IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.207

CR-2645-2020 (O&M)
Date of decision : 26.2.2021

M/s Givo Private Limited ..... Petitioner

VERSUS

Jasjeet Singh Malik and another ..... Respondents

CR-2658-2020 (O&M)

M/s Givo Private Limited ..... Petitioner

VERSUS

Rita Sarin and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sukhwinder Sudan, Advocate, for the petitioner.

Mr. Arun Vohra, Advocate,
for respondent No.1 in CR-2645-2020 and
for respondent No.1 and 2 in CR-2658-2020.

Mr. Sandeep Phogat, Advocate,
for respondent No.2 in CR-2645-2020 and
for respondent No.3 in CR-2658-2020

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SUDHIR MITTAL, J. (Oral)

This order shall dispose of aforementioned revision petitions as common questions of fact and law are involved. The facts are being extracted from CR-2658-2020.

The petitioner has filed a suit for injunction directing the defendants therein not to charge rent and common area maintenance charges for the period of lockdown and also for restraining them from prohibiting the petitioner from entering into the premises and operating its business therefrom. Alongwith the suit, an application under order 39 Rule 1 and 2 CPC, was filed, which was rejected by the trial Court vide order dated 22.10.2020. Appeal against the same was dismissed vide order dated 6.11.2020. Thus, the revision petition has been filed.

The petitioner is the lessee of a premises leased out vide registered lease deed dated 9.10.2006. It was continuing with its business peacefully and paying all the due charges till lockdown was imposed on account of Covid-19 pandemic. This lockdown was in-force from 19.3.2020 to 2.7.2020. Upon lifting of lockdown, the petitioner tried to re-open his store on 3.7.2020, but according to him, he was prevented from doing so as there were arrears of maintenance charges. Learned counsel for third respondent, however, states that on account of arrears of maintenance charges, common services were not provided, but the petitioner was never prevented from entering the store. Be that as it may, the petitioner was unable to continue with its business as electricity supply, dis-continued during the course of the lockdown, was never restored. Thus, he filed the suit referred to hereinabove, wherein, on deposit of Rs.25,000/-, electricity supply was restored w.e.f. 10.9.2020. The application under order 39 Rule 1 and 2 CPC was dismissed on 22.10.2020 and electricity supply was dis-continued again w.e.f. 24.10.2020.

Thus, undisputedly, the premises in dispute remained shut for the period 19.3.2020 to 2.7.2020, 3.7.2020 to 9.9.2020 and from 24.10.2020 till date. It has functioned for the period 10.9.2020 till 24.10.2020.

It is admitted by both the parties that pursuant to lease deed dated 9.10.2006, no separate maintenance agreement was executed between the petitioner and maintenance agency. The only agreement in writing regarding provision of maintenance services is dated 8.7.2018, which was executed between M/s Grand Mall Condominium Association and the third respondent. According to the terms of this agreement, the maintenance charges were payable by the allottee/occupant of the premises.

Certain relevant clauses of lease deed dated 9.10.2006 are reproduced below for ready reference:-

'**Maintenance Service**

5.1 The lessee agrees that as a condition for being granted the lease of the demised premises. It shall excuse a separate maintenance services agreement with any agency nominated by the lessor (hereinafter referred to as the 'Maintenance Agency'). The lessor acknowledges that it shall be the maintenance agency's obligation to provide common facilities and services in the complex and the demised premises. Lessor shall extent all cooperation to the lessee so as to ensure that maintenance agency renders services and facilities consistent with good industry practices prevalent in relation to other comparable buildings in Gurgaon, and based on this representation, simultaneous to the execution of this lease deed, the lessee shall execute an agreement for maintenance and service (hereinafter referred to as the 'Maintenance Agreement') with the maintenance agency, and with the lessor as the endorsing parties.'

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'**16. Force Majeur/Legal Proceedings**

16.1 If due to flood, fire, earthquake, tempest or any other acts, of God, acts of Government change of laws or for any reason beyond the reasonable control of human beings, the Demised Premises or any part thereof cannot be used and/or occupied by the lessee for a period of two (2) months or if the demised Premises or any part thereof is sealed or is rendered unfit for use and occupation by any statutory authority and/or municipality, for continuous period of 2 months, the lessee shall not be liable to pay any rent or any other amount, whatsoever, to the lessor for such period.'

From the aforementioned clauses, it is evident that the lessee had agreed to enter into a separate maintenance agreement with any agency nominated by the lessor. Further, in case of force majeure, which takes an act of God and act of Government within its purview, the lessee was not liable to pay any rent or any other amount to the lessor for the period, he was unable to use the premises.

