

\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 17th April, 2023*

+ W.P.(C) 4821/2023 and CM APPL. 18629-30/2023

M/S INCAS

..... Petitioner

Through: Mr. Rajiv K. Garg and
Mr. Ashish Garg, Advocates
(Ph.9810002830, e-mail:
adv.ashishgarg@gmail.com)

versus

INDIA TOURISM DEVELOPMENT CORPORATION LTD.
& ANR.

..... Respondents

Through: Mr. Krishan Kumar, Mr. Atul
Sheopuri, and Mr. Nitin Pal,
Advocates.

Mr. Santosh Kumar Tripathi,
SC Civil GNCTD with
Mr. Kartik Sharma and
Mr. Utkarsh Singh, Advocates
(Ph.9129829862, e-
mail:scgnctd@gmail.com)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

**CM APPL. 18630/2023 (Exemption from filing certified copies and
dim annexures under Section 151 CPC)**

1. Exemption is allowed, subject to just exceptions.
2. Application is disposed of.

W.P.(C) 4821/2023 and CM APPL. 18629/2023

3. The present writ petition has been filed with prayer for quashing the notice of recovery dated 27.03.2023 issued by the Assistant Collector Grade –I/II, Sub Division (Kalkaji), Government of NCT of Delhi for recovery of amount of damages along with interest as arrears of land revenue.

4. The facts in brief are that the petitioner was given shop No. 35 on licence basis in Ashoka Hotel in the year 1978, for specific duration renewable at the option of the licensor. The last licence was granted to the petitioner vide licence deed dated 19.05.2006 for a period of two years. The said licence expired on 31.03.2008.

5. It is the case of the petitioner that the petitioner has vacated the premises on 10.08.2009. Proceedings under Section 7 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short ‘PP Act’) were initiated by the respondent against the petitioner herein. By order dated 04.08.2013, under Section 7 of the PP Act, the learned Estate Officer passed direction against the petitioner herein that the petitioner was liable to pay outstanding amount of Rs.76,880/- per month as damages with effect from 01.04.2008 towards unauthorized use of the public premises.

6. It is the contention on behalf of the petitioner that the order of the Estate Officer was only to the extent of levy of damages to the tune of Rs.76,880/- per month and that no interest was levied by the Estate Officer. It is further the case of the petitioner that no amount of interest upon the arrears of damages payable by the petitioner has been

ever demanded by the respondent.

7. Attention of this Court is drawn to legal notice dated 07.04.2008 issued on behalf of respondent No. 1 to the petitioner herein. It is submitted that the respondent had only demanded the damages per month from the petitioner and there was no mention of any interest.

8. On the other hand, learned counsel appearing for respondent No. 1, on advance notice, submits that the order dated 04.08.2009 passed by the learned Estate Officer has attained finality. He submits that no appeal was ever filed on behalf of the petitioner against the said order. It is submitted that in view thereof, the petitioner is liable to pay damages to the tune of Rs.76,880/- per month as the petitioner occupied the premises in question beyond the period of the licence, which expired on 31.03.2008.

9. Learned counsel for the respondent No. 1 further draws the attention of this Court to the application under Section 7 of the PP Act before the learned Estate Officer. By referring to para 8 of the said application, it is submitted that the petitioner herein was intimated by letter dated 01.02.2008 that his Licence Agreement was not being renewed. Thus, the petitioner was in the knowledge that his licence was not being renewed after 31.03.2008 and that the petitioner was required to vacate the premises in question. It is further submitted on behalf of the respondent that the present writ petition has been filed against the recovery notice as issued by the Executing Court for execution of the order passed by the Estate Officer dated 04.08.2009.

Thus, the present petition is not maintainable.

10. I have heard learned counsels for the parties and with the consent of the parties proceed to dispose of the present writ petition.

11. Perusal of the record clearly shows that the order dated 04.08.2009 passed by the Id. Estate Officer, wherein damages to the tune of Rs.76,880/- per month has been imposed upon the petitioner herein w.e.f. 01.04.2008 towards unauthorised use of public premises, has not been challenged by the petitioner. Thus, the said order has attained finality and the petitioner is liable to pay damages for occupation of the premises in question after the expiry of the licence on 31.03.2008.

12. Further, it is noted that the present writ petition has been filed against the recovery notice as issued by the Executing Court i.e. Assistant Collector Grade –I/II, Sub Division (Kalkaji), Government of NCT of Delhi. Thus, the present writ is clearly not maintainable. This Court, under writ jurisdiction will not act as Appellant Court against the order of the Executing Court.

13. At this stage, learned counsel for the petitioner submits that he would approach the Executing Court and raise all the objections therein. Further, learned counsel for the petitioner submits that the petitioner is willing to pay the principal amount at the rate of Rs.76,880/- per month w.e.f. 01.04.2008 till 10.08.2009, when the premises were vacated, after deducting the amount already paid.

14. In view thereof, the present writ petition is dismissed being not maintainable.

15. It is made clear that this Court has not expressed any opinion on the merits of the case.

MINI PUSHKARNA, J

APRIL 17, 2023

PB



नित्यमेव जयते