

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/106/2021
IA NO:GA/2/2021

CENTRAL WAREHOUSING CORPORATION AND ORS.
VERUSU
KISHAN LAL SHARMA

BEFORE:

THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

DATE : 20th January, 2023.

Appearance:

Mr. Dipak Kumar Bhattacharyya, Advocate
Mr. Sobhan Majumder, Advocate
... for appellants.

Ms. Sonal Agarwal, Advocate
Mr. Kushagra Shah, Advocate
..for respondent

The Court:- By this intra-court appeal, the respondent in the writ petition has challenged the order of the learned Single Judge dated 11th April, 2019 whereby WPA 591 of 2018 has been disposed of with certain directions.

The respondent (petitioner) had approached the Writ Court with the plea that the petitioner had taken the storage space of 1508 sq.Mtr. and 455 sq.Mtr. as also 380 sq.Mtr. from the appellants, Central Warehousing Corporation and that certain disputes in respect of retrospective enhancement of rent and demand of rent had arisen and that the appellants had put the padlock on the godown on the plea of not paying the due amount. Hence, the writ petitioner had challenged the demand of a sum of Rs.6,65,874/- made by the appellants vide letter dated 26th November, 2018 and had prayed for a Writ of Mandamus commanding the appellants to open storage space measuring 380 sq.Mtr.

Learned Single Judge in the impugned order has reached to the conclusion that the appellants did not have any right to seal or put padlock of

the tenancy of the writ petitioner and the action of the appellants was arbitrary. Learned Single Judge has further examined the dispute relating to the rent and has directed that the appellants will adjust the occupation charges till August, 2018 at the undisputed rate of rent and will refund the balance that may be found to have been paid in excess by the petitioner.

It is undisputed before this Court that subsequently the padlock has been removed and the writ petitioner has been permitted to take out the material which was stored in the warehouse, hence, the legality and validity of the action of the appellants in putting padlock in the godown need not be gone into in this appeal at this stage.

It has been pointed out that three separate storage areas in three different godowns ad measuring 1508 sq.Mtr., 455 sq.Mtr. and 380 sq.Mra. were taken and that in respect of the storage space of 455 sq.Mtr., the agreement dated 17th June, 2013 was executed and in respect of the storage space of 1508 sq.Mtr., the agreement dated 26th February, 2014 was executed between the parties and both these agreements contained the arbitration clause.

So far as the storage space of 380 sq.Mtr. is concerned, the stand of the counsel for the writ petitioner that no agreement was executed, has not been refuted by the counsel for the Warehousing Corporation.

The only dispute which remains is about the rent, if any, recoverable by the appellants or the refund, if any, for which the writ petitioner is entitled. The calculation of the appellants is contained in the communication dated 26th November, 2018 which shows the pending storage charges upto November, 2018 amounting to Rs.6,65,874/- including GST whereas the calculation at the instance of the writ petitioner is contained in the communication dated 13th September, 2018 which states that only a sum of Rs.5,38,080/- was due and payable which can be adjusted against the security deposit of the same amount.

These are the disputed questions of fact which cannot be decided in exercise of writ jurisdiction. Better course available to both the parties is to lead evidence and establish their right before the appropriate forum. If the dispute of rent is in respect of the storage space covered by the two agreements mentioned above, then the parties have remedy of invoking arbitration clause and if the same relates to storage space wherein no such arbitration agreement exists, the parties have remedy to approach the Civil Court.

In the aforesaid circumstances of the case, we dispose of the appeal by granting liberty to the parties to approach the appropriate forum in respect of recovery of their dues, if any.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)