

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 4th December, 2018

+ FAO(OS) 183/2018, CM Nos. 50691-50692/2018

C J INTERNATIONAL HOTELS LTD & ANR Appellants

Through: Mr. A.S. Chandhiok, Sr. Adv. and
Mr. Vivek Tankha, Sr. Adv. with
Mr. H.S. Chandhioke, Mr. Shiv Sapra,
Ms. Neha Mehta, Ms. Pallavi Shali,
Ms. Sweta Kakkad, Ms. Shruti
Sharma, Mr. Harneet and Mr. Prashant
T., Advs.

Versus

NEW DELHI MUNICIPAL COUNCIL & ORS Respondents

Through: Mr. Sanjay Jain, Sr. Adv. with
Mr. Yoginder Handoo, Mr. Akshay
Makhija, Ms. Rhea Verma and
Mr. Sneh Suman, Advs. for R1.
Mr. Manjan Mishra, Adv. for R2.
Mr. Rajesh Gogna, CGSC with Mr.
Perala Upendra Sai, Adv. for R3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM.No. 50692/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

FAO(OS) 183/2018

1. This appeal has been filed by the appellants challenging the order of the learned Single Judge dated 20th November, 2018 whereby the learned Single Judge has passed the following order:

“1. The defendants have filed I.A. 2917/2017 under Order XXXIX Rule 4 of Code of Civil Procedure for modification/clarification of interim order dated 18th May, 2001 to initiate the proceedings against the plaintiff under the Public Premises Act.

2. The defendants have filed I.A. 8455/2017 under Order XXXIX Rule 2A of Code of Civil Procedure for holding the plaintiff guilty for disobedience and violation of the order dated 18th May, 2001 and for attaching the property of the plaintiffs and detaining their Director in civil prison.

3. The pleadings in both the applications are complete and both the applications are listed for hearing today.

4. Learned counsels for both the parties submit that FAO (OS) Nos. 262/2017, 324/2017 and 12/2018 against the order of this Court dismissing the plaintiff's amendment application are listed before Division Bench today and they mentioned the matter before the Division Bench and the Division Bench has requested this Court to adjourn the matter after 04th December, 2018.

5. List these matters for hearing on 06th December, 2018 at 02:30 PM.

6. This Court has perused the record of this case and this case appears to be squarely covered by two judgments of this Court in NDMC v. Prominent Hotel Limited 222 (2015) DLT 706 and Airport Authority of India v. Hotel Leela Ventures 231

(2016) DLT 457. The counsels for the parties shall make submissions of the applicability of these two judgments on the next date of hearing.

7. Both the parties are directed to file brief note of submissions not exceeding three pages along with copies of relevant pages of relevant documents already on record and judgments on which they wish to rely, with relevant portion duly highlighted for the convenience of this Court within ten days.

8. Learned senior counsel for the plaintiff submits that the plaintiffs have paid the entire outstanding amount in terms of the interim orders of this Court which is disputed by counsel for NDMC.

9. All the Directors of the plaintiff are directed to file an affidavit to place on record the amounts paid by them till date within one week. NDMC is also directed to place on record the amount paid by the plaintiff, the computation of amount payable by the plaintiff as well as the computation of outstanding amount within one week.

10. The Investigating Officer of CBI who is investigating the matter in terms of letter dated 28th August, 2015 of Ministry of Home Affairs is directed to remain present in Court along with the status report and the complete relevant record on the next date of hearing.

11. All the Directors of the plaintiffs' shall remain present in Court on the next date of hearing.

12. The Director (Estate) of the NDMC shall remain present in Court on the next date of hearing along with complete relevant record.

13. Copy of this order be sent to Mr. Nikhil Goel, learned Standing Counsel for CBI. "

2. It is the submission of Mr. A.S. Chandhiok, learned Sr. Counsel appearing for the appellant that the Suit in which the order has been passed was filed in the year 2000 *inter alia* seeking Specific Performance and Permanent Injunction against the respondents. According to him, when this Court is seized of three appeals being FAO(OS) 262/2017, 324/2017 and 12/2018 wherein the parties have challenged the orders passed by the learned Single Judge and when the matter was listed on 20th November, 2018 on a mentioning before this Court, this Court had requested the learned Single Judge to adjourn the matter to a date after 4th December, 2018, the learned Single Judge adjourned the matter to 6th December, 2018 but by giving directions qua personal appearance of the officers of the appellant as well as respondent no.1. It is his submission that the learned Single Judge has proceeded with the said Suit which defeats the very purpose of the directions given by this court on 20th November, 2018. It is also his submission that the learned Single Judge in passing the impugned order has also failed to appreciate that the learned Single Judge is not vested with the pecuniary jurisdiction to try the said suit to the extent that the appellants have already challenged the issue before this court in

FAO(OS) 324/2017. In substance, it is his submission that the learned Single Judge ought not to have proceeded with the said Suit.

3. Mr. Sanjay Jain, learned Sr. Counsel appearing for the respondent no.1 would submit that the order of the learned Single Judge does not amount to proceeding with the said Suit. According to him, the learned Single Judge in deference to the order passed by this Court had adjourned the matter to 6th December, 2018. Vide Para 6 of the said order, he has only directed the counsels for the parties to make their submissions about the applicability of two judgments on the next date of hearing. Even the direction to file brief note of submissions is for convenience / and to help the Court to appreciate the arguments advanced by the parties. Even the directions in Para 9 onwards is in view of the submission made by the counsel for the appellant in Para 8, that the appellant has paid the entire outstanding amount in terms of the interim order passed by the learned Single Judge.

4. Having heard the learned counsel for the parties, it is an admitted position that the issues in the appeals are also with regard to pecuniary jurisdiction of the learned Single Judge to entertain the Suit as well as the amendments sought by the appellants, which

surely have a bearing on the suit. So, we are of the view that in the given circumstance appropriate shall be to stay the proceedings before the learned Single Judge in CS(OS) 610/2000 till the decision in FAO(OS) 262/2017, 324/2017 and 12/2018. Ordered accordingly.

Appeal stands disposed of.

CM. No. 50691/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

DECEMBER 04, 2018/jg