

Item-4. 19-06-2023

sg Ct. 37

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side
Commercial Division**

FMAT 446 of 2022
CAN 1 of 2022

Aristocrat International Pvt. Ltd.
Versus
Dongfang Electric (India) Pvt. Ltd. Ors.

Mr. Saptangsu Basu, Sr. Adv.
Mr. Arnab Roy, Adv.
Mr. Satyam Mukherjee, Adv.
Mrs. Sayani Ahmed, Adv.
Mrs. Deborita Mukherjee, Adv.

...for the appellant

Mr. Ishan Saha, Adv.
Ms. Sananda Ganguli, Adv.

...for the respondent

1. The appeal and the application are taken up together for hearing and dispose of by this common judgment.
2. The appellant is aggrieved by the impugned order dated 30th September, 2022 passed by the learned Judge, Commercial Court at Rajarhat in Title Suit No. 28 of 2021 in connection with an application under Order 39 Rule 10 of the Code of Civil Procedure.
3. The relationship between the landlord and tenant as lessor and lessee is not in dispute. However, the possession of the appellant in the suit premises is on the basis of an unregistered lease agreement. The said lease agreement was terminated by a notice under Section 106 of the Transfer of Property Act.
4. The plaintiff filed a suit in the Commercial Division for eviction of the respondent. In the said proceeding, an

application has been filed by the defendant for rejection and/or return of the plaint as, according to the appellant, the dispute is non-commercial in nature and does not attract the jurisdiction of Commercial Court. This defence was, however, not raised contemporaneously but subsequent to the impugned order being passed against the appellant.

5. It appears from the impugned order that the appellant did not pay monthly lease rent from December 2019 and by reason of such failure to pay monthly lease rental the respondent filed an application under Order 39 Rule 10 CPC for securing the said amount as, according to the respondent, the appellant cannot be allowed to enjoy the suit property without even paying the rent.
6. The learned Trial Judge relying upon the decision in ***Green Bank Apartments Private Limited and Ors. vs. The Mint Matrix & Ors.*** reported in **2021 (2) ICC 269**, correspondingly **MANU/WB/0107/2021** allowed the application by directing the appellant to pay arrear rent from December, 2019 onwards until the month of September, 2022 along with interest at the rate of 6% per annum proportionately with the installment. This order is under challenge.
7. Mr. Saptangsu Basu, learned Senior Counsel appearing on behalf of the appellant submits that it is a non-commercial dispute, the learned Trial Judge has not considered the issue of abatement of rent by reason of non-supply of electricity, water and air condition

facilities. It is submitted that a suit for declaration has been filed by the plaintiff against the appellant in which an order was passed restraining eviction of the appellant from the suit premises without due process of law.

8. Even if we accept the submission of Mr. Basu with regard to liability to pay rent from December, 2019 till September, 2022 on account of alleged breaches of lease agreement there cannot be any reason for not paying the rent after September, 2022. The appellant is presently in possession of the suit premises. There is no order in the suit filed by Mr. Basu directing the respondent to provide such amenities. This point, in our view, ought to have been urged had there been any such deficiencies. On the part of the appellant to provide such facilities for use of the said premises for commercial purpose.
9. However, having regard to the fact that an application has been filed by the appellant for determination of the Trial Court as to whether the dispute involved is commercial in nature or not, we dispose of the appeal by directing the appellant to deposit a sum of Rs.75,00,000/- (Rupees Seventy Five Lakhs) with the respondent within two weeks from date. The payment of said sum and the acceptance of the said sum shall be without prejudice to the rights and contention of the parties in the pending suit and this will not create any equity in favour of the appellant.
10. Notwithstanding the pendency of the suit, having regard to the nature of controversy, we refer the parties to

mediation. We appoint Hon'ble Justice Prabir Kumar Samanta (Retired) as Mediator.

11. We request the learned Mediator to conclude the proceeding preferably within a period of six weeks from the date of communication of this order.
12. This order shall immediately be communicated to the Member Secretary, Mediation and Conciliation Committee, High Court, Calcutta in order to enable him to take immediate steps in this regard.
13. We request the learned Trial Judge to fix a suitable date after eight weeks for consideration of the pending application subject to the result of the mediation.
14. The Member Secretary shall forward the report of the mediation to the learned Trial Court. The report of the mediation shall be filed with the learned Trial Judge.
15. The Title Suit no. 28 of 2021 shall remain stayed for a period of eight weeks or until further order whichever is earlier.
16. We make it clear that in the event mediation fails the learned Trial Court shall decide the demurrer application without being influenced by any observation made in this order.
17. In the event of failure to deposit the sum of Rs.75 lakhs within the aforesaid and stipulated period the payments devided to be made under the impugned order shall be immediately executable.
18. It is needless to mention that without prejudice to the rights and contention of the respondent, all amenities

under the agreement shall be provided to the appellant within 48 hours from the deposit of said amount paid.

19. The amount directed to be deposited in terms of the order dated 30th September, 2022 excluding the amount to be paid in terms of this order would become payable if the suit is decreed in favour of the plaintiff subject to any defence that may be raised by the appellant for abatement of rent and an adjudication to that effect.
20. With the above directions, the appeal and the application are, accordingly, disposed of. However, there shall be no order as to costs.
21. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)