

11.02.2022
SL No.9 wt 10
Court No.8
(gc)

**FMAT 802 of 2021
With
CAN 1 of 2021**

**S.K. Dining Pvt. Ltd.
Vs.
L.A. Bar & Restaurant Pvt. Ltd. & Anr.**

With

**FMAT 803 of 2021
With
CAN 1 of 2021**

**S.K. Dining Pvt. Ltd.
Vs.
L.A. Bar & Restaurant Pvt. Ltd.**

(Via Video Conference)

Mr. Rudraman Bhattacharya,
Mr. Shuvasish Sen Gupta,
Mr. Sanjay Ginodia,
Mr. Manoj Kumar Tewari,
...for the Appellant.
Mr. Shaunak Ghosh,
Mr. Rajib Mullick,
Ms. Shreyshi Maity,
...for the Respondents.

By consent of the parties, both the appeals are taken up together in view of the common issues are involved in both the appeals and disposed of by this common order.

The respondent No.1 is the tenant under the appellant/defendant. The grievance of the appellant/defendant is that the Trial Court without considering the prima facie case and balance of convenience has restrained the defendants from

disturbing the operation of the plaintiff by disconnecting the electricity and other amenities in the schedule premises till 10th November, 2021 and 20th August, 2021 which was extended from time to time. The plaintiff is unable to show that the plaintiff has paid rent and occupation charges for the last one year. Although electricity and water connections are essential supplies which should not be disrupted by the landlord so long the tenancy subsists but at the same time it has to be taken into consideration that certain amounts are payable by the plaintiff No.1 to the defendant/appellant for enjoyment of the said property. There is a dispute with regard to the amounts to be paid by the plaintiff No.1 to the defendant/appellant as it is contended that due to disconnection of electricity, the plaintiff No.1 has to hire generator sets for the purpose of running its business. However, the fact remains that the interim orders passed on 21st September, 2021 and 23rd July, 2021 were extended mechanically from time to time without really adverting to the issues raised by the appellant.

Under such circumstances, upon depositing a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) with the appellant within a period of three weeks from date, the interim orders passed on 21st September, 2021 and 23rd July, 2021 shall continue till the disposal of the injunction application. However, the interim order unconditionally shall stand extended for a period of three weeks from date

and in the event the said amounts are paid by Bank Draft or RTGS to the designated bank account of the appellant in terms of this order, the interim order shall continue till the disposal of the injunction application.

This order is without prejudice to the rights and contentions of both the parties in the appeal.

Affidavit-in-opposition to the pending injunction application shall be filed within three weeks from date. Reply thereto, if any, shall be filed within three weeks thereafter.

Upon payment of the aforesaid sum by the plaintiff No.1, all facilities including electricity connections should be restored to the plaintiff No.1 as required under the agreement. The plaintiff shall continue to pay the rent and other charges payable under the agreement month by month from March, 2022 as a condition precedent for continuation of the interim order till the disposal of the injunction application strictly in terms of the agreement. The arrears amounts are not required to be decided at this stage. The learned Trial Court shall take into consideration the conduct of the parties at the time when the dispute arose in finally deciding the injunction application.

The learned Trial Judge is requested to dispose of the injunction application on merits without being uninfluenced by any observation made by us in this order

preferably within a period of twelve weeks from the date of completion of pleadings.

With the aforesaid observation, the appeal being FMAT 802 of 2021 along with CAN 1 of 2021 and the appeal being FMAT 803 of 2021 along with CAN 1 of 2021 stand disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)