In view of the aforementioned provisions, learned counsel for the petitioner has argued that lockdown imposed by the Government was covered under the force majeure clause and for the period, the same was in force, the petitioner was not liable to make payment of rent or any other amount in terms of lease deed dated 9.10.2006. The petitioner is not a signatory to the maintenance agreement dated 8.7.2018 and thus, although, the liability thereunder is upon an allottee/occupant, the said liability cannot be enforced against the petitioner. Under the circumstances, the Courts below were in error in rejecting the application under order 39 Rule 1 and 2 CPC.

In response, learned counsel for the respondents, after making reference to clause 5.1 reproduced hereinabove, have submitted that in view of the said clause, although no agreement in writing was executed, the petitioner was making direct payment of maintenance charges to the maintenance agency. Further, it has been submitted that the petitioner does not want to vacate the premises and therefore, he has to continue to make payment of the maintenance charges to the maintenance agency, despite clause 16. Reliance has been placed upon a judgment of the Delhi High Court passed in RC Revision No.447 of 2017 titled as Ramanand and others Vs. Dr. Girish Soni and another, decided on 21.5.2020, for arguing that in case, the petitioner had vacated the leased premises at the end of the lockdown period, it could have asked for benefit of the force majeure clause. Since, it is intending to continue with the possession, it cannot take the benefit of the same.

While deciding an application under order 39 Rule 1 and 2 CPC, the Court has to consider three major ingredients, i.e. a) prima facie case, b) balance of convenience and c) irreparable injury. Clause 16 reproduced hereinabove shows that prima facie case exists in favour of the petitioner, so far as payment of lease money and other charges for the period of lockdown is concerned. Even though, the petitioner may have been paying common maintenance charges to the maintenance agency directly since the inception of the lease, prima facie, it would be absolved of its liability to do so during the period of the lockdown in view of the words ‘rent or any other amount, whatsoever’ appearing in clause 16. This opinion is re-enforced by a conjoint reading of the maintenance agreement dated 8.7.2018 alongiwth terms of lease deed dated 9.10.2006. The occupant is liable to pay the maintenance charges in terms of agreement dated 8.7.2018, but when this stipulation is read in conjunction with clause 16 of the lease agreement dated 9.10.2006, there is no escape from the conclusion that during the period of lockdown, the lessee-occupant can claim exemption. Irreparable injury and loss would be caused to the petitioner, in case, he is not granted temporary injunction as it would result in continuing loss of business and non-generation of revenue, whereas, liabilities under the lease agreement dated 9.10.2006 would continue to mount. The petitioner is in possession and deserves to continue in possession so long as he abides by the other terms and conditions contained in the lease deed. Thus, the order passed by the Courts below are not sustainable in law and deserve to be set aside.

The case of Ramanand (supra) relied upon by learned counsel for the respondents does not serve their cause. The said judgment was passed in a pending rent revision, wherein, orders of eviction passed by the authorities below were under challenge. The tenant had filed an application for suspension of rent during the period business could not be conducted due to Covid-19 induced lockdown. This application was rejected by holding that Section 56 of the Indian Contract Act regarding frustration of contract could not be invoked for suspension of rent as a contract of lease was an executed contract in which possession stood transferred. The same did not stand frustrated because of a pandemic like Covid-19. It has further been held that the terms of the contract would govern situations of force majeure and Section 32 of the Indian Contract Act would apply to such contracts. The said provision provides for enforcement of a contract upon the happening of a contingency. The contingency in this case was the act of government of imposing of lockdown and clause 16 of the lease deed provides for consequences in case of such a contingency. Thus, I fail to see how this judgment helps the respondents. The contention raised on their behalf that in such situations, the tenant must vacate the premises before claiming benefit of clause 16 is erroneous and based upon a stray observation in the judgment which can be respectfully turned as 'obiter'.

Accordingly, the revision petitions are allowed and orders dated 22.10.2020 and 6.11.2020 are set aside. The following directions are issued:-

(i) Electricity supply shall be restored to the demised premises within seven days from the date of receipt of a certified copy of this order.

(ii) The petitioner will be permitted to occupy the demised premises and use the same freely and without any hindrance.

(iii) The petitioner shall pay arrears of rent for the period 1.3.2020 to 18.3.2020 and 10.9.2020 to 24.10.2020 as well as maintenance charges within the aforementioned period of seven days. He shall continue to make payment of rent and common maintenance charges in future also in accordance with agreed schedule of payment.

(iv) The arrears of rent and maintenance charges for the period of lockdown shall abide by the decision in the suit. The same shall also apply for the period that the petitioner has not been able to use the demises premises.

Nothing observed hereinabove, shall be construed to be an opinion on the merits of the cases.

A photocopy of this order be placed on the file of other connected case.

(SUDHIR MITTAL)
JUDGE

26.2.2021
Ramandeep Singh

Whether speaking / reasoned	Yes / No
Whether Reportable	Yes/ No