitioners. The respondent was liable to hand over the exclusive possession of the suit hospital to the petitioners, after the expiry of the third agreement. However, in para 7 of the written statement, the petitioners have admitted that the agreements were not followed meticulously as pleaded. It was contended that the respondent employed his own staff and did the entire cash collection in respect of the suit hospital. In such circumstances, the petitioners started taking lump sum amount from the respondent, as despite doing huge business, the respondent started manipulating the accounts and started showing losses. It was however denied that the respondent was individually conducting the hospital business, without the intervention of the petitioner no. 1.

6. In para 11 of the written statement, it is denied that the respondent out of his own cost effected repairs and replaced the hospital equipments. It is however contented that the normal wear and tear of the suit hospital was repaired with the help of a loan, for which, the petitioner no. 1 and the respondent were the co-borrowers. The loan has since been cleared from out of the income generated from the suit hospital.

7. In the counterclaim, it is contended that the respondent had been carrying on and running the suit hospital as a manager and in that capacity had engaged staff and had been engaging Doctors and was running the suit hospital. The petitioners have sought a decree for eviction of the respondent from the suit hospital and injunction against him, not to interfere with the hospital business. The petitioners are also seeking a decree against the respondent to pay Rs. 2 lakhs per month from 12.11.2017, till the suit hospital is vacated, as mesne profits and to pay a further sum of Rs.68,000/- per month to the petitioner no. 2 from 03.12.2017, till he takes over the suit hospital.

8. The respondent filed a rejoinder, in which, he has claimed that he is a tenant and thus, cannot be evicted and his possession is protected, he being in settled possession for more than 13 years. It is also contended that there are patients admitted in the hospital and their treatment and surgeries are planned and scheduled and thus, the petitioners cannot interfere or take forcible possession or evict the respondent from the hospital or the residential accommodation provided therein. The respondent sought temporary injunction, as set out in prayer clause (a) of the application for temporary injunction, which was resisted by the petitioners.

9. The learned Trial Court found that the respondent has not demonstrated any of the three conditions necessary for grant of temporary injunction. In short, the learned Trial Court found that the respondent has no authority to continue to be in possession, after the expiry of the third agreement. The learned Trial Court has also noted certain clauses of the agreement dated 12.11.2014, in which, the respondent had agreed and undertaken not to claim any tenancy rights under the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act or any other legislation. The learned Trial Court thus found that there is no *prima facie* case, nor the balance of convenience lies in favour of the respondent. In that view of the matter, the learned Trial Court by an order dated 15.02.2018, dismissed the application. Feeling aggrieved, the respondent challenged the same before the learned District Judge in Miscellaneous Civil Appeal No. 13/2018.

10. The learned District Judge came to the conclusion that a triable issue arises, as to the status and capacity, in which, the respondent is running the hospital. While holding so, the learned District Judge has noted that the parties had admittedly, not adhered to the terms and conditions of the agreements and when the parties had not abided, by the said term, the

agreement/s are sham. In short, according to the learned District Judge, when both the parties clearly admit that the agreements were “not for the purposes of adhering to”, it amounts to no documents in the eyes of law and the same can be considered as sham documents. The learned District Judge found that once, this aspect is clear from the pleadings, it was for the respondent to prove by the oral evidence that the relationship between him and the petitioner no. 1 was “totally on a different context and not as mentioned in the said documents”. This according to the learned District Judge required serious consideration, which can be gone into at the trial. Thus, the learned District Judge by judgment and order dated 20.03.2018, allowed the appeal, granting the application for temporary injunction in terms of prayer clause (a). Feeling aggrieved, the petitioners are before this Court.

11. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioners and Shri Bhobe, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record and the order passed by the learned Trial Court as well as the impugned judgment of the learned District Judge.

