

ORDER

OD – 1

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/18/2014

WITH

WPO/59/2013

BASU HOUSE PVT. LTD.
VERSUS
INDIAN OVERSEAS BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE V.M. VELUMANI

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 30th August 2023.

Appearance:

Mr. Shyamal Chakraborti, Advocate
Ms. Manju Jaiswal, Advocate
Mr. Sayan Ghosh, Advocate
.... for appellant.

Mr. Sudeep Pal Choudhuri, Advocate
... for respondent nos.1, 2 and 3.

Ms. Suchishmita Ghosh Chatterjee, Advocate
... for respondent nos.4, 5 and 6.

THE COURT:- The appellant has come up with the present appeal challenging the order dated 20th September 2013 made in WPO/59/2023. The appellant filed the above writ petition for a direction to the respondents 4 to 6 to revoke and/or cancel the authorization/licence given to the first respondent to run the branch office at “Basu House” at 3, Chowringhee Approach, Kolkata – 700072. According to the appellant, the lease granted to the first respondent has expired as early as on 30th September 2002 and the first respondent is not entitled to run the branch office in the said address.

The learned senior counsel who appeared before the Learned Single Judge relied on the letter/circular dated 21.08.2008 issued by the fourth respondent. The learned senior counsel referring extensively to the said circular contended that when there is a dispute with regard to lease of the premises, the fourth respondent has to cancel or withdraw the licence granted to the first respondent to run the branch office in disputed premises. The learned senior counsel also relied on the judgments reported in (2002) 1 SCC 367 [Central Bank of India v. Ravindra], AIR 2005 Calcutta 21 [Eastern Paper Mill Machinery Pvt. Ltd. v. State Bank of India] and AIR 2007 Calcutta 241 [Ruia Cotex Ltd. v. Corporation Bank].

The Learned Judge considering the materials placed before him came to the finding that the appellant is trying to resolve landlord-tenant dispute by way of the writ petition and the guideline contained in the letter/circular dated 21.08.2008 is directory in nature and not mandatory. When there is a dispute with regard to the lease of the property, the fourth respondent has discretion to consider the same and pass orders. The Learned Single Judge distinguished the judgments relied on by the learned senior counsel appearing for the writ petitioner before him and held that the facts of the said judgments are different from the facts of the present writ petition and dismissed the writ petition.

Against the said order of dismissal, the appellant has come up in the present writ appeal.

The learned counsel appearing for the appellant raised various grounds in the memo of appeal and reiterated the averments made in the

writ petition. The learned counsel for the appellant has relied on the very same judgments referred to by the learned senior counsel before the Learned Single Judge as well an unreported decision of the Delhi High Court in WP(C) 7505/2013 & CM Appeal 16064/2013 [M/s. Holystar Natural Resources Pvt. Ltd. & Anr. v. Union of India & Anr.] and made very same submissions. The main contention of the learned counsel for the appellant is that the conditions mentioned in the letter/circular dated 21.08.2008 are mandatory and the Learned Judge erred in holding that they are only directory. The conditions mentioned therein are guidelines as per the provisions of the Banking Regulations Act, 1949 and are binding on the respondent nos. 4 to 6. According to the learned counsel for the appellant, the Learned Judge erred in holding that the appellant is trying to evict the first respondent from the premises. The appellant in the writ petition is seeking only cancellation of the licence granted to the first respondent to run the branch office and not for eviction and prayed for setting aside the order of the Learned Single Judge and allowing the appeal.

The learned counsel appearing for the respondents 1 to 3 made submission in support of the order of the Learned Single Judge and prayed for dismissal of appeal.

Ms. Suchishmita Ghosh Chatterjee, learned counsel appearing for the respondents 4 to 6 extensively referred to the order of the Learned Single Judge and submitted that only if there is any violation of ingredients of Section 22(4) of the Banking Regulations Act, 1949, the RBI cancels the

licence given to the banking companies. The letter/circular dated 21.08.2008 does not have any statutory force. If banking operations are stopped by canceling the licence, the public interest will be affected. The learned counsel for the respondents 4 to 6 relied on the judgment reported in (2004) 3 SCC 415 [Pramod Malhotra and Others v. Union of India and Others] and submitted that RBI cannot easily close down the banking companies merely because there are certain irregularities. They have to keep in mind the implications of closing a bank or financial institution. The closing of a bank or a financial institution has its impact not just on that bank or financial institution, its customers and debtors but also on the future of financial services in that region.

Heard learned counsel appearing for the appellant and the respondents and perused the entire materials on record.

From the materials on record it is seen that according to the appellant, the lease in respect of the premises where the first respondent is running the branch office has expired as early as on 30th September 2002. No material was placed before the learned Single Judge till 2013 when the present writ petition is filed or before this Court to the effect that any action has been taken by the appellant upon expiry of the lease. Once the tenancy is admitted, it is always open to the landlord to take steps before the competent court to evict the tenant (first respondent herein) from the premises. The Learned Single Judge considering the materials placed before him has rightly held that the appellant is trying to evict the first respondent in the guise of cancellation of licence given to the first

respondent to run the branch office in the premises. The contention of the learned counsel for the appellant in the appeal that the appellant is not seeking for an order to evict the first respondent from the premises but is seeking only to cancel the licence given by the RBI to the first respondent to run the branch office in the said premises is not acceptable in the facts and circumstances. Further, the Learned Judge has rightly held that the guideline issued in the letter/circular dated 21.08.2008 is only directory and not mandatory and the respondents 4 to 6 have discretion to consider the disputed lease and take action. The judgments relied on by the learned counsel appearing for the appellant relate to Sections 21 and 35A of the Banking Regulations Act, 1949 under which the RBI issues master circulars. The said judgments are not applicable in the facts of the present case to set aside the disputed lease. The Learned Judge considered all the materials placed before him and rightly dismissed the writ petition. There is no error in the order of the learned Judge warranting interference by this Court.

For the above reasons, the appeal fails and is dismissed.

(V.M. VELUMANI, J.)

(RAI CHATTOPADHYAY, J.)

s. kumar