

05.07.2022
(D/L-8 & 9)
Ct.-18
(Susanta)

C.O. 2803 of 2019

Sanjay Gupta
-Vs-
Falgun Export Private Limited
With
C.O. 3031 of 2019

M/s. Falgun Export Private Limited
-Vs-
Sri Sanjay Gupta

Mr. Aniruddha Chatterjee,
Mr. Sounak Battacharya,
Ms. Shreyasi Sanyal,
.... For the Petitioner in
C.O. 2803 of 2019 &
For the opposite party
in C.O. 3031 of 2019

Mr. Arindam Banerjee,
Mr. Kaushik Banerjee,
Ms. Rashmita Sen,
.... For the Petitioner in
C.O. 3031 of 2019 &
For the opposite party
in C.O. 2803 of 2019

These two revisional applications are arising out of the self-same suit, as such taken up for analogous hearing and disposal.

The plaintiff of the connected suit for recovery of possession being Title Suit No. 862 of 2016 pending before the learned Judge, 12th Bench, City Civil Court at Calcutta is the petitioner of C.O. 3031 of 2019 whereas the defendant of the said suit is the petitioner of C.O. 2803 of 2019.

The plaintiff in the suit on April 05, 2019 filed an application praying a direction upon the defendant to pay a sum of Rs. 5,67,435/- towards

outstanding license fees for the period from July 1, 2015.

The learned Trial Judge by the order No. 49 dated July 22, 2019 has disposed of the said application by directing the defendant to pay arrear rent for the period from July 2015 to March 2019 @ Rs. 11,000/- per month totaling Rs. 4,95,000/- in twelve equal monthly installments. The prayer of the plaintiff for a direction upon the defendant to pay electricity charges was refused on the ground that the said prayer is not justified by any document.

The plaintiff has assailed the part of the aforesaid order whereby its prayer for payment of electricity charges has been denied.

The defendant is aggrieved by the part of the said order directing him to pay the said arrear rent.

Mr. Aniruddha Chatterjee learned advocate for the defendant submits that the agreement dated July 01, 2015 is in serious dispute as such the learned Trial Judge has committed an error in fixing the monthly rent @ Rs. 11,000/- on the basis of the said agreement.

Mr. Arindam Banerjee, learned advocate for the plaintiff submits that the said rate of rent is admitted as would appear from the different correspondences between the parties. He further submits that the defendant cannot enjoy electricity without making any payment.

Mr. Chatterjee, in reply disputes the said submissions of Mr. Banerjee but fairly submits that his client shall pay electricity charges as per actual consumption.

The parties ultimately agree that the defendant shall pay a sum of Rs. 36,788.36/- towards the arrear electricity charges till June 2022. The defendant on and from July 2022 shall consume electricity from the sub-meter bearing serial no. 603471 and shall pay to the plaintiff electricity charges as per the consumption shown in the said sub-meter.

The plaintiff in the suit since has prayed for a decree of arrear license fees with interest at the rate of 18% thereon as such, is not entitled to get the said relief on an interlocutory application.

However, prayer of the plaintiff for direction upon the defendant to pay such fees during the pendency of the suit can be considered but the said issue being highly contentious requires close scrutiny to the said claim of the plaintiff made in the application dated April 05, 2019 vis-à-vis the objection raised by the defendant to the said claim of the plaintiff.

Such scrutiny does not appear to have been made while disposing the said application dated April 05, 2019.

The order impugned, therefore, is set aside.

The learned Trial Judge is requested to decide the said application afresh in accordance with law.

It is made clear that the issue regarding payment of electricity charges since has been settled by the parties shall not be reopened.

In view of the nature of the application, the learned Trial Judge is requested to make all endeavour to dispose of the same within a period of two effective available working months of his Court and in doing so shall not grant prayer of the parties for any unnecessary adjournment.

C.O. 2803 of 2019 and C.O. 3031 of 2019 are thus disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)