12. It is submitted by Shri Lotlikar, the learned Senior Counsel for the petitioners that the various agreements would make it explicit that the respondent was only working as a manager and managing the affairs of the suit hospital, which was closed for some time, due to the death of Dr. Subhashchandra Nagzarkar. It is submitted that mere use of the licensee in the agreement dated 12.11.2014, would not be decisive, as has been held in several decisions of the Supreme Court and the High Courts. It is submitted that the respondent has not pleaded in the plaint that he is a tenant and such an averment was made for the first time in the rejoinder. The learned Senior Counsel pointed out that the rejoinder cannot be the part of the pleadings and there is no pleading that the respondent is a tenant of the suit hospital. It is submitted that the payments made by the respondent, cannot by any stretch of imagination be termed as rent. The learned Senior Counsel has referred to the extracts of the diary maintained (produced at page nos. 166 to 169 of the compilation), in order to submit that the same does not represent uniform payments on fixed dates and thus, cannot be termed as rent. It is submitted that the respondent taking undue advantage of the fact that the petitioner no. 1 was a widow and the petitioner no. 2 was then a minor, started manipulating the accounts and did not adhere to the terms of the agreements. It

is submitted that at any rate, after the expiry of the third agreement, the respondent has no authority to continue in the suit hospital or the residential accommodation provided therein and thus, the Trial Court was right in refusing to grant injunction. It is submitted that the Appellate Court was in error in interfering with the said order. It is submitted that a mere trespasser is not entitled to injunction, against the owner and persons having better title than the plaintiff.

On behalf of the petitioners, reliance is placed on the following decisions:-

- (i) *Delta International Limited Vs. Shyam Sundar Ganeriwalla & Another*, AIR 1999 SC 2607
- (ii) *Suhas Yeshwant Chopde Vs. Sachhidanand D. Purekar*, (1999) 5 SCC 721
- (iii) *Roop Kumar Vs. Mohan Thedani*, AIR 2003 SC 2418
- (iv) *Maria Margarida Sequeira Fernandes & Others Vs. Erasmo Jack de Sequeria (Dead) through LRs.*, AIR 2012 SC 1727
- (v) *Datta Damodar Kakule Vs. Krishna Sridor Pai*, 1989 (2) GLT 44
- (vi) *Shri Madhi Yeshwant Gaude & Others Vs. Shri Yadu Rama Gaude*, 1997 (1) GLT 71
- (vii) *Shri Joao Necessidade Roque Antonio AS & Another Vs. Dr. Vaman Govind Lotlikar & Others (Second Appeal No. 29 of 2005 decided on 21.12.2012).*
- (viii) *Shri Prakash Ganesh Lotlikar Vs. Shro Joel Avelino Noronha (Second Appeal No. 68 of 2009 decided on 28.02.2014).*

13. On the contrary, it is submitted by Shri Bhobe, the learned Counsel for the respondent that the petitioners have admitted that the parties did not strictly adhere to the terms of the agreements. It is submitted that the agreements read as a whole, clearly show that the intention of the parties was to induct the respondent as a tenant of the suit hospital. It is submitted that the respondent was independently managing the affairs of the suit hospital, without the interference of the petitioner no. 1 and the respondent was paying a fixed amount to the petitioner no. 1, towards the same, which is sufficient to show that there was landlord and tenant relationship between the parties in respect of the suit hospital. The learned Counsel submitted that the respondent cannot be branded as a mere trespasser. It is submitted that even otherwise, the petitioners cannot take law into their own hands in dispossessing the respondent from the suit hospital and the residential accommodation provided therein. It is submitted that the cases cited on behalf of the petitioners are distinguishable on facts. It is submitted that it is settled position that even a trespasser, in settled possession, cannot be evicted without due process of law. He pointed out that the respondent is conducting the hospital business, in which, there are indoor patients, whose treatment and surgeries are planned and scheduled and it is in the interest

of the smooth running of the hospital that injunction is granted, so as to avoid any attempt to take forcible possession.

14. I have given my anxious consideration to the rival circumstances and the submissions made.

15. Admittedly, the public notice was issued by the petitioner no. 1, inviting interested persons to run the suit hospital, which was closed for some time, after the death of Dr. Subhashchandra Nagzarkar. It is undisputed that the respondent, who was then working at Mumbai, had shown interest and the parties had entered into first agreement, which is dated 07.10.2004, followed by another agreement dated 09.10.2009, both of which were for a period of five years and a third agreement dated 12.11.2014, which was for a period of three years from November 2014, which expired by efflux of time in November 2017. According to the petitioners, the respondent was a mere manager, while according to the respondent, he was inducted as a tenant and was paying rent. It is true that the specific case of the respondent being a tenant was not set up in the plaint. However, the same finds place in the rejoinder, which is in the nature of a reply to the counterclaim. In a suit where there is a counterclaim, the plaint as well as the rejoinder/reply

filed by the plaintiff to the counterclaim, would together comprise pleadings of the plaintiff. Thus, *prima facie* at this stage, it cannot be accepted that because the plea of the respondent being tenant, is taken in rejoinder (which is filed after the counterclaim was raised), it is not the part of the pleadings. Be that as it may, the issue essentially turns upon the construction of the terms of the various agreements, in context of the circumstances and the conduct of the parties. It would be worthwhile to reproduce the various clauses of the third agreement dated 12.11.2014 as under:

