

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS 47 of 2017

Tower Marketing Private Limited

Versus

Smt. Sheila Guha & Ors.

Mr. Debdut Mukherjee

Ms. Ankita Agrahari

Ms. Jayashree Ghosh

... for the plaintiff.

Hearing Concluded On : 03.01.2024

Judgment on : 10.01.2024

Krishna Rao, J.:

1. The plaintiff has filed the instant suit against the defendants praying for a decree for an amount of Rs. 30,68,164/- along with interest.
2. By a decree passed by the Hon'ble Court (previously High Court of Judicature at Fort William in Bengal) on September 2, 1889 in Suit No. 413 of 1888, the Committee of the Armenian Church was appointed for

the purpose of management of the property of the Armenian Church at Kolkata and Chinsurah, which included the said premises. Accordingly, necessary scheme was also framed pursuant to and in terms of the said decree dated September 2, 1889 for management of the properties and affairs of the Armenian Church.

3. On March, 2014, the defendants approached the plaintiff at its former branch office and represented that the Armenian Church was the sole and absolute owner of premises No. 46, Park Street, Kolkata-700016 and the premises comprises of a two storied building and an outhouse.
4. By virtue of lease executed on February 6, 1985, the Official Trustees of West Bengal as lessor had let out the said premises in favour of Mrs. Ava Rani Ghosh, since deceased and the defendants herein, who are the daughters and sons of the said Mrs. Ava Rani Ghosh. The lease was for a tenure of ten (10) years and had commenced from October 4, 1983. Under the said lease, the lessor had the right to sublet portions of the said premises on the condition that the lessees would keep a portion of the said premises under their occupation.
5. The said lease expired with the efflux of time on October 3, 1993. After such expiry, by a letter dated 14th February, 1994, the Official Trustees of West Bengal granted monthly tenancy in favour of Mrs. Ava Rani Ghosh, since deceased and the defendants herein with effect from October 4, 1993 under the same and similar terms and conditions of the said lease. Subsequently, Mrs. Ava Rani Ghosh died intestate

leaving behind the defendants as her legal heirs, due to the said circumstances the defendant were entitled to and were competent to create a sub-tenancy in portion of the said premises.

- 6.** On the basis of the representations, the defendants approached the plaintiff with the offer to induct the plaintiff in a portion of the ground floor of the said premises, leaving aside a room comprising of an area of about 125 sq. ft. on the South-East portion of the ground floor of the said premises for the defendants and the area under the physical occupation of Neo Bacto Chemical Laboratories (P) Ltd. against a total consideration of Rs. 50,00,000/- advance rent which was to be paid by the plaintiff in a phased manner.
- 7.** The plaintiff entered into an agreement with the defendants for assignment and/or creating sub-tenancy in respect of a part and portion of the ground floor of premises No. 46, Park Street, Kolkata-700016. Such agreement was contained in a letter dated March 18, 2014 which was counter signed by the defendant nos. 1 and 2 for themselves and the defendant no. 2 being constituted attorney of the defendant nos. 3 and 4.
- 8.** Pursuant to the aforesaid agreement and on the basis of the representations and instructions of the defendants, the plaintiff paid an advance sum of Rs. 20,00,000/- to the defendants as part consideration through manager's cheque dated March 18, 2014 in

favour of defendant no.1 and such manager's cheque had been encashed and appropriated by the defendants.

- 9.** The aforesaid cheque was drawn in favour of the defendant no. 1 since it was represented to the plaintiff that the defendant no. 1 was duly authorised by all the other defendants to receive the said amount on behalf of all the defendants.
- 10.** It was agreed between the parties that the balance sum of amount which is of Rs. 30,00,000/- would be paid by the plaintiff to the defendants after the possession of the demised portion was handed over to the plaintiff by the defendants.
- 11.** As the defendants failed and neglected to perform their obligations arising out of the said agreement, under such circumstances the plaintiff by a letter dated April 14, 2014 called upon the defendants to perform their obligations under the said agreement and the plaintiff is ready to pay the balance amount on setting possession of the premises.
- 12.** The defendants have sent a reply dated April 28, 2014 to the plaintiff through their Learned Advocate, raising false and frivolous disputes. By the said letter, the defendants repudiated the agreement contained in letter dated March 18, 2014 and offered to return the aforesaid sum of Rs. 20,00,000/-.

