

15.09.2020
Court No. 05
Item No. 4 & 5
CP

WPA 6620 of 2020
with
IA NO. CAN/1/2020 (Old NO. CAN 5441
of 2020)

Reliance Commercial Finance Limited & anr.
vs.
State of West Bengal & ors.

and

WPA 6621 of 2020
with
IA NO. CAN/1/2020 (Old NO. CAN 5443
of 2020)

Reliance Home Finance Limited & anr.
vs.
State of West Bengal & ors.

(Via Video Conference)

Mr. Anirban Ray,
Mr. Arnab Basu Mullick.

.....for the petitioners.

Mr. S. N. Mukherjee,
Mr. Ratnanka Banerjee,

....for the respondents 5 and 6.

Mr. Jishnu Chaudhury, Ld. AGP,
Ms. Amrita Panja.

....for the State.

As similar questions of law are involved, both the petitions are taken up together with the consent of the parties.

This writ petition has been filed challenging inaction on the part of the Officer-in-Charge, Tollygunge Police Station in registering a complaint

pursuant to the letters dated June 12, 2020, July 4, 2020 and August 5, 2020.

It is the allegation of the petitioners that the petitioners had taken a premises on lease from the respondent nos. 5 and 6. The lease deed had a lock in period of 36 calendar months. It was further provided that the parties shall not have the right to terminate the lease agreement during the lock in period save and except as provided in the agreement. It was also provided that in the event of termination of the lease prior to the expiry of the lock in period, the lessee shall have the liability to pay the lessor the monthly payment for the unexpired period.

Mr. Ray, learned advocate for the petitioners, submits that the lease agreement was terminated at the instance of the petitioners on May 30, 2020 by invoking the 'Force Majeure' clause due to the pandemic situation which was continuing. He submits that subsequent to such termination, the respondents 5 and 6 have not allowed the petitioners to enter into the premises and take some documents relating to their usual course of business. Consequently complaints have been lodged with the concerned police station but the police authorities have not yet taken any steps.

Mr. S. N. Mukherjee, learned senior advocate appearing on behalf of the respondents 5 and 6 submits that the writ petition was not maintainable

as the petitioners were indirectly seeking orders which could not be otherwise passed by a writ court. According to Mr. Mukherjee, the entire dispute is civil in nature and the interpretation, rights and liabilities of the parties under the lease agreement and fitment agreement are to be adjudicated upon.

Mr. Jishnu Chaudhury, learned Additional Government Pleader, submits that the police authorities do not have any role to play in the matter as the letters of complaint filed before the police authorities clearly indicate that the dispute was between the lessor and the lessee and with regard to unpaid dues and other terms and conditions of the contract.

Mr. Mukherjee has referred to the letter of termination of the lease in which the petitioner has stated that the possession of the lease property would be handed over in terms of the lease deed after the pandemic situation comes to an end. Mr. Mukherjee, further says that there is a service agreement and certain constructions have been made in the office premises at the cost of the respondents 5 and 6 but the petitioners have not yet paid the cost.

The petitioner has relied on the decisions of the Hon'ble Apex Court passed in Civil Appeal No. 6156 of 2013 (Hari Krishna Trust v. State of Maharashtra) and a decision of this Court in Giridhari Goswami v. State of West Bengal. Records reveal that the main

bone of contention between the parties is with regard to the termination of the lease agreement.

After hearing the parties and having gone through the records, I find that the dispute is actually between the petitioners and the respondents 5 and 6 with regard to the termination of the lease and the claim of the lessor for rent as also the service charges for the fitment services that have been given. The petitioners strongly urges that even if there is a dispute on the lease deed, yet the lessor cannot prevent the petitioners from taking the documents necessary for its business; that the letters written by the petitioners do make out a cognizable offence for which an investigation has to be started.

Having gone through the documents and having heard the respective parties, I do not find that the petitioners have made out a case against the police authorities. On the other hand, the directions prayed for would be mandatory orders upon a private party being the respondents 5 and 6. The judgments cited by the petitioners have been rendered in different facts situation and do not have any application in this case.

Both the writ petitions are, thus, disposed of without any orders. As a result whereof CAN 5441 of 2020 and CAN 5443 of 2020 are also disposed of.

However, disposal of this writ petition will not prevent the petitioners from approaching the

respondents 5 and 6 so that they may enter the premises and take the documents necessary for their day-to-day work and business. Similar requests may also be made to the Officer-in-Charge, Tollygunge Police Station to be present during such process. If such request is made, the respondents 5 and 6 shall consider the same, inasmuch as the disputes between the parties do not warrant that important documents should not be allowed to be taken out by the petitioners. Legality of the termination of the lease deed, the claim of the respondents 5 and 6 over the movables in the possession of the petitioners are to be decided by the appropriate Civil Court. Both parties are entitled to approach the Civil Court for their reliefs.

It is also made clear that the petitioners are also at liberty to approach the learned Magistrate under the provisions of the Code of Civil Procedure. Both parties will give a notice to the Officer-in-Charge, Tollygunge Police Station to be present at the premises, if necessary in case the documents are being removed from the premises and an inventory of the documents which are taken out will be prepared and signed by each party. A copy of the same shall be handed over to the Officer-in-Charge, Tollygunge Police Station. It open to the parties to arrive at a commercial settlement.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities. All parties are to act on a server copy of this order.

(Shampa Sarkar, J.)