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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12194/2018 and CM APPL. 47303/2018
INDIA TOURISM DEVELOPMENT CORPORATION LTD.

..... Petitioner

Through: Mr.Anish Chawla and Ms.Ayushi
Aggarwal, Advocates

versus

M/S PERFORMANCE MOTORS PVT. LTD.

Respondent

Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **14.11.2018**

The petitioner assails the impugned order dated 16.7.2018 of the learned Additional District Judge-03 in PPA No.27/18 whereby on a fresh appeal having been filed by the appellant thereof arrayed as respondent to the present appeal, which was filed under Section 9 of the Public Premises Act, 1971 against the order dated 26.6.2018 in case No. EO/1310/2014/Samrat of the Estate Officer of the India Tourism Development Corporation Limited which order was passed under Sub-Section (2A) (1) and of Section 7 of the Public Premises Act, 1971, “the appellant of the said appeal is arrayed as respondent to the present petition and has been declared as an unauthorized occupant after 31.01.2009 and accordingly in view of the Order dated 17.10.2013, it was directed by the Estate Officer to the effect:

“This Forum directs the Respondent to pay the damages w.e.f. 18.10.2013 with the rate of Rs.210/- per sq. ft as applicable in 01.02.2009 with enhancement of 10% every year. It is clarified that

the damages would start from 18.10.2013 though the rate of 210/- per sq. ft with 10% escalation every year would apply and the rate of damages are arrived after 10% increase from 01.02.2009 as on 18.10.2013 would be payable till the date of handing back the possession i.e. 20.6.2015. From the period from 01.02.2009 to 17.10.2013, the license fee shall be payable as per the License Deed 30.5.2006.

Period	Rate	Area Sq. ft.	Damage per month
18.10.2013 to 31.01.2014	307.46	7521.24	2312480
1.02.2014 to 31.01.2015	338.20	7521.24	2543683
01.02.2015 to 20.6.2015	372.02	7521.24	2798052

The interest on the above amounts shall be payable as per Clause 41 of the License Deed. However, the rate of interest shall be @ 12% p.a. to be calculated as per Clause 41 of the License Deed.”

The petitioner is aggrieved by the factum that vide the impugned order dated 16.7.2018, the learned Trial Court on the fresh appeal having been instituted, having heard arguments on an application under Section 151 CPC seeking stay of the impugned order of the Estate Officer dated 26.6.2018 in the said appeal, granted the stay of the operation of the said order and issued notice of the appeal along with the notice of the application seeking condonation of delay to the respondent to that appeal, i.e., the present petitioner, returnable for the date 15.11.2018.

It has been submitted on behalf of the petitioner that there were no reasons whatsoever in the impugned order of the learned Trial Court dated 16.7.2018 and that there was no urgency

whatsoever, that warranted issuance of such an *ex parte* order dated 16.7.2018.

Inter alia, reliance has been placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Orissa in ***Subhadra Singh and another V. Union of India and Others***: AIR 1991 Orissa 328 to contend that ordinarily an *ex parte* order of interim stay ought not to be granted with a specific reference to observations in the said verdict in paragraph 4 thereof which reads to the effect:

4. There is right of appeal against the order of eviction under the Act and an appellant is to be heard both on fact and law to examine correctness of the order of eviction. However, appellant has no right to get an order of ex parte interim stay. Grant of stay during pendency of appeal is ancillary power. Unless there would be irreparable injury to the appellant who applies for stay, no exparte order of interim stay shall normally be passed. Where on the strength of the order, appellant takes steps or moves statutory authority that the appeal itself would become infructuous unless an ex parte interim order is passed, notice in the matter of stay should ordinarily be issued. Where ex parte interim order is passed, the order should contain clear reason why the order was thought to be necessary. Unless this principle is adopted, an appellant getting ex parte interim order in his favour would not get ready for the appeal or the interim matter to be heard on some ground or other to enjoy benefit of the interim order as long as possible. By this process the person who gets the advantage and the person

against whom the order is passed lose confidence in the adjudicatory process both having the feeling that the adjudicatory authority does not apply judicial mind while passing the order. Lack of confidence in the adjudicatory process makes it unacceptable to the society creating unrest developing attitude to take law in one's own hand. Mohanty is correct in his submission that ex parte interim order of stay was uncalled for in this case when the process of eviction is bound to take some time under the Act.

A perusal of the petition that has been filed and on a perusal of the order of the Estate Officer impugned in Public Premises Act, 1971 dated 26/6/2018 indicates that the respondent to the present petition has already handed over the possession of the public premises to the present petitioner. The matter involved in the case is apparently only in relation to the damages imposed by the Estate Office in terms of order dated 26.6.2018 of the Estate Officer under Section 7 of the Public Premises Act, 1971 and, it is undoubtedly open to the applicant/petitioner herein to seek redressal against the impugned order of the learned Trial Court dated 16..7.2018 vide which there was a stay of the operation of the order dated 26.6.2018. The petitioner may move an application seeking the setting aside of the stay of the operation of the order of Estate officer dated 26.6.2018 and in the event of such application being filed, the learned Trial Court is directed to dispose of the same within a period of seven days of the receipt of the said application with reasons therefor. The petition calls for no further action and is disposed of.

A copy of this order be sent to the learned Trial Court.

Copy of the order be given *Dasti* under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

NOVEMBER 14, 2018/SV