

**IN THE HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

**CS-COM No. 763 of 2024
(Old No. CS 70 of 2023)**

Karnani Properties Limited

Versus

Mehra Eyetech Private Limited

Mr. Sabyasachi Choudhury
Mr. Shounak Mukhopadhyay
Mr. Neelesh Choudhury
Ms. Anuradha Poddar

... For the plaintiff.

Hearing Concluded On : 19.09.2024

Judgment on : 27.09.2024

Krishna Rao, J.:

1. The plaintiff has filed the present suit for a decree of eviction and recovery of peaceful, vacant and khas possession of the suit property and for a decree of sum of Rs. 40,39,000/- along with mesne profit.

- 2.** The plaintiff, namely, Karnani Properties Limited is the owner of 17 premises (being premises Nos. 21, 23, 25A, 25B, 27A, 27B, 29, 31, 33, 35, 37, 39, 43, 45, 47, 55 and 57) popularly known as “Karnani Mansion” situated at Park Street, Kolkata. By an order dated 11th October, 2018, issued by the Kolkata Municipal Corporation, premises Nos. 29, 31, 33, 35, 37, 39, 43 and 45, Park Street have been amalgamated with premises No. 47, Park Street, Kolkata.
- 3.** The defendant since January, 2017, was a tenant in respect of Flat No. 232 at premises No. 25A, Park Street, Kolkata – 700016 and was carrying on business from the said premises. The defendant approached the plaintiff and requested for further space of around 1000 sq. ft. in the Karnani Mansion.
- 4.** As per the request of the defendant, the plaintiff further inducted the defendant as a lessee on 1st January, 2017, for a monthly rent of Rs. 70,000/- per month, inclusive of municipal taxes, in respect of one Double Room Flat being No. 417, measuring an area of about 1000 sq. ft., situated on the 4th Floor at the premises No. 25A, Park Street, Police Station – Park Street, Kolkata – 700016 and paid an amount of Rs.7,00,000/- as interest-free security deposit.
- 5.** The defendant according to the discussion between the plaintiff and the defendant, had paid rent for the month of January, 2017 at the rate of Rs.70,000/-, along with service tax and other statutory charges total

amounting to Rs.80,500/- and accordingly, a rent receipt dated 31st January, 2017, was issued by the plaintiff in favour of the defendant.

- 6.** The defendant defaulted in paying the lease rent amounting to Rs.70,000/- per month as well as tax from the month of February, 2017. The plaintiff had sent a notice to the defendant dated 29th November, 2021, under Section 106 of the Transfer of Property Act, 1882, terminating the tenancy upon expiry of 15 days from the date of receipt of the notice. The defendant received the notice dated 29th November, 2021 on 30th November, 2021 and the tenancy being in the nature of a lease from month to month, stood terminated on the expiry of 15 days from the date of the receipt of the termination notice dated 29th November, 2021, which was 15th December, 2021.
- 7.** As per the submissions made by the plaintiff, as the quantum of last admitted rent being Rs.70,000/- per month, the tenancy of the defendant was not protected under the provisions of the West Bengal Premises Tenancy Act, 1997 and was deemed to be a lease from month to month under the provisions of the Transfer of Property Act, 1882.
- 8.** The plaintiff submits that even after receipt of the termination notice, the defendant failed and neglected to hand over peaceful, vacant and khas possession of the suit property to the plaintiff, therefore, the defendant continued to wrongfully and illegally occupy the suit property as a trespasser on and from 16th December, 2021.

- 9.** The plaintiff became entitled to outstanding rent from the month of February, 2017 to June, 2017 at the rate of Rs. 70,000/- per month along with applicable service tax aggregating to a sum of Rs.80,500/- per month amounting to a total sum of Rs.4,02,500/-. The plaintiff further became entitled to outstanding rent for the period of July, 2017 to September, 2017 at the rate of Rs. 70,000/- per month alongwith applicable GST at the rate of 18% aggregating to Rs. 82,600/- per month total amounting to Rs.2,47,800/-.
- 10.** The plaintiff submits that from February, 2017 to September, 2017, the total rent would be amounting to a total sum of Rs.6,50,300/- and after adjusting the security deposit paid by the defendant, which is a sum of Rs.7,00,000/-, an amount of Rs.49,700/- would remain as security deposit to the credit of the defendant. The plaintiff claims an outstanding amount of Rs. 32,900/- as rent of 18 days for the month of November 2017.
- 11.** The plaintiff further claims outstanding rent for the months of December, 2017 till 15th December, 2021 at the rate of 70,000/- per month alongwith applicable GST aggregating to a total sum of Rs.40,06,100/-.
- 12.** It appears from the service report dated 5th August, 2024, issued by the Deputy Shreiff of Calcutta, High Court at Calcutta, that writ of summons along with a copy of the plaint have duly been delivered to the defendant on 12th May, 2023. As per the report of the Deputy

Registrar (Legal), dated 6th August, 2024, neither the defendant nor any legal representative on behalf of the defendant has entered appearance. This Court fixed the matter in the list of “Undefended Suit”.

