

OCD-1

ORDER SHEET

CS 187 of 2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)

RAJA RAM SARAF
VS.
STATE BANK OF INDIA

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 21st September, 2023.

Mr. Vikram Wadehra, Ms. Aasia Hasan, Advocates for
plaintiff

The Court : This suit as appears from the averments in the plaint is for specific performance of an indenture of lease dated 15th December, 2015 so far as it relates to payment of arrears of lease rent maintenance charges and municipal rates and taxes. The defendant is State Bank of India who operates a branch from the leased out property being the ground floor of premises no.11A, Jatindra Mohan Avenue, Kolkata-700 006.

As per the averments made in the plaint the rent, maintenance and Municipal rates and taxes have been left outstanding by the defendant for a considerable period of time. The right to sue in favour of the plaintiff arose for the first time when there was a default. The plaintiff did not bring any action against the defendant before any Court at that point of time but had allowed the defendant to continue in possession of the leasehold property without paying. The plaintiff also says that after keeping rent and Municipal

rates and taxes in arrear for some time the defendant again started paying the same but has defaulted. The right to sue as held by the Hon'ble Supreme Court in the judgment reported in 2016 (13) SCC 1 [*Sundaram Finance Limited vs. Noorjahan Beevi*] does not get deferred. The plaintiff has approached this Court after successive breaches having been allegedly committed by the defendant. Although, the limitation gets extended with the successive breaches and the plaintiff is entitled to come on the last date prior to expiry of the limitation period but the right to sue does not get deferred. To seek dispensation of the formalities under Section 12A of the Commercial Courts Act, 2015 (hereinafter referred to as '2015 Act'), the plaintiff has to approach the Court at the first instance when the right to sue accrues. If urgent interim relief is contemplated and that point of time, the formalities under Section 12A of the 2015 Act may be dispensed with. The plaintiff after waiting for a considerable period of time cannot fall back and say that it contemplates urgent interim relief when the infringement to his right has taken place long back. The legislature by incorporating the provision of Section 12A of the 2015 Act which has now been held to be mandatory in terms of the decision reported in (2022) 10 SCC 1 (*Patil Automation Private Limited And Others Vs. Rakheja Engineers Private Limited*) has made a clear distinction between the urgent interim relief contemplated as under Section 12A of the 2015 Act with these available under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. In the instant case from the averments, I do not find any contemplation of urgent interim relief. Moreover, State Bank of India cannot be said to be removing itself from the jurisdiction of the Court or are removing their

assets.

In the aforesaid facts and circumstances, leave to dispense with the formalities under Section 12A of the 2015 Act as prayed for by the plaintiff is refused and as a consequences thereof the plaint is directed to be returned to the plaintiff for being instituted after complying with the pre-institution mediation, if otherwise permissible in law. Since no court fees have been paid, the question of return of the court fees does not arise in the instant case. The plaint has been filed only in the computer department and has not entered the records of the Court except being allotted a number. The plaint will enter the records of the Court only on the same being admitted on being presented. The number allotted to the suit after return of the plaint shall be de-registered to avoid future complication.

(ARINDAM MUKHERJEE, J.)

pa