

14.03.2023

Court : 37
Item : CD-03-04
Matter : FAT
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IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division).

FAT 267 of 2021
with
CAN 3 of 2023
&
CAN 4 of 2023

West Bengal State Warehousing Corporation
Vs.
Adventz Securities Enterprises Limited

Mr. Mainak Krishna Ghosh, Advocate
Mr. Debdutta Saha, Advocate
Mr. Soumya Mukherjee, Advocate

.....for the Appellant

Mr. Farhan Gaffar, Advocate
Ms. Ananya Chatterjee, Advocate

.....for the Respondent

A suit for recovery of possession and the arrears of rent in relation to a demised premises stood decreed by virtue of a judgment and decree passed by the Commercial Court at Alipore in Title Suit No. 26 of 2019. The said decree indicates that there is an arrear in discharge of its contractual as well as statutory obligations towards payments of rent for use and occupation of the demised premises.

Indubitably, the lease has expired by efflux of time yet the possession remains with the appellant which constrained the lessor to institute such suit. While admitting the appeal, the order of stay was passed conditionally to the effect that the appellant shall deposit the arrears of rent to the tune of Rs.1,22,03,016/- calculated upto June 15, 2021 i.e. the date of expiration of the lease by efflux of time. The Division Bench further directed the appellant to continue paying the current occupational charges at the contractual rate i.e. Rs.1,31,200/- per month. The appeal came up before the

Division Bench where one of us was a party thereto and was eventually dismissed.

An application being CAN 3 of 2023 is taken out by the landlord seeking a further order that the amount so deposited with this Court in terms of the order passed on a stay application be disbursed and/or released.

The learned Advocate appearing for the appellant have also taken out an application being CAN 4 of 2023 seeking leave of the Court to withdraw the same amount deposited in terms of the said order passed by the Division Bench with liberty to deposit the same with the Executing Court. Both the parties have prayed for release of the said amount deposited with this Court.

Admittedly, the appeal filed by the appellant stood dismissed and, therefore, the decree passed by the Court below stood affirmed. We noticed that at the time of granting the stay, our predecessor passed an order directing a deposit of the arrears rent calculated on the basis of an admitted rate of rent and further directed to continue deposit the same on such contractual rate till the premises is vacated or reverted in due execution of the decree. It is inconceivable that a person using and occupying a premises of another person, shall not pay any rent or the occupational charges, as the case may be. The manner in which the prayer is couched in CAN 4 of 2023, gives an impression in our mind that the appellant is interested in the litigation and intend to contest the execution proceeding. We have given to understand that the judgment passed in the instant appeal has not been further assailed before the higher forum as on date.

Since the direction was passed by this Court to deposit the contractual rate of rent, more particularly, on

the basis of the last pay rent, we do not find any justification on the stand of the appellant, who appears to be more interested in the litigation than to honour his contractual obligation. Despite the fact that the lease has expired by efflux of time, the occupation continues and ironically the lessor is put to much inconvenience as he has to travel through the due process of law to recover the demised premises.

The execution proceeding is still pending, meaning thereby the possession has not been reverted to the lessor as on the date and, therefore, we do not think that any equity plays in favour of the appellant in granting the relief claimed in CAN 4 of 2023.

The said application being **CAN 4 of 2023** is hereby **dismissed**.

We do hereby direct the Registrar General of this Court to disburse the amount so deposited by the appellant to the respondent within three weeks from the date of an application to be made before the said authority. The respondent shall undertake before the Registrar General that in the event of any order being passed which disentitle the respondent to get the said amount, the same shall be re-deposited with the Registrar General.

The application being **CAN 3 of 2023** accordingly **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

