

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

RESERVED ON : 11th DECEMBER, 2017

DECIDED ON : 3rd JANUARY, 2018

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FAO 462/2017 & CM 42730/17

BALA RANI Appellant

Through : Mr.Brijesh K.Gupta, Advocate.

versus

M/S. MGF DEVELOPMENTS LTD & ORS..... Respondents

Through : Mr.Akhil Sachar, Advocate with

Mr.Yudhister Singh, Advocate for R1/MGF.

**Ms.Vibha Mahajan Seth, Advocate for R3/DMRC along
with Mr.Puneet Garg, ALO.**

**Mr.Gautam Narayan, Advocate with Mr.R.A.Iyer &
Mr.Vikram Puri, Advocates for R4.**

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present appeal has been preferred by the appellant – Bala Rani to challenge the legality and correctness of an order dated 14.11.2017 of learned Addl. District Judge whereby her application under Order XXXIX Rule 1 & 2 read with Section 151 CPC was dismissed. The appeal is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. It is not in dispute that the suit premises was handed over by respondents No.1 & 2 (hereinafter ‘respondents’) to the appellant by a licence agreement dated 22.01.2011 for running a hair saloon under the brand name of “Habibs” or any other national reputed brand on a monthly licence fee of ₹80,017/-. This agreement

was executed by the respondents as Sub licencors under respondent No.3 i.e. The Delhi Metro Rail Corp. Ltd. by virtue of an agreement dated 02.09.2004 (Annexure I, Page-165). By this agreement dated 02.09.2004 between the respondents and respondent No.3, a concession agreement was executed to develop, finance, construct, commission, operate, manage and maintain the project and licence the use of the built-up spaces and facilities during the period of the agreement. The 'termination date' as agreed to in the said concession agreement was 'end of the concession period of 12 years from the commencement date or date of sooner determination of the concession period in accordance with the terms of this agreement whichever is earlier'.

3. Learned counsel for the appellant urged that the suit premises was let out by the respondents being agent of respondent No.3 to the appellant for a period of 9 calendar years (3+3+3). At the time of taking the premises on rent, the appellant had apprised the respondents that her business in the suit premises would require investment of huge amount of money and the gestation period would be 5 – 7 years. With that understanding and considering the nature of the business, the respondents granted occupancy rights / lease / licence for holding and enjoying the suit premises for a period of 9 years without any unlawful interruption for running the business of hair saloon; the appellant was permitted to carry out interior works for the smooth functioning of the business. She was also granted the right of renewal of the lease deed beyond the period of 9 years on enhancement of security deposits by 15% over the existing one. It

was further urged that at the time of execution of the agreement dated 22.01.2011 the respondents did not reserve any right to get the suit premises vacated before 9 years. The intention of the parties was that 'lease' was in perpetuity on renewal basis. Acting on the representation of the respondents, the appellant had invested a sum of ₹15 lacs – ₹20 lacs in raising permanent structure in the suit premises. The appellant has since complied with the terms and conditions of the agreement. The respondents, however, vide letter dated 22.06.2017 informed her to vacate the suit premises as the agreement dated 02.09.2004 executed with respondent No.3 for development of project and management of commercial facilities in the area had expired by efflux of time. The appellant was never apprised about the terms and conditions of the said agreement dated 02.09.2004 and a fraud was played upon the appellant by the respondents. The respondents cannot be permitted to take advantage of their own wrong to approbate and reprobate. The respondents have no right to get the suit premises vacated before the expiry of lease period valid up to 21.01.2020. Reliance has been placed on '*Jagdish Chander Khurana & Anr. Vs. Ghanshyam Dass*', 172 (2010) DLT 681 and '*Krishna Ram Mahale (dead) by his LRs. Vs. Mrs. Shobha Venkat Rao*', AIR 1989 SC 2097.

4. It is not at issue that the respondents were Sub-licensors; it is so mentioned in the agreement dated 22.01.2011. It was further mentioned therein that the Sub-licensors had entered into an agreement dated 02.09.2004 (agreement) with the Delhi Metro Rail Corp. Ltd. 'DMRC', whereby DMRC had given specified area in question; the Sub-licensors had taken on lease the said property on the

terms and conditions contained therein, including the conditions that the Sub-licensors would have to construct partition walls and floors in certain areas. Clause 2.1 of the said agreement between the parties reads :

“Unless terminated earlier in accordance with the terms of this License agreement the Sub-Licensee is permitted to occupy and use the Shop consistent with the terms hereof for period of 9 Calendar years (3+3+3) (“Terms”) commencing from the date of commencement of lease of Sub-Licensors with DMRC up to maximum term granted by DMRC.”