1. *The Manager is provided a family accommodation in the hospital premises till the term is over.*
2. *The Manager shall not practice anywhere else other than in the said hospital and its associated clinics.*
3. *If necessary, the Manager may acquire the services of other specialized medical practitioner and surgeons in the treatment and procedures on the patient admitted in the said hospital at his sole discretion.*
4. *The management of the said hospital is hereby handed over to the Manager today which shall be subject to overall supervision and control of the proprietor.*
5. *All the staff members engaged in the said hospital on nursing side or for office purposes shall be employed on and behalf of the hospital by the proprietor.*

6. *All the collections in the said hospital either by way of room charges, medical fees, treatment charges, machine charges, service charges and whatsoever, either to any medical practitioner or otherwise, shall be received by the office staff appointed by the proprietor in the said hospital for the purpose.*
7. *All the money received in the said hospital shall be taken over by the proprietor all the expenditure in the said hospital such as electricity charges, water charges, municipal taxes, professional taxes, medicines, sanitation, entertainment, visiting doctors charges etc. shall be paid through such collected amount by the proprietor and all such outgoings shall be taken as expenditure in the hospital. The Manager shall have access to such statement(s) of expenditure.*
8. *The accounts of the net profits in the said hospital shall be taken every year ending on 31st March of every year and out of net profits 50% (fifty percent) of the net profit shall be exclusively to the Manager. In addition to 50% the Manager will be paid Rs.15,000/- (Rupees fifteen thousand only) monthly by the proprietor such amount of net profits shall be treated as the consideration payable by the proprietor to the Manager towards his services.*
9. *The Manager shall draw at the end of each month a sum in consultation with the proprietor from the monthly collection as ad-hoc payment.*
10. *After drawing the annual accounts, the proprietor shall immediately pay to the Manager his dues of profits after deducting monthly ad-hoc payments made during the year.*

11. *This agreement does not create any right in favour of the Manager either to the said hospital or to the goodwill of the said hospital.*
12. *The duration of this agreement shall be three (3) years commencing from 1st November 2014, unless the parties hereto extend the same by mutual consent.*
13. *The Manager is granted on the express understanding by the parties that nothing herein shall be deemed to constitute or create a tenancy or a lease or any right or transfer under the provision of Section 15 of the Transfer of Property Act. It is expressly understood and agreed by the parties that a bare licence is hereby granted to the Manager under the provision of Section 52 of the Easements Act is hereby granted to the Manager to enter and make use of the licensed premises for above mentioned hospital.*
14. *The Manager hereby expressly undertakes not to claim any tenancy rights under Goa, Daman and Diu Buildings (Lease, Rent and Eviction center act No. 16) of 1968 or any other legislation.*

16. It may be mentioned that the earlier two agreements only contained clauses 1 to 12. It is only the third and the last agreement, in which, clauses 13 and 14 were added. In clause no. 13 of the agreement, it is stated that a licence is granted to the manager (i.e. the respondent), under the provisions of Section 52 of the Easements Act and the manager had expressly undertaken not to claim any tenancy rights under the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act

or any other legislation. In clause no. 8, the parties have agreed to draw the accounts of the net profits of the hospital, every year ending on 31st March and 50% of the net profits being paid to the manager and Rs.15,000/- per month in addition thereof. The respondent is also provided with family accommodation in the premises and is authorised to acquire services of other medical practitioners and surgeons for the treatment of the patients admitted in the hospital at his sole discretion. Clause 4 specifically mentions that the management of the hospital is handed over to the respondent, albeit, subject to overall supervision and control of the petitioner no. 1.

Prima facie, it appears that had the respondent been a mere manager (which would envisage the relationship as master and servant), there was no occasion to share 50% of the net profits. Further, *prima facie* it appears that during the subsistence of the various agreements, there was no medical expert available in the family of the petitioners and thus, the management of the hospital, at least, the professional/medical part of it, was not possible to be undertaken by the petitioner no. 1 and thus, was left to the sole discretion of the respondent.