- 13.** Subsequently by the letters dated May 17, 2014 and June 10, 2014 the plaintiff called upon the defendants to perform their obligations under the aforesaid agreement dated March 18, 2014.
- 14.** Initially, the plaintiff had not accepted the purported repudiation of the said agreement dated March 18, 2014. However, the defendants were neither performing their obligations under the said agreement dated March 18, 2014 nor the defendants have returned the part-consideration of Rs. 20,00,000/- to the plaintiff. By a letter dated July 8, 2016, the plaintiff through its Ld. Advocate called upon the defendants to refund the sum of Rs. 20,00,000/- along with the interest thereon at the rate of 18% per annum within a period of seven days from the date of receipt of the said letter. The said letter was received by the defendant nos. 1, 3 and 4 at their address mentioned in the said letter and the said letter addressed to the defendant no. 2 was returned with the postal remark “unclaimed”.
- 15.** The defendants by a letter dated 21.07.2016 have sent a reply, wherein false and frivolous allegations were raised, however the defendants did not deny the receipt of Rs. 20,00,000/- from the plaintiff. The plaintiff had sent a reply to the letter dated July 21, 2016 to the defendants.
- 16.** The defendants have not returned the amount of Rs.20,00,000/- to the plaintiff and finding no other alternative had filed the present suit.
- 17.** The defendants on the receipt of the writ of summons have entered appearance and have filed written statement jointly. After filing of

written statement, the defendants have not appeared before this court and have also failed to complete discovery and inspections of the documents and have also not filed admission and denial of documents.

18. In spite of opportunity given to the defendants, after filing the written statement failed to appear before this court and on the basis of the pleading, the following issues were framed:-

- i. Whether the parties herein had entered into an agreement as recorded in the letter dated March 18, 2014?*
- ii. Whether the contract between the parties stood repudiated?*
- iii. Whether the amount of Rs.20 Lacs received by the defendants as part consideration money has now become due and payable to the plaintiff?*
- iv. Whether the plaintiff to a decree for sum of Rs.30,68,164/- against the defendants, jointly and/or severally, as on March 6, 2017?*
- v. Whether the plaintiff is entitled to interest pendente lite and interest on judgement at the rate of 18% per annum from March 7, 2017 till realization.*
- vi. To what other relief/s is the plaintiff entitled?*

19. The plaintiff has examined two witnesses in support of its case namely Amit Kumar Mallick as P.W.1 who is the Director of the plaintiff company and Shri. Kunal Sarbadhikari who is the auditor to the plaintiff company. During their evidence, all together ten documents were marked as Exhibit A to Exhibit J which are as follows:-

Exhibit A- Original letter dated 18.03.2014 of Tower Marketing Pvt. Ltd. recording the agreement between the parties..

Exhibit B- The Manager's Cheque dated March 18,2014 for Rupees Twenty Lakhs paid to defendants.

Exhibit C- Letter dated 14.04.2014 of the plaintiff requesting the defendants to execute the necessary tenancy agreement and hand over the possession of the tenanted property to the plaintiff where upon the plaintiff would pay the balance amount of 30 lakh Rupees to the defendants.

Exhibit D- Letter dated 28.04.2014 issued by the defendants to the plaintiff through their Learned Advocate, in which the defendant had denied the factum of any agreement between the parties.

Exhibit E- Letter dated 17.05.2014 issued by the plaintiff to the Advocate of the defendants to with a request to withdraw his letter dated April 28,2014 and further requested the defendants to complete the transaction in terms of the agreement between the parties.

Exhibit F- Letter dated 10.06.2014, the plaintiff called upon the defendants to execute the necessary documents and hand over the possession of the tenanted premises to the plaintiff.

Exhibit G- Letter dated 08.07.2016, sent by the plaintiff through its Learned Advocate repudiated the agreement between the parties and demanded refund of Rs.20 Lakhs along with the interest of 18% per annum.

Exhibit H- Letter dated 21.07.2016 issued by the defendants through their Learned Advocate refused to refund the amount of Rs.20 Lakhs since the plaintiff

had not disclosed the names of the directors of the plaintiff's company.

Exhibit I-Letter dated 01.08.2016, issued by the plaintiff through its Learned Advocate issued to the Learned Advocate for the defendants denying the allegations and contentions made by the defendants in the earlier letter.

Exhibit J- Letter dated 03.08.2016, issued by the Learned Advocate of the defendants to the Learned Advocate of the plaintiff to withdraw the earlier letters dated July 8, 2016 and August 1, 2016.

