

13.09.2021

Sl. 2 & 3
Ct.No. 03
Amalranjan

(Via Video Conference)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(COMMERCIAL DIVISION)**

FMAT 524 of 2021

**Ashish Tibrawalla & Ors.
Vs.
Atulya Diagnostics LLP & Anr.
With
CAN No. 1 of 2021**

With

FMAT 443 of 2021

**M/s. Atulya Diagnostics LLP
Vs.
Ashish Tibrawalla & Ors.
With
CAN No. 1 of 2021**

Mr. Debnath Ghosh
Mr. Sushovit Dutt Majumder
Mr. S. Dasgupta
Ms. Pubali Sinha Chowdhury
Mr. Bhavesh Garodia

...for the appellants
in FMAT 443 of 2021..for the respondents

Mr. Debjit Mukherjee
Mr. F. Ray
Mr. Kaustav Bhattacharya

...for the respondents
in FMAT 443 of 2021...for the appellant

Re: FMAT 524 of 2021

We admit the appeal.

As the point involved is very short and the matter scheduled to be taken up by the learned court below on 25th September, 2021, we propose to hear out the appeal itself, dispensing with all formalities.

This is a typical landlord and tenant dispute.

The lessors allege breach of covenant of the subject lease by the lessee. They have determined the lease and claim vacant possession of the premises where the lessee runs a diagnostic centre. It is also alleged by them that there is a huge amount of arrear rent/occupation charges aggregating about Rs. 13.5 Lakhs as of now.

The lessee counter alleges breach of covenant by the lessors, namely, their failure to keep the premises wind and water proof.

There is an arbitration agreement between the parties. Contested issues between them must be decided by the learned court below or by the arbitral tribunal.

As an interim measure, we direct that the respondent no. 1 shall pay to the appellants immediately by 20th September, 2021, Rs. 8 Lakhs as an ad hoc amount and without prejudice to the rights and contentions of the parties towards the said claimed arrear rent/occupation charges.

Furthermore, the respondent no. 1 shall pay to the appellants occupation charges at the rate

of Rs. 3 Lakhs per month as rent/occupation charges, (being the rent last paid or payable), from September 2021 every month and payable by the 7th of each succeeding month punctually, without prejudice.

We appoint the advocates on record for the parties as Joint Special Officers to inspect the premises, identify the repairs, which need to be done to prevent seepage of water into the demised premises including the lift shaft.

Upon such identification by them to be recorded in minutes and in a report to be filed in the learned court below, the appellants shall have the option of effecting the repair. In default, the repair may be made by the respondent no. 1.

All questions regarding the responsibility to repairs, payments and adjustment of payments shall be decided by the learned court below or by the arbitral tribunal if and when constituted.

With these directions and observations, the appeal (FMAT 524 of 2021 along with the connected application (CAN 1 of 2021) for stay are disposed of, setting aside the impugned judgment and order, except the directions

contained therein for posting of the interim applications for hearing.

FMAT 443 of 2021

M/s. Atulya Diagnostics LLP

Vs.

Ashish Tibrawalla & Ors.

With

CAN No. 1 of 2021

We admit the appeal.

In view of our order passed today in the appeal FMAT 524 of 2021 (Ashish Tibrawalla & Ors. Vs. Atulya Diagnostics LLP & Anr.), we dispose of the appeal (FMAT 443 of 2021) along with the connected application (CAN 1 of 2021) for stay by directing that the respondents shall not change the status quo regarding possession of the appellant till further order of the court below or by the arbitral tribunal, if and when constituted.

(Aniruddha Roy,J.)

(I. P. Mukerji,J.)