

IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 18 of 2020

I.G.E. (India) Private Limited

Vs.

Larica Infrastructure Limited

Mr. Debdatta Sen, Sr. Adv.

Mrs. Suchismita Ghosh, Adv.

Mr. Malay Kr. Seal, Adv.

...for the plaintiff.

Heard on : 06.02.2023

Judgment on : 17.02.2023

Krishna Rao, J.:

The plaintiff has filed the instant suit praying for possession of the suit property, permanent injunction and for payment of amount due and payable by the defendant.

The plaintiff is a perpetual lessee with respect of a portion of premises No. 7, Red Cross Place, Kolkata, inter alia, being the 4th Floor of the

premises comprising of 5300 sq. ft. carpet area. As per the request of defendant, the plaintiff granted a Business Service Centre (herein after referred to as “BSC”) with respect of the above mentioned premises to the defendant. The plaintiff had also allowed the defendant to use the area at the ground floor of the said premises No. 7. As the defendant had defaulted in handing over possession of the premises to the plaintiff on completion of the agreed period, the plaintiff had initiated a Suit being C.S. No. 232 of 2012 before this Court. During the pendency of C.S. No. 232 of 2012, the parties have settled their dispute wherein the defendant had vacated and handed over the vacant possession of the ground floor of the said premises and the defendant continued with the possession of the 4th Floor of the premises as per the terms and conditions of the agreement entered between the parties on 19th August, 2017.

Clause 2.1, 2.2, 2.3, 2.4 and 4.1 of the agreement reads as follows :

“2.1 The use of the BSC is for a fixed period of 36 (Thirty Six) months effective 1st June 2017 to 31st May 2020.

2.2 The terms of this Agreement shall be for a period of 36 months commencing from 1st June 2017 and ending on 31st May 2020 (the Term).

2.3 At the end of the terms the user undertakes/ assures/promises to handover space and facilities without any demur or recourse to law.

2.4 It is expressly and specifically represented, agreed, assured, promised and irrevocably guaranteed by the User to IGE that on completion of the duration of this Agreement and/or sooner determination thereof the user shall get all of its personnel, agents, employees, servants, representatives together with all its belongings equipment removed from the BSC and under no circumstances shall the user violate the specific term as made herein inasmuch

as time is the essence of this Agreement. The User does hereby confirm that in case of default on its part to handover peaceful vacant possession for any reason whatsoever the right of IGE to have khas vacant peaceful possession of BSC from the User tantamount to be a consent decree in law and will be executable before the Hon'ble High Court at Kolkata and that the User because of the undertaking and/or promise made herein shall not oppose the Same. Besides such right of IGE, the User shall also pay a sum of Rs. 10,000/- per diem till such possession is handed over from the date of default.

4.1 In consideration of IGE providing the facilities referred to Clause 1 above the User agrees to pay to IGE the sum per month Rs. 1,75,100/- for the first twelve months from commencement date i.e. from 1st June, 2017 to 31st May, 2018, Rs. 1,89,100/- per month from the period 1st June, 2018 till 31st May 2019 and Rs. 2,04,230/- per month from the period 1st June 2019 till 31st May 2020 by way of fixed ad non available compensation for use of the facilities in the manner provided in Clause 4.5 below without any deductions except tax deducted at source at prevailing rate from time to time. Such charges are payable in advance on or before the 7th day of each calendar month.

a. For availing of the space.

b. For using cabins, conference room, work stations etc. provided by IGE to the user.

c. For using the equipments A.C. machines and other facilities. Together with the said amount the User shall be reimbursing the Municipal Tax and/or such statutory outgoings as will be levied by Municipal Authorities based on the aforesaid amount to be paid by the User from time to time together with the Service Tax as is liable."

The defendant failed to pay the monthly charges for a sum of RS. 1,89,100/- plus GST from the month of July 2018 in total amounting to Rs. 43,82,446/- and the defendant had also failed to vacate the premises. The defendant used to send cheques to plaintiffs not as per the agreed terms and the plaintiff had returned the said cheques to the defendant. As the defendant has defaulted the agreement entered between the parties, the

plaintiff had issued a notice through the learned Counsel on 19th November, 2019 by terminating the BSC facilities granted to the defendant and directed the defendant to vacate and to hand over the possession of the premises to the plaintiff but the defendant has neither paid the amount nor had vacated the premises.

During the pendency of the instant suit, the plaintiff had filed an application being G.A. 1 of 2020 and in the said application the defendant had appeared and filed affidavit. On the basis of the affidavit, this court had disposed of G.A. No. 1 of 2020 by an order dt. 23rd March, 2021 by passing the following order :

“Affidavit filed on behalf of the defendant in Court be taken on record.

From the affidavit filed in Court today, it appears that the defendant specifies September 30, 2021 as the date on which the defendant will vacate the tenanted premises. In view of such stand be taken, there will be a decree for eviction against the defendant. Such decree however will not put into execution till September 30, 2021.