- 20.** As per the discussion between the plaintiff and the defendants, the authorized signatory of the plaintiff company had sent a confirmation by a letter dated 18th March, 2014 informing the defendants that the defendants should be ready for execution of the agreement in the first week of April' 2014 and the plaintiff had also sent a Manager's Cheque dated 18th March, 2014 for a sum of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the defendants. After receipt of the said communication, the defendants have signed in the said letter in presence of witness and also accepted the cheque of Rs. 20,00,000/- and encashed the same. On receipt of the letter dated 18th March, 2014, the defendant have categorically mentioned that "Received, Confirmed and Accepted" and the defendant nos. 1 and 2 have signed in the said letter and the defendant no. 2 has signed in the said latter on behalf of the defendant nos. 3 and 4 as their attorney. The letter dated 18th March, 2014 and the manager's cheque are proved and marked as Exhibit A and B.

- 21.** The defendants on receipt of the amount of Rs. 20,00,000/- have not come forward to hand over the peaceful and vacant possession of the premises to the plaintiff, the plaintiff had sent a notice to the defendants on 14th April, 2014 which was duly received by the defendant no. 1 on the same date wherein the plaintiff had requested the defendants to hand over the possession of the premises and the plaintiff is ready to pay the balance amount of Rs. 30,00,000/-. The letter dated 14th April, 2014 is proved and marked as Exhibit-C. On receipt of the letter dated 14th April, 2014, the defendant no.1 through her Learned Advocate had sent a reply on 28th April, 2014 wherein she has denied with regard to the tenancy of the premises but has admitted with regard to receipt of the amount of Rs. 20,00,000/- and stated that she is ready to refund the said amount. The letter dated 28th April, 2014 is proved and marked as Exhibit- D.
- 22.** On receipt of reply, the plaintiff had sent a letter dated 17th May, 2014 requesting the defendant to withdraw the allegations made in the reply dated 28th April, 2014 and to come forward for complete the transaction as per the discussion mentioned in the letter dated 18th March, 2014, the letter is marked as Exhibit -E. On 10th June, 2014, the plaintiff had again sent a letter to the defendants calling upon the defendants to come forward for execution of the necessary documents and to hand over the possession of the premises. The letter is marked as Exhibit-F. On 8th July, 2016, the plaintiff had again sent a legal notice thorough its learned Advocate to the defendants calling upon the

defendants to return the amount of Rs. 20,00,000/- with interest at the rate of 18% per annum. The legal notice was duly received by the defendant by speed post. The legal notice is marked as Exhibit- G Collectively.

23. The defendants through their learned advocate have sent a reply, the learned advocate of the plaintiff on 21st July, 2016 alleging that the defendant no.1 has paid the amount of Rs. 20,00,000/- by way of two cheques to one Gourbrata Mukherjee. The notice dated 21st July, 2016 is marked as Exhibit-H .On receipt of the said reply, the plaintiff through its advocate sent a reply on 1st August, 2016 informing that the plaintiff has not received the amount of Rs. 20,00,000/- and Shri Gourbrata Mukherjee is no way connected with the plaintiff. The reply of the plaintiff is marked as Exhibit-I. In reply to the legal notice dated 1st August, 2016, the defendant had sent a reply on 3rd August, 2016 requesting for furnishing the name of the Director and the person responsible for management of the plaintiff company for taking appropriate action and the said reply was also forwarded to the Police authority and the Official of Trustees of the West Bengal.

24. The defendants have jointly filed written statement and in the written statement, the defendants have denied the agreement dated 18th March, 2014. As regard the amount of Rs. 20,00,000/- the defendant have taken the defence that defendants have not received and accepted the amount directly from the plaintiff and the said amount is credited in the account of the defendant through unknown person. In the reply

dated 28th April, 2014 (Exhibit - D), the defendants have admitted the amount of Rs. 20,00,000/- received through the banker's Cheque. In the reply dated Exhibit – J the defendant have stated that the amount of Rs. 20,00,000/- is paid by way of two cheques to one Shri Gourbrata Mukherjee. The defendants have taken different stands in different stages but the defendants have not proved their stands by way of cogent evidence. The fact is admitted that the defendants have received an amount of Rs. 20,00,000/- from the plaintiff and the same is proved by the plaintiff through the Exhibit A.

- 25.** Considering the pleadings, evidences and the materials on record, this Court finds that the plaintiff has proved the case and the defendants are jointly and severally liable to pay an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) with interest at the rate of 10% per annum to the plaintiff with effect from 18th March, 2014 till the realization of the said amount.
- 26.** In view of the above, the defendants are directed to pay an amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) jointly and severally to the plaintiff along with interest at the rate of 10% per annum till the realization of the said amount.
- 27. C.S No. 47 of 2017** is thus **disposed of**. Decree be drawn accordingly.

(Krishna Rao, J.)