(Emphasis given)

5. Clause 2.2 reads :

“There shall be as 15% (fifteen percent) increase in the monthly License Fees last paid /payable, after every 3 (Three) years, but this shall be subject to the maximum term of lease granted and renewed by DMRC. There will be 15 months lock-in-period, and the Sub-Licensee cannot terminate this Agreement for the first fifteen months from the commencement of the License except for paying a sum equivalent to the license fees payable over the entire term of the 15 months lock-in-period.”

(Emphasis given)

6. Apparently, rights of respondents in the suit premises were on the basis of the agreement dated 02.09.2004 entered into with respondent No.3 where concession was for a total period of 12 years from the commencement date. Undisputedly, the said period has come to an end. It has been further extended by DMRC for some duration. Since the respondents have no right, title or interest in the

suit property by virtue of expiry of the concession agreement with respondent No.3, the appellant cannot have any better right in the suit premises to continue to occupy the premises in question beyond that period on the basis of the agreement dated 22.01.2011. Clauses 2.2.2, 2.3 and 2.3.2 of agreement dated 02.09.2004 put specific restrictions, which read :

“2.2.2 At the end of the Concession period or sooner determination of this Agreement for any reason whatsoever all rights given under this Concession Agreement shall cease to have effect and the Site and Project Facility with all the furniture and fixtures and other assets permanently attached to the Project Facility shall revert to DMRC without any obligation to DMRC to pay or adjust any consideration or other payment to the Concessionaire.

2.3 Restriction on licensing the use of the Project Facility or any part thereof :

2.3.2 The Concessionaire shall be entitled to sub license the use of the Project Facility, during the subsistence of this agreement only with a clear stipulation that sub-licenses granted shall terminate simultaneously with the termination of this Concession Agreement including on sooner determination of the Concession Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate this covenant of termination of the sub-licensees rights and further that the sub licensee shall not have any claim whatsoever against DMRC for any such termination.”

7. It has been informed that the Letter of Acceptance has been issued to respondent No.4 (M/s.P.P.Buildwell Pvt. Ltd.) for

property development at Netaji Subhash Place Metro Station. ₹10 crores have since been deposited with respondent No.3.

8. On perusal of the contents of the unregistered agreement dated 22.01.2011 it can be inferred that the appellant was aware that the respondents were concessionaires by virtue of the concession agreement executed on 02.09.2004 with respondent No.3 for 12 years. The respondents apparently had no authority to permit the appellant to occupy the said premises for a period of 9 years by an agreement dated 22.01.2011. The said agreement dated 22.01.2011 with the appellant was obviously in violation of the terms and conditions of the concession agreement dated 02.09.2004 executed by respondents with respondent No.3. It is informed that the other occupiers in the suit premises have already vacated the respective premises in their possession. It is further disclosed that even the appellant's husband Sachin Singh Chauhan who in similar circumstances was inducted to run a retail outlet under the brand name of "High Heels" or any other national reputed brands in shop No.1 in the premises in question vide an agreement dated 16.03.2013 has since vacated it.

9. Regarding inconvenience caused to the appellant to vacate the premises before the expiry of 9 years period, the remedy before the appellant could be to seek damages against the respondents who had no occasion or reasons to hand over the suit premises to the appellant by an agreement dated 22.01.2011 for a period of 9 years. When the respondents were aware that the period under concession agreement was 12 years from the date of its execution on 02.09.2004, it did not behove them to enter into any transaction with the appellant

for 9 years without the consent and permission of respondent No.3. The appellant by virtue of this agreement dated 22.01.2011 had legitimate expectations that the premises would remain in her occupation at least for 9 years subject to its renewal beyond that; she had purportedly spent ₹15 – 20 lacs in renovation of the suit premises.

10. During the course of arguments, the respondent No.1 as well as respondent No.4 offered to compensate the appellant without prejudice to settle the controversy and get immediate vacant possession of the suit premises, the amount so offered by the respondents No.1 and 4, however, was not acceptable to the appellant.

11. Nothing has emerged if any steps were taken by the respondents to evict the appellant forcibly. Record shows that letters were written by the respondent No.1 to the appellant to vacate the premises for the reason that the concession agreement with respondent No.3 had come to an end.

12. Since the appellant has no legal right to occupy the premises in question because of coming to an end of the concession agreement executed between respondents and respondent No.3, the interim protection as claimed cannot be granted.

13. The appeal is dismissed. Pending application also stands disposed of.

14. Observations in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

JANUARY 03, 2018 / tr