17. That apart, it is an admitted position that the agreements were not followed meticulously as pleaded, though,

the petitioners have claimed that this was in view of the fact that the respondent took undue advantage of the helpless position of the petitioner no. 1. *Prima facie*, it appears that notwithstanding such alleged acts on the part of the petitioners, there were three successive agreements entered into by the parties. As noticed earlier, in para 11 of the written statement, the petitioners have claimed that the repairs of the suit hospital were carried out by incurring huge loans, for which the petitioner no. 1 and the respondent were co-borrowers. *Prima facie*, it appears that had the respondent been a mere manager, there was no occasion to obtain a joint loan, in the name of the petitioner no. 1 and the respondent. There are other circumstances such as the periodic payments of certain amounts by the respondent to the petitioner no. 1, which are evidenced in the form of diary (which entries are at pages 166 to 169 of the compilation). It is true that the amounts are not uniform. However, looking to the overall circumstances and the respective claims made by the parties, in my considered view, the learned District Judge is right in holding that a triable issue arises in the matter.

18. The Hon'ble Supreme Court in the case of **Delta International Limited** (supra) has *inter alia* held that in order to find out the nature of the document and whether, it creates a

lease or a licence, the real test is to find out “the intention of the parties”, keeping in mind that the cases where exclusive possession is given, the line between lease and licence is very thin. It is further held that the intention of the parties is to be gathered from the document itself, which is to be gathered from the words used in the document, except where, it is alleged and proved that the document is a camouflage. If the terms of the agreement and the documents are not clear, the surrounding circumstances and the conduct of the parties are also to be borne in mind for ascertaining the real relationship between the parties.

19. In the present case, as noticed earlier, it is a common ground that various stipulations in the agreements were not strictly adhered to and there are surrounding circumstances and the conduct of the parties, which indicate that the nature of the relationship may not be strictly governed by the terms of the agreement and therefore, the same needs to be inquired into at the trial. In order to demonstrate *prima facie* case for grant of injunction, the plaintiff should show that he is in possession of the suit property, which possession is relatable to some status, such as, an owner, tenant or a licensee etc. Thus, it is necessary for the Court to examine whether, the person claiming injunction

has “title of title to remain in possession” as has been held by this Court in the case of **Datta Damodar Kakule** (supra).

20. The respondent is admittedly running and is in possession of the suit hospital for more than 13 years. This would be evident from the fact that the petitioners are seeking a decree of eviction and possession against the respondent in their counterclaim. While the respondent claims that he is a tenant, the petitioners claim that the respondent was a mere manager. The agreements recite that he is a licensee. Thus, at the cost of repetition, it needs to be emphasized that the matter needs consideration, which can be done at the trial of the suit. I, thus, find that the learned District Judge is right in holding that the respondent has established a *prima facie* case for grant of temporary injunction. It is well settled that even a trespasser cannot be evicted, otherwise in due course of law.

21. Admittedly, the respondent is provided with a residential accommodation in the suit hospital and in the event if, there is interference with the activities in the suit hospital or the residential accommodation of the respondent, he would per se suffer irreparable loss. It is claimed that there are indoor patients in the suit hospital, whose treatment and surgeries are

planned and scheduled. Thus, any interference with the hospital activities is bound to result in the disruption of the hospital activities and would also adversely affect the patients. I, therefore, find that the balance of convenience lies in favour of the respondent, for grant of the relief of temporary injunction.

22. I would now propose to briefly deal with the cases cited on behalf of the petitioners. At the outset, it may be mentioned that there cannot be any dispute about the principles laid down in the various authorities. However, I find that the cases cited turned on their own facts. For instance, in the case of **Madhi Gaude** (supra), admittedly, the suit shed was an illegal construction, the demolition of which was ordered by the Village Panchayat. The respondent had failed to produce any license for construction of the suit shed, which admittedly was an illegal construction. It was in these circumstances found that the suit shed cannot be protected under the garb of an injunction against the appellants.

I have already referred to the case of **Delta International Limited** (supra) and **Datta Damodar Kakule** (supra).

In the case of **Suhas Yeshwant Chopde** (supra), the Hon'ble Supreme Court found on interpretation of the agreement

dated 24.03.1984 that in substance, it was an agreement of sale of flat and Rs.40,000/- was to be paid as security deposit.

