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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th SEPTEMBER, 2019

+ FAO 9/2019 and C.M. No.1042/2019

FOCUS COMBINE MARKETING PVT LTD..... Appellant

Through: Mr. Udit Gupta, Mr. Sidhant Bhatia and Mr. Aditya, Advocates

versus

**HARYANA STATE COOPERATIVE SUPPLY
& MARKETING FEDERATION LTD & ANR .. Respondents**

Through: Mr. Hemant Gupta, Ms. Sunakshi Gupta and Mr. Alok Sharma, Advocates for R-1 with Ms. Usha Chopra, Asstt.

Mr. Bharat Bhushan Gupta, Adv. for R-2 with Mr. S.B. Chauhan, Authorised Representative

+ FAO 10/2019 and C.M. Nos.1046/2019, 23794/2019, 35586/2019

SYSCOM CONSUMER PRODUCTS PVT LTD..... Appellant

Through: Mr. Udit Gupta, Mr. Sidhant Bhatia and Mr. Aditya, Advocates

versus

**HARYANA STATE COOPERATIVE SUPPLY
& MARKETING FEDERATION LTD & ANR ... Respondents**

Through: Mr. Hemant Gupta, Ms. Sunakshi Gupta and Mr. Alok Sharma, Advocates for R-1 with Ms. Usha Chopra, Asstt.

Mr. Bharat Bhushan Gupta, Adv. for R-2
with Mr. S.B. Chauhan, Authorised
Representative

+ FAO 11/2019 and C.M. Nos.1048/2019 and 23524/2019
 SYSCOM PACKAGING COMPANY Appellant

Through: Mr. Udit Gupta, Mr. Sidhant
Bhatia and Mr. Aditya, Advocates

versus

HARYANA STATE COOPERATIVE SUPPLY
& MARKETING FEDERATION LTD & ANR ... Respondents

Through: Mr. Hemant Gupta, Ms. Sunakshi
Gupta and Mr. Alok Sharma, Advocates for
R-1 with Ms. Usha Chopra, Asstt.

Mr. Bharat Bhushan Gupta, Adv. for R-2
with Mr. S.B. Chauhan, Authorised
Representative

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The parties in these three appeals are virtually common, the background facts leading to three civil suits being preferred by the respective appellants being similar, each appeal giving rise to questions which are identical and, therefore, they have been heard together and are being decided by this common judgment.

2. The first appellant is a company established and controlled by the government of the State of Haryana. It owns a property described

as “HAFED WAREHOUSE” Inner Ring Road, Near Wazirpur DTC Depot, Delhi (hereinafter “the subject property”). Indisputably, the subject property had been given on lease for a period of three years by the first respondent (owner) in favour of the second respondent (lessee) by a registered lease deed executed on 05.05.2015.

3. The appellant companies, on the other hand, are sister concerns, they sharing their respective registered offices in a common premises. It appears that by three separate lease agreements, purportedly executed on 13.04.2015 (noticeably on a date even prior to coming in possession as lessee), the second respondent had let out different portions of the subject property (owned by the first respondent) in their favour on certain terms of payment of rental, etc. for specified period, the possession of such portions let out to the appellants having eventually been handed over for their respective use and occupation. It appears that on account of certain breaches including in the payment of rent, dispute arose between the first respondent and the second respondent. Against this backdrop, three civil suits were filed simultaneously by the three appellants impleading the respondents herein as defendants, the prayer being for injunction against forcible dispossession, or from interference in the peaceful enjoyment of the respective parts, as also qua the continued enjoyment of electricity and water supply. In the course of the proceedings in each of the said suits, the appellants (as respective plaintiffs) also moved applications seeking interim reliefs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC).

4. The suits, as also the applications, were contested by the first respondent (the owner of the premises), the pleadings having been completed in that regard. It appears that the second respondent (lessee under the owner) took the plea that possession of the demised premises had been handed over to the plaintiffs who were thus answerable.

5. The Additional District Judge, presiding over the proceedings in the civil suits, granted interim protection including against disconnection of electricity supply for some period, but by similar orders passed on 24.12.2018 on the file of each case, applications under Order XXXIX Rules 1 and 2 CPC were dismissed primarily on the basis of conclusion that the plaintiffs had failed to show a *prima facie* case. It is the said orders which are under challenge by the present appeals simultaneously preferred.

