

23.03.2023
Court No.12
S/L. No. 3
Suvayan/
Sourav

**FA 116 of 2002
With
CAN 3 of 2023**

**Lakshminarayan Ramniwas
Vs.
Commercial Properties &
Merchandise Ltd. & Anr.**

*Mr. Nirmalya Dasgupta
Mr. R. L. Mitra
Ms. Priyanka Dhar*

...for the appellant.

*Mr. Bikash Shaw
Ms. Rekha Ghosh*

...for the respondents.

Heard Mr. Mitra, learned Counsel for the appellant and Mr. Shaw, learned Counsel for the respondents.

The defendant is the appellant and the plaintiffs are the respondents in this appeal. The suit was filed by the plaintiffs being the landlord in the City Civil Court at Calcutta, *inter alia*, praying for recovery of vacant and khas possession of the suit premises and/or damages and/or *mesne profits*.

The suit having been decreed, the defendant brought the matter in appeal to this Court.

Now during pendency of the appeal, the present interim application vide CAN 3 of 2023 is filed wherein annexure-‘C’ is the term of settlement between the parties.

Taking into consideration the facts and submissions and the terms of settlement extracted below, the appeal be disposed of.

The terms of settlement between the parties are as follows:

“1. By consent of the appellant and the respondent, the Appeal being F. A. No. 116 of 2002 is disposed of on the following terms:

a) It is hereby recorded and confirmed by the parties herein that the tenant/appellant/applicant has already handed over the peaceful vacant khas possession of all that office space admeasuring about 700 sq. ft. in the first floor at premises 135A, Biplabi Rash Behari Bose Road, P.S. Burrabazar, Kolkata – 700001 in favour of the landlord/plaintiff/respondent i.e., the suit premises being the subject matter of Title Suit No. 1185 of 1985 which was decreed in favour of the plaintiff/landlord by the Learned 8th Bench in the City Civil Court at Calcutta on 18th October 2001 and presently the landlord/plaintiff/respondent is in peaceful possession of the same.

b) The landlord/plaintiff/respondent shall be at liberty to withdraw the amount of Rs. 1,20,577/- only or any

other amount which has been deposited by the tenant/defendant/appellant as occupational charges and/or arrear rent (whichever may be) of the suit premises, in terms of the Order dated 18th June 2002 passed by this Hon'ble Court in F.A.T. No. 177 of 2002 (subsequently renumbered as F.A. No. 116 of 2002) or in terms of any other order passed by Learned Court below to the credit of the said suit.

c) The defendant/appellant has handed over to the plaintiff/opposite party all the challans and receipts relating to such deposits made on account of occupation charges to the credit of the said suit to enable the plaintiff/opposite party to withdraw the said sum and the defendant/applicant shall co-operate with the plaintiff/opposite party in every manner possible for smooth withdrawal of the same.

d) It is hereby recorded, accepted and confirmed by both parties that neither of them has any present claim against the other nor will have any in future.

e) The appeal against the proforma defendant/respondent is disposed of.

f) The plaintiff/decreed holder, Commercial Properties and Merchandise Limited shall not proceed with Title Execution Case No. 11 of 2002 pending before the Learned City Civil Court at Calcutta.

g) Each party shall bear its own costs.”

Taking into consideration the aforesaid terms of settlement, the decree passed by the learned court below is modified to the extent of the settlement reached between the parties and the appeal is accordingly disposed of. The LCR along with a copy of the order be sent down to the court below forthwith after drawl of decree.

The decree be drawn within a period of one month from today on the basis of the terms of settlement.

In view of the aforesaid, the appeal being FA 116 of 2002 along with interim application CAN 3 of 2023 are disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)