

OD-7

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA No.GA/1/2022

In

GA/17/2022

CS/144/2016

In

APOT/25/2022

SQUARE FOUR ASSETS MANAGEMENT AND RECONSTRUCTION COMPANY
PVT. LTD. AND ORS.

Vs

ORIENT BEVERAGES LIMITED AND ORS.

BEFORE :

THE HON'BLE JUSTICE HARISH TANDON

And

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

Date : 5th April, 2022

Appearance:

Mr. Jayanta Kumar Mitra, Sr. Adv.

Mr. Joy Saha, Sr. Adv.

Mr. Ratnanko Banerji, Sr. Adv.

Ms. Sristi Barman Roy, Adv.

Mr. Zeeshan Haque, Adv.

Mr. Subranil Dey, Adv.

Ms. Sudipta Paul, Adv.

...for the appellants/petitioners.

Mr. Arnab Chakraborty, Adv.

Ms. Pragya Bhowmick, Adv.

...for the respondent no.8.

Mr. Kaushik Banerjee, Adv.

Ms. Rashmita Sen, Adv.

...for the respondent/defendant no.1.

The Court : The appeal is admitted and by consent of parties is taken up for final disposal.

The instant appeal has been preferred against an order dated 8th February, 2022 by which the application filed by the respondent no.8 for an order to hand over possession of the portion of the building in their occupation to the plaintiffs was allowed.

The suit for recovery of possession as well as the mesne profit was filed by the appellants primarily on the ground that after the expiration of the

period, provided in the lease deed, by efflux of time, the original lessee has surrendered but the sub-lessees who remained in occupation continued to occupy and, therefore, the decree for recovery of possession is required to be passed against them. Amidst pendency of the said suit, the respondent no.8 volunteered to hand over the possession of the portion in their occupation by taking out an application which was eventually allowed by the impugned order. The primary relief claimed in the said suit pertains to the recovery of possession and if the sub-lessees volunteer to hand over the possession, we do not find any infirmity and/or illegality in the order in allowing such prayer.

However, we find that the plea was taken by the appellants before the Single Bench that the said respondent no.8 having in wrongful occupation is liable to pay the mesne profit and the reference was made to the reports of the Special Referee filed before the Single Bench. The said report was filed to ascertain the occupational charges prevalent at the relevant point of time and on the basis thereof the appellants contend that the respondent no.8 should not be allowed to walk merrily from the portion in their occupation unless the quantum so ascertained is paid. In course of the hearing, it transpired that an application for a judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure is pending as no final order has been passed thereupon. The foundation of the said application for judgment on admission can be founded on the resolution taken in a joint meeting.

Since the matter is still pending adjudication before the Single Bench, we do not find that an order of such nature can be passed on equitable consideration. Furthermore, the Single Bench has protected the rights of the appellants as well as the respondent no.8 while directing the said respondent to hand over the possession and, therefore, no prejudice shall be caused to the appellants with regard to the legitimate claim if there be any on account of

mesne profit. However, we have been invited to the fact that pursuant to the impugned order, the respondent no.8 has offered to hand over the possession of the portion in their occupation. It is submitted on behalf of the respondent no.8 that they have withdrawn the security guards placed therein but the appellants have not responded to such letter as yet. The primary concern of the appellants is to recover the possession of the demised premises from the sub-lessees after the surrender by the original lessee, more particularly upon an expiration of the period provided in the lease deed by efflux of time.

We do not find any justification in not accepting the possession of the portion in the occupation of the respondent no.8 by the appellants. We, thus, feel that the appellants must take the possession of the portion in their occupation of the respondent no.8 immediately. So far as the claim on the mesne profit or loss suffered for the wrongful possession of the portion of the respondent no.8 is concerned, the matter is pending before the Single Bench and we expect that the same would be decided in near future without any further delay.

With these observations, the appeal and the applications are disposed of. For abundant caution, we hereby make it clear that any observation made hereinabove shall not have any persuasive effect in pending applications or in the suit as it is restricted to an application filed by the respondent no.8 before the Single Bench which had been eventually allowed.

(HARISH TANDON, J.)

(RABINDRANATH SAMANTA, J.)