

1 15.03.2022

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

**F.M.A.T. 10(ARBAWARD) of 2022
With
CAN 2 of 2022**

**Women's Co-ordinating Council
Vs.
Dipak Naz**

**Mr. Sudipto Sarkar, Sr. Advocate
Mr. Siddhartha Mitra, Sr. Advocate
Mr. Soumabho Ghosh
Mr. Deepan Kumar Sarkar
Mr. Arunabha Deb
Mr. Ayush Jain
Ms. Arti Bhattacharyya
Ms. Ananya Sinha For the Petitioner/Appellant.**

**Mr. Jishnu Saha, Sr. Advocate
Ms. N. Banerjee
Mr. Sidhartha Sharma
Mr. Danish Taslim
Ms. Shalini Basu ... For the Applicant.**

**Mr. Kalyan Kumar Chakraborty
Mr. Kashinath Bhattacharya
Ms. Anjana Mehebbub
Mr. Ashok Halder For the Receiver.**

Re: **CAN 2 of 2022**

The issues have become a little complicated on the filing of an application by Pulse Diagnostics Private Limited represented by Mr. Jishnu Saha, learned senior advocate.

S.D. They say that in the year 2006 they purchased the premises 75, Sarat Bose Road, Kolkata-700 026 and runs a diagnostic clinic from there. The applicant was approached by one Gaurav Ghosh stating that under the last will and testament of his aunt (mother's sister) Rekha Chatterjee he had inherited the premises 73C,

Sarat Bose Road and that he had obtained probate of the Will. The applicant claims to have purchased the demised Ground floor of the premises (the subject property) from Gaurav Ghosh. The lessee Dipak Naz has vacated the subject property. The applicant was put in possession of it.

This is seriously disputed by Mr. Sudipto Sarkar, learned senior advocate appearing for the appellant. He shows us the lease deed entered by and between himself and the respondent dated 20th September, 2009 for nine years which expired in 2018. Clause 7.7 of the lease required the lessee to deliver up vacant and peaceful possession of the property to the lessor. On 13th May, 2019 his client, on expiry of the lease, caused a notice to quit to be issued to the respondent to vacate the subject property. By their reply dated 5th June, 2019 the respondent has created a quagmire of property dispute which had the effect of challenging the title of the appellant to the subject property. They narrated how the alleged predecessor in itself of the appellant, Rekha Chatterjee had allegedly bequeathed the subject property to Gourav Ghosh by a Will dated 7th February, 2004 and also allegedly gifted it to one Ambar Nath Chatterjee on 6th February, 2005, thus making her alleged disposition in favour of the appellant by her will of 14th June, 1999 non est.

All these factual disputes give rise to the question whether the dispute remains between the parties to the arbitration agreement in the lease deed between them or directly involve the rights of a third party, the client of Mr. Jishnu Saha, Pulse Diagnostic Private Limited, now in possession of the subject property.

On the prima facie case before us, we find that the appellant had executed a lease in favour of the respondent, the lessee was all through in possession of the property, the lease has expired by efflux of time and that a Receiver appointed by us at this point of time found some third parties in possession of the property vide his report dated 15th February, 2022.

We think it fit and proper that the receiver takes actual physical possession of the property without disturbing the possession of the organization/persons he has found to be in occupation of the subject property. Accordingly we order that the receiver shall take physical possession of the subject property without interfering with the above possession upon notice to the parties. The subject property becomes custodia legis. The Receiver shall be entitled to a further ad hoc remuneration of 2000 gms to be paid by the appellant.

With the above observations we remand the matter to the learned court below to hear out the interim

application on merits. The learned court will treat the Section 9 application as maintainable in view of our observations in our earlier interim order dated 9th February, 2022. The learned court below will consider our observations in the judgement and order as prima facie and dispose of the interim application upon hearing the parties, including any third party, by a reasoned order within three months from communication of this order. Our interim order will continue till the disposal of the Section 9 application by the learned court below and will abide by any order to be passed by that court.

The status quo with regard to the ownership possession and use of the subject property will continue.

The appeal (FMAT 10 of 2022) and the connected application (CAN 2 of 2022) are disposed of.

(I.P. Mukerji, J.)

(Aniruddha Roy, J.)