The lease of the defendant expired on May 31, 2020. The defendant is not paying the occupation charges from June 1, 2020 to the plaintiff. Learned advocate appearing for the defendant submits that, the defendant is ready and willing to deposit the arrears occupation charges as well as current occupation charges till September 30, 2021 with 2 the plaintiff. He submits that, the defendant be allowed to pay such arrears in instalments by allowing the defendant to pay one month arrear along with the current month occupation charges.

In such circumstances, the defendant will pay the occupation charges commencing from the month of June, 2020 till September 30, 2021 in the manner as following :

(i) Occupation charges from the month June, 2020 be paid by the defendant to the plaintiff within April 7, 2021.

(ii) Occupation charges for the month of March, 2021 be paid on April 7, 2021 to the plaintiff.

(iii) The defendant will continue to pay the subsequent arrear monthly occupation charges along with subsequent current monthly occupation charges month by month within the 7th of each month commencing from May, 2021 until the entire arrears are paid off.

(iv) In the event of the present occupation charges expiry prior to the arrear occupation charges being completely paid, the defendant will continue to pay the arrear occupation charges month by month within 7th of each month as provided above.

The balance claims of the parties are relegated to the suit.”

After disposal of G.A. No. 1 of 2020, the instant suit was listed on 6th June, 2022 and the plaintiff has filed a report of Deputy Registrar (Ct. & J) dt. 18th May, 2022 wherein it was certified that the defendant had not entered appearance either in person or through the Advocate. In view of the certificate of the Deputy Registrar, the suit was transferred to the list of undefended suit.

The plaintiff has examined one witness to prove the case of the plaintiff and during the evidence of the plaintiff's witness following documents were exhibited :

- i. Exhibit – 1: Agreement entered between plaintiff and defendant dated 19th August, 2017.*
- ii. Exhibit – 2 : Letter dt. 24th July, 2019 issued by the plaintiff to the defendant.*
- iii. Exhibit -3 : Letter dt. 3rd September, 2019 issued by the plaintiff to the defendant.*
- iv. Exhibit -4 : Letter dt. 14.11.2019 issued by the plaintiff to the defendant.*
- v. Exhibit – 5: Letter dt. 19.11.2019 issued by the Counsel for the plaintiff to the defendant.*

As per the evidence of the plaintiff's witness, though this Court has passed a part decree on 23rd March, 2021 but as per the part decree, the defendant had paid arrears of rent only for the month of June 2020 and July 2020 and March 2021 and April 2021 but the defendant has not paid any further amount.

As per Clause 2.2 the tenancy period is for 36 months with effect from 1st June, 2017 till 31st May, 2020. In Clause 2.4 of the agreement, the defendant had agreed that on completion of the period of agreement, the defendant or its men and Agents will vacate the premises and will hand over the possession of the premises to the plaintiff and in default, it tantamount to be consent decree in law and will be executable before this Court. It was further agreed that defendant shall pay Rs. 10,000/- per diem till possession of the premises is handed over to the plaintiff from the date of default.

In clause 4.1 of the Agreement, the mode of payment is agreed by the defendant and as per the said clause, the compensation from 1st June, 2017 to 31st May, 2018 is Rs. 1,75,100/- per month, from 1st June, 2018 to 31st May, 2019 is Rs. 1,89,100/- per month and from 1st June, 2019 to 31st May, 2020 is Rs. 2,04,230/- per month.

It is evident from the evidence of the plaintiff's witness that even after the expiry of the period of lease, the defendant has not vacated the premises and is in illegal occupation of the premises. It is also evident that after the part decree passed by this Court, the defendant had paid monthly rent for

the month of June 2020, July 2020, March 2021 and April 2021 and the defendant has not paid any further amount.

This Court on admission had passed part decree with regard to possession and occupational charges from June 2020 till 30th September, 2021 and remaining part this Court relegated to the suit. Clause 4.1 is binding upon the defendant for payment of rent but the defendant has defaulted in payment of rent. The agreement is proved by the plaintiff by adducing evidence. As regard occupational charges also plaintiff has proved that inspite of several requests, the defendant has not paid the agreed occupational charges.

In view of the above, this Court finds that the plaintiff has proved that the plaintiff is entitle to get the arrears of occupational charges from the defendant in terms of clause 4.1 of the agreement in the following manner :

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|-----|---|-------------------------|
| i. | <i>From 1st July, 2018 to 31st May, 2019
at the rate of Rs. 1,89,100/ per
month total amounting to :</i> | <i>Rs. 20,80,000/-.</i> |
| ii. | <i>From 1st June, 2019 to 31st May, 2020
at the rate of Rs. 2,04,230/- per
month total amounting to :</i> | <i>Rs. 24,50,760/-.</i> |

Total	Rs. 45,30,860/-
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The plaintiff is also entitled to get interest at the rate of Rs. 8% per annum on an amount of Rs. 20,80,000/- from the month of June 2019 till the realization of the total amount and further interest at the rate of 8% per

annum on an amount of Rs. 24,50,760/- from the month of June 2020 till realization of the said amount.

C.S. No. 18 of 2020 is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)