

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CM (M) 409/2020

KANWAR SINGH YADAV

.....Petitioner

Through: Mr Raman Kapur, Senior Advocate
with Mr Joydeep Sarma and Mr
Sudarshan Kumar Sharma,
Advocates.

versus

ALL INDIA INSTITUTE OF
MEDICAL SCIENCES

..... Respondent

Through: Mr Satya Ranjan Swain, Advocate for
AIIMS. .

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

07.08.2020

The hearing was conducted through video conferencing.

CM APPLs 18334-18335/2020 (Exemption)

1. Allowed, subject to all just exceptions. The applications stand disposed off.

CM APPL 18336/2020 (Court fee)

2. Exemption allowed, subject to the condition that the applicant/petitioner will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.
3. The application stands disposed-off.

CM (M) 409/2020 & CM APPL 18333/2020 (Stay)

4. Issue notice.
5. The learned counsel named above accepts notice on behalf of the respondent.

6. At joint request of the learned counsel for the parties, the petition is taken up for disposal.

7. The petitioner seeks the following relief:-

“(a). allow this petition and pass appropriate order or directions setting aside Impugned Order dated July 28, 2020 by the Court of Sh. Vijay Kumar Khanna, Ld. District Judge (Commercial Courts-II), Saket Courts, New Delhi whereby the amendment application of the Plaintiff under Order 6 Rule 17 read-with Section 151 CPC has been dismissed and allow the amendment application of the Plaintiff.”

8. It is the petitioner/plaintiff's case that the amendment to the plaint has been declined, *inter alia*, for the following reasons in the impugned order dated 28.07.2020 passed by the learned District Judge (Commercial Court-II), Saket Courts, New Delhi, in CS (Comm.) No. 222 of 2019:

“35. In 'Gaurav Jain vs. Union of India & Anr. decided on 15.06.2020 in W.P. (C) 3519/2020 by our own Hon'ble High Court wherein a Writ of prohibition seeking prohibiting eviction of the tenant on the ground of non-payment of rent till the crises caused by the pandemic situation and lockdown lasted and as regards waiver of rent etc was dismissed with cost. It was observed that there cannot be a lump sum/general submissions that rent should be waived and there can be no eviction on ground of non-payment of rent and the tenants alone cannot be said to suffer from financial hardship or from economic consequences of the pandemic and lockdown Thus, It Is a question of clause in the agreement between the parties as to whether force majeure clause exists or In the absence thereof the tenant or a licensee has to demonstrate a complete frustration of contract due to the pandemic situation or lockdown failing which a licensee or a tenant cannot unilaterally extend the period of licence.

35. In view of the afore-noted legal position this court is of the considered view that pleadings as regards the afore-noted office memorandum dated 13.05.2020 are not necessary for determining the real question in controversy in the factual situation. At the stage of final hearing, plaintiff is at liberty to satisfy the court as to how this office memorandum, whose judicial notice court may take applies to the present case and how contract between the parties stands affected or altered or frustrated by Covid-19 Global Pandemic and whether that may lead to extension of license even beyond 31.08.2020 against the will of defendant.

36. In the result, this court finds that amendment sought will not only change the nature of the case of the plaintiff and introduce new cause of action but also will prejudice and cause injustice to the defendant and the amendment sought are not necessary for determining the real question in controversy between the parties. Hence, this application U/o VI Rule 17 CPC deserves to be dismissed. Order accordingly. ”

9. The petitioner/(plaintiff) contends that if there is no prayer in the pleadings, as sought in the amendment application, the learned Trial Court could possibly not grant any relief of extension of time, based on the government's notification dated 13.05.2020. The Court is of the view that, grant of the said relief is contingent upon applicability of the aforesaid notification to the petitioner's circumstances. If it is found that the notification is applicable, then a corollary relief could follow.

10. However, the learned counsel for the Respondent/AIMMS submits that the petitioner has already exhausted both, the initial period of two years, as well as the extension period one year, in terms of the contract. He submits that AIIMS has since been an important centre for cure against the COVID-19 pandemic. The footfall of visitors to

the Institute may have lessened but not so significantly that the petitioner could not operate his kiosk viably. It is argued that, in comparison to the medical institutes/hospitals which are not COVID-19 centres, the footfall at AIIMS was perhaps on the higher side. He further submits that the said circular would be applicable only in cases of road transport and other related sectors, where there was actual prohibition in view of the pandemic lockdown. In the case of AIIMS, there was no such prohibition, albeit OPD consultation may have been suspended for some time. Therefore, there can be no case of *force majeure* apropos AIIMS. The learned counsel for AIIMS asserts that the petitioner's extended tenure expires on 31.08.2020. Therefore, he would be required to vacate the kiosk on or before that date.

- 11.The petition, along with pending application, stands disposed off in terms of the above.
- 12.Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.
- 13.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

AUGUST 07, 2020/rd