

OCD-2

ORDER SHEET

CS 44 of 2023
IA No.GA 1 of 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

CARPOL INDUSTRIES PVT. LTD.
VS
RELIANCE INFRATEL LIMITED

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 5th April, 2023.

Mr. Sayantan Bose, Mr. Gautam Kr. Ray, Mr. T. K. Jana, Mr.
Gopal Das, Mr. Sourav Jana, Advocates for plaintiff.

The Court : The proposed plaintiff intends to institute the suit by presenting the plaint upon obtaining dispensation of formalities under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as the 2015 Act) against the proposed defendant inter alia for eviction from a premises let out for commercial purpose and consequential injunction. The proposed plaintiff says that it contemplates urgent and immediate relief as a Special Officer is required to be appointed to remove the equipments, tools and machineries of the proposed defendant lying at the suit premises and keep the same under the custody of the Special Officer.

It is the case of the proposed plaintiff that the lease between the plaintiff and the proposed defendant expired some time around 27th July, 2014 by efflux of time and the same was not renewed and/or extended any

further. The proposed plaintiff had called upon the proposed defendant to hand over vacant and peaceful possession on expiry of the lease but the proposed defendant did not comply with such request. It is also the case of the proposed plaintiff that on 30th May, 2015 a Memorandum of Understanding was entered into between the proposed plaintiff and the proposed defendant for a stipulated period upto 31st March, 2016. The proposed defendant, according to the proposed plaintiff, was obliged to vacate the suit property on expiry of March, 2016. It is the further case of the proposed plaintiff that the proposed defendant did not pay any occupational charges since July, 2015. The proposed plaintiff alleges that the proposed defendant is illegally occupying the suit premises as a trespasser and/or as an unauthorised occupant.

The proposed plaintiff in paragraph 17 says that the proposed plaintiff issued a notice on 22nd November, 2022 calling upon the proposed defendant to hand over vacant and peaceful possession of the suit property within 15 days from the date of receipt of the said notice. The proposed plaintiff also alleges that despite receipt of such notice the proposed defendant did not quit and vacate or hand over peaceful and vacant possession after expiry of the said notice period.

The proposed plaintiff has also claimed a money decree for occupational charges from July, 2015 to February, 2023 and perpetual injunction restraining the proposed defendant from transferring, alienating, encumbering and/or creating any third party right and/or interest in respect of the suit premises.

The cause of action, if any, in favour of the proposed plaintiff arose

immediately after 27th July, 2014 when the lease expired by efflux of time. The proposed plaintiff did not approach the Court at that point of time but entered into a Memorandum of Understanding by and under which the period of occupation of the proposed defendant was extended upto March, 2016. Thus the cause of action, if any, of the proposed plaintiff arose on expiry of March, 2016. The proposed plaintiff did not approach the Court immediately thereafter but waited for more than 6 years to issue the eviction notice on 22nd November, 2022.

The proposed plaintiff was well within its right to approach the court on the last day of limitation but having waited for so long since the right to sue accrued, the proposed plaintiff cannot then turn around and say that urgent interim reliefs are contemplated in the year 2023. It is well settled that the right to sue which accrued with the expiry of March, 2016 does not get deferred with the accrual of subsequent cause of action, if any. In this regard reference may be made to the judgment reported in (2016) 13 SCC 1 (Sundaram Finance Ltd.-versus- Noorjahan Beevi & Anr.). That apart and in any event the averments to support contemplation of urgent interim relief as pleaded in paragraph 30 of the plaint do not appeal to this Court.

In a suit for eviction normally the belongings of the defendant are not directed to be removed until there is a decree passed against the said defendant. The appointment of Special Officer for the purpose of taking custody of the articles of the proposed defendant, therefore, cannot be a ground of contemplated urgency in 2023 when the plaintiff has waited since April, 2016.

In the aforesaid facts and circumstances, dispensation of formalities

under Section 12A as prayed for by the proposed plaintiff is refused. The proposed plaintiff, however, will be at liberty to institute a suit on the self-same cause of action if otherwise permissible in law after complying with the requirements of pre-institution mediation as envisaged under Section 12A(1) of the 2015 Act.

The plaint has not entered the records of the Court on being not admitted on being presented and has only been filed in the computer department of this court to which a number has been allotted. The plaint, therefore, is directed to be returned back to the proposed plaintiff along with the court fees after completing the requisite formalities for the same. The proposed plaintiff will be entitled to use the same court fees in a suit against the same defendant on the self-same cause unless there is any statutory embargo for the same.

(ARINDAM MUKHERJEE, J.)