The case of **Roop Kumar** (supra) involved a plea of sub-tenancy. It was held that sub-tenancy in favour of a third person is illegal and cannot be enforced even if there is an agreement. In my humble view, the case is clearly distinguishable on facts.

23. In the case of **Joao Necessidade Roque Antonio** (supra), the question in a Second Appeal before this Court was whether, the document titled as leave and licence agreement dated 04.02.1986 was rightly construed by the Appellate Court as a document of lease. This Court after noticing the judgment in the case of **Suhas Yeshwant Chopde** (supra) and **Delta International Limited** (supra) and after construing the various clauses of the agreement found that it was the intention of the parties, while entering into the agreement, to create a licence and not lease, in favour of the defendant. That case, arose after a full fledged trial of the suit and para 36 of the judgment would make it clear that on the basis of oral and documentary evidence led and having looked to the terms of the agreement, it was held that, the intention of the parties was to create a licence and not a lease.

Similarly, in the case of **Prakash Ganesh Lotlikar** (supra), there was a second appeal before this Court, in which, the question was whether, the Appellate Court, on proper reading of the agreement dated 01.03.1977, was justified in coming to the conclusion that the respondent was the lessee of the suit property. This case also turned on its own facts and it arose after a full fledged trial.

24. Lastly, in the case of **Maria Margarida Sequeira Fernandes** (supra), there was a suit under Section 6 of the Specific Relief Act, in which, the defendant, who was the caretaker of the suit premises, was sought to be evicted. In para 101 of the judgment, the Supreme Court has *inter alia* held that the caretaker, watchman or servant cannot acquire interest in the property, irrespective of his long possession and such, caretaker or servant has to give possession forthwith on demand. In all these cases the respondent was a trespasser. Even in the case of **Maria Margarida Sequeira Fernandes** (supra), in para 80, the Supreme Court has held that it is a settled principle of law that no one can take law in its hands and even a trespasser in settled possession cannot be dispossessed without recourse to a legal remedy.

25. Although, I have held that the learned District Judge was right in coming to the conclusion that this is a case for grant of temporary injunction, the prayer clause in the application for temporary injunction needs to be adverted to. The learned District Judge has granted the application in terms of prayer clause (a), which reads thus:

“(a) Pending disposal of the suit an order of temporary injunction be passed and thereby the defendants their family members agents, servants and all persons claiming under defendants be permanently restrained from in any manner whatsoever (i) dispossessing plaintiff and or his family of the suit hospital described in para 1 of the plaint and or (ii) interfering with suit hospital and or (iii) interfering with activities of plaintiff in suit hospital and or (iv) disconnecting and or attempting to disconnect electricity and or water connections of suit hospital and or (v) disturbing plaintiff's peaceful possession of suit hospital and or (vi) creating any hurdles to plaintiff as also patients for entering and or exiting from the suit hospital.”

(Emphasis supplied)

26. Firstly, the prayer clause is not properly and happily worded, when it seeks permanent injunction (which should have been temporary injunction), at an interim stage. Secondly, such an injunction can only be granted, until the respondent is evicted in due course of law and cannot be a blanket injunction. Thirdly,

I find it would be necessary to mould the reliefs and balance equities, while granting such injunction. It has come on record that the respondent was making some periodic payments. In para 12 of the plaint, it has come on record that the plaintiff had paid Rs.80,000/-, which according to him was paid by way of rent. In my considered view, the grant of injunction should be subject to a condition of payment/deposit of certain amount by the respondent, before the Trial Court every month. On overall consideration, I find that the respondent can be directed to deposit an amount of Rs.75,000/- per month, before the Trial Court, during the pendency of the suit/subsistence of the order of injunction. Such a deposit would be made on or before 10th of each English calendar month.

27. In the result, the following order is passed:-

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order is modified. The petitioners/defendants are restrained, during the pendency of the suit, from dispossessing the respondent/plaintiff or his family, from the suit hospital or interfering with the activities of the suit hospital, in any manner, otherwise than in due course of law.

- (iii) This shall be subject to the condition that the respondent deposits Rs.75,000/- per month, before the learned Trial Court.
- (iv) The first of such deposit for the month of July 2018, shall be made on or before 10th August 2018.
- (v) The subsequent deposits from August 2018, onwards shall be made on or before the 10th of the succeeding calendar month.
- (vi) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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