OCD-3

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS 19 OF 2023
With
IA NO. GA 1 OF 2023

IN THE MATTER OF:
KARNANI PROPERTIES LIMITED
VS
MEHRA EYETECH PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date : 2nd February, 2023.

*Appearance:*
*Mr. Pranit Kumar Bag, Adv.*
*Mr. Shounak Mukhopadhyay, Adv.*
*Mr.Neelesh Chowdhury, Adv.*
*Ms. Anuradha Poddar, Adv.*
*For plaintiff*

The Court:- A plaint filed in the computer department of this Court with a number allotted has appeared in the list for presentation and admission for instituting the suit. The proposed plaintiff intends to institute a suit for a decree for eviction and recovery of peaceful, vacant and khash possession of an immovable property within jurisdiction, a decree on account of unpaid rent and mesne profit.

It appears from paragraphs 4 and 5 of the plaint sought to be presented that the defendant paid rent for the month of January, 2017 and defaulted in paying the same from the month of February, 2017. The default, therefore, was caused as per the averment in February, 2017. The proposed plaintiff says that it has adjusted the arrears of rent between February 2017 to September, 2017 aggregating to a sum of Rs. 6,50,300/- from the security deposit of Rs.7,00,000/- lying to the credit of the proposed defendant. Thus, by making such adjustment an excess sum of Rs. 49,700/- was lying with the proposed plaintiff. This amount admittedly does not cover the whole rent for the next month i.e. October, 2017 and, as such, even after the adjustment, the default continued from October, 2017. The termination notice was issued on 29th November, 2021. The plaint has been filed in the computer department of this Court on 30th January, 2023 i.e. after more than a year from the expiry of the notice period under the termination notice dated 29th November, 2021.

The proposed plaintiff seeks dispensation of formalities under Section 12A(1) of the Commercial Courts Act, 2015 on the ground that the proposed plaintiff contemplates urgent interim relief. In support of its contemplation, the proposed plaintiff in paragraph 18 says that from reliable sources in the market it has come to know that the defendant being unable to pay rent and further in view of the notice of termination dated 29th November, 2021 is looking desperately to illegally sublet the suit premises without even specifying as to when it has come to know. The proposed plaintiff, therefore, wants to institute the suit to seek an order of injunction and receiver to protect the immovable property.

The pleadings in support of the contemplation of urgent interim relief is not only insufficient but also does not persuade this Court to allow institution of the suit without complying with the pre-institution mediation. It is also well settled that a sub-tenant and/or a sub-lessee is bound by the decree which may be passed against the principal tenant or head lessee. Assuming without admitting that the proposed defendant is attempting to sublet then also such act will be covered by the decree that may be passed against it in a eviction suit to be instituted by the proposed plaintiff. Going by this principle also this Court is not persuaded to grant leave under provisions of Section 12A of the Commercial Courts Act, 2015 in contemplation of urgent interim relief.

It is clear that the proposed plaintiff who could wait despite default from February, 2017 or October, 2017 and for more than a year from the expiry of the notice period cannot wait for a couple of months to exhaust the remedy under pre-institution mediation. In fact, the proposed plaintiff could have gone for pre-institution mediation within this period instead of seeking to institute the suit with leave under the provisions of Section 12A of the Commercial Courts Act, 2015.

The prayer for leave under Section 12A of the Commercial Courts Act, 2015 is, therefore, refused in the aforesaid facts and circumstances as aforesaid.

Since the refusal of leave under Section 12A of the Commercial Courts Act, 2015 goes to the root of the jurisdiction and this Court cannot admit the plaint, the proposed plaintiff, if so advised, will be entitled to file the suit on the self-same cause after exhausting the remedy of pre-institution mediation, if permissible in law.

The plaint has been filed in the computer department and has only been allotted a number. Unless it is admitted, the suit is not instituted and the plaint does not officially enter the record of this Court.

In the aforesaid facts and circumstances, the department is directed to return the plaint along with the Court fees so that the proposed plaintiff can utilise the Court fees already paid in the suit against the same defendant, if filed, after exhausting the remedy of pre-institution mediation. The department to take necessary steps for return of the plaint after making necessary endorsement in the computer department.

(ARINDAM MUKHERJEE, J.)

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