

20-02-2024
Item no.1 CD
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Commercial Division)

FMAT No.428 of 2022
Mani Square Limited
-vs-
H.M. Leisure
with
CAN No.2 of 2023
and
CAN No.3 of 2024

Mr. S.N. Mookherjee, sr. adv.
Mr. Jishnu Saha, sr. adv.
Mr. Suddhasatva Banerjee, adv.
Ms. Rituparna Chatterjee, adv.
Mr. Khushboo Chowdhury, adv.
Mr. Ishan Saha, adv.
Mr. Yash Singhi, adv. ...for the appellant

Mr. Rajarshi Dutta, adv.
Mr. Debjyoti Saha, adv.
Mr. A. Goyal, adv. ...for the respondent

The interim applications, after exchange of affidavits, were heard out. While hearing the applications, we are also in a position to dispose of the appeal itself.

We find infirmity in the impugned judgement and order dated 24th March 2022 to the extent stated hereinbelow. The rent or occupation charge that was directed to be paid by the respondent at the rate of Rs.8.5 lakh per month is less than the contractual rate at the time of the alleged expiry of the lease in 2017.

The contractual rate was Rs.10,14,513/-. Similarly, the CAM charges which were Rs.2,37,110/- per month were reduced to Rs.40,000/-.

The respondent ought to have been directed to pay at least the contractual rate without prejudice to the rights and contentions of the parties.

However, Mr Dutta, learned advocate appearing for the respondent, submits that in view of the prevailing COVID-19 pandemic, this concession was granted by the learned court below.

Whatever may have been the reason for this reduction, from March 2024 the respondent shall pay rent or occupation charges and CAM charges at the above contractual rate by the 7th of each month in advance without prejudice to the rights and contentions of the parties.

Furthermore, the stipulation in the impugned judgement and order of payment for fixed electricity and AC charges is also flawed. It should have been on actual consumption basis. Again, Mr Dutta tries to justify this order by the above reason.

We direct that from March 2024 the respondent shall pay electricity and AC charges on actuals. All statutory liabilities, including GST, required to be discharged or paid by the respondent, shall be paid by them.

It is submitted before us that apart from the suit by the respondent, the appellant has also instituted a suit for eviction of the respondent.

We direct that the learned court below be suitably approached by the parties so that hearing of both the suits are expedited.

Although the respondent shall make payment of occupation and other charges at the above rate in

modification of the impugned judgement and order, we make it absolutely clear that the said order would not stand in the way of the appellant prosecuting their suit for eviction of the respondent and moving the court for any interim order in aid of it.

We also make it absolutely clear that it would be open to the parties to ask for vacation or further variation of the impugned judgement and order and also for modification of the present arrangement directed to be maintained by this order as circumstances of the case may warrant.

The appeal and the connected applications – FMAT No.428 of 2022 with CAN No.2 of 2023 and CAN No.3 of 2024 – are thus disposed of, modifying the impugned judgement and order, as above.

[I.P. Mukerji, J]

[Biswaroop Chowdhury, J]