6. When these appeals came up before the roster bench on 17.01.2019, a learned single judge then in *seisin* of the matters granted interim protection against dispossession except in due course of law taking note primarily of the submission that it is not in dispute that the appellants (plaintiffs) are in possession of the respective parts of the subject premises. On the subsequent dates of hearing, the respondents having entered appearance, questions were raised about the conduct of the appellants primarily with reference to the payment of electricity dues. In the first captioned appeal, it was pointed out by the first respondent that the appellant of that case had run into arrears on account of electricity dues to the extent of Rs.3 Lakh for the period

ending 20.07.2019. Similarly, in the second captioned matter, it was pointed out that the appellant of that case had not paid electricity dues to the extent of Rs.22 Lakhs for similar period ending with 20.07.2019, such arrears vis-à-vis the appellant in third matter statedly being Rs.4.8 Lakhs. Interim protection in the first and third captioned matters were extended by orders dated 30.07.2019 subject to payment of the aforesaid amounts of money to the first respondent within the period specified. In the second captioned matter (i.e. FAO 10/2019), similar directions were given on 30.07.2019 but by order dated 07.08.2019, some modification was brought about in terms of which the factum of Rs.7 Lakh having been paid by the appellant to the first respondent having been noted, it was directed that the balance amount of Rs.15 Lakhs would be deposited in fixed deposit receipt with the Registrar General within the period specified. The order was further modified partially on 27.08.2019 wherein the fixed deposit receipt taken out by the appellant himself was directed to be accepted by the registry.

7. The appellants are in no position to do so and, in fact, do not dispute that the subject property was given on lease for a period of three years by the first respondent unto the second respondent by lease deed dated 05.05.2015, one of the crucial terms whereof would read thus :-

“4. To use the demised premises by the lessee as its warehouse and shall in no case whatsoever sub-let, assign or otherwise part with possession of a part or whole of the premises hereby demised and also not to

avail the loan facility by way of mortgage / pledge of the above premises against the lease from any person, bank, financial institution under any circumstances. However, the Lessee shall be free to do business of warehousing, Cold Storage ; Logistics / Transport / C&F work and allied service like grading, sorting, mechanized packing of staples / agro products, etc. for their various customers. Indo Arya Logistics shall apply for packing License at their own cost and shall be required to ensure compliance of labour laws and other statutory requirements at their end.”

(emphasis supplied)

8. It is not disputed that the second respondent is not the owner of the property. It had come in use, occupation and enjoyment of the subject property only as a lessee under the first respondent (owner-cum-lessor). The second respondent cannot admittedly have unbridled or unrestricted right to use or deal with the property beyond the circumspection of the discipline created by the lease deed under which it came in possession. The creation of lease in respect of the parts of the subject property by the lessee (second respondent) in favour of the third parties was clearly and indisputably without authorization from or approval of the superior lessor – and *prima facie* impermissible and illegal. No such right as did not vest in the lessee could have been passed on in favour of the third party (i.e. the appellants). In these circumstances, the lease agreements executed by the second respondent in favour of appellants in respect of the parts of the subject property are *prima facie* unenforceable and of no consequence, not the least against the owner or superior lessor.

9. On the foregoing facts and in the circumstances, the view taken by the trial court holding the appellants to have failed to bring home a *prima facie* case cannot be faulted. The said view does not suffer from any error or infirmity. In this view of the matter, there is no need for any scrutiny on the touchstone of the other factors such as balance of convenience or irreparable loss.

10. The appeals are thus found to be wholly devoid of substance. They are dismissed with costs of Rs.50,000/- each to be payable to the first respondent.

11. For clarity, and in order to properly regulate the rights and obligations in the proceedings which are pending before the trial court in the three suits, it is directed that the payments made by the appellants towards consumption of electricity shall be subject to adjustment. The amount lying in fixed deposit receipt with the Registrar General shall be transferred to the trial court for appropriate direction vis-à-vis the claim and entitlement of the first respondent towards electricity dues.

12. The appeals and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 13, 2019

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