- 13.** The plaintiff in support of its case had examined one witness, namely, Mr. Rishi Karnani, Director of the plaintiff company, and during his evidence had exhibited total number of 9 (nine) documents, marked as **“Exhibit – A to Exhibit – I”**.

Exhibit – A: Copy of a Board Resolution dated 20th August, 2024, authorising Mr. Rishi Karnani, the Director of the plaintiff company to make, sign, verify and affirm the present affidavit for and on behalf of the plaintiff company.

Exhibit – B: Copy of an Indenture dated 5th November, 1966 where the plaintiff was evinced as an owner of “Karnani Mansion”, which was executed by the erstwhile owners of the premises in favour of the plaintiff.

Exhibit – C: Original copy of an amalgamation of the properties being premises nos. 29, 31, 33, 35, 37, 39, 43 and 45, Park Street and premises No. 47, Park Street, dated 11th October, 2018.

Exhibit – D: Schedule “B” mentioned in the plaint, describing the rented area being one Double Room Flat, being No. 417, measuring an approximate area of 1000 sq. ft. on the 4th

Floor situated at Municipal Premises No. 25A, Park Street, Police Station – Park Street, Kolkata – 700016, is exhibited.

Exhibit – E: Copy of a rent receipt issued by the plaintiff, acknowledging the receipt of rent paid by the defendant, for the month of January, 2017, dated 31st January, 2017.

Exhibit – F and F/1: Copy of the termination Notice dated 29th November, 2021, sent by the plaintiff to the defendant, along with its original postal receipts/registration slips.

Exhibit – G: Copy of track reports of the delivery and receipt of the termination Notice dated 29th November, 2021, sent by the plaintiff to the defendant.

Exhibit – H: Copy of an order dated 2nd February, 2023, passed in the suit filed by the plaintiff being C.S. No.19 of 2023, allowing the plaintiff to avail the remedy of pre-institution mediation process.

Exhibit – I: Copy of a “Non-Starter Report” of the mediation initiated by the plaintiff, dated 10th April, 2023.

14. Exhibits “B” and “C” proves that the plaintiff is the owner of the suit schedule property i.e. Exhibit “D”. Exhibit “E” proves that the monthly rent of the schedule premises was Rs. 80,500/- inclusive of all taxes i.e. monthly rent Rs. 70,000/-, Service Tax at the rate of 14% i.e. Rs.

9,800/-, Swatch Bharat Cess and K. Kalyan Cess at the rate of 0.50% each which is Rs. 350/- each. Plaintiff has also proved from Exhibit **“F”**, **“F1”** and **“G”** about issuance of notice dated 29th November, 2021 and delivery of the same by speed post to the defendant under Section 106 of the Transfer of Property Act, 1882 and receipt of the same by the defendant on 30th November, 2021.

15. It is the specific case of the plaintiff that as per request of the defendant, the plaintiff had leased out the suit remises to the defendant from the month of January, 2017, at the monthly rent of Rs. 70,000/- per month and the defendant has taken possession of the said premises and paid rent of Rs. 70,000/- along with all taxes, total amounting to Rs. 80,500/- but since February, 2017, the defendant failed to pay the rent and applicable tax of the suit premises to the plaintiff.
16. The plaintiff by a notice under Section 106 of the Transfer of Property Act, 1882 terminated the lease with effect from 16th December, 2021 as the defendant has received notice on 30th November, 2021 but the defendant has neither vacated the premises nor had sent any reply within a period of 15 days from the date of receipt of notice.
17. Till the month of June 2017, the plaintiff has calculated service tax and other taxes at Rs. 10,500/- per month as admitted by the defendant by paying the same as reflected in Exhibit **“E”** and from the month of July 2017, the plaintiff has calculated GST at the rate of 18% amounting to

Rs. 12,600/- per month on monthly rent of Rs. 70,000/- per month. The plaintiff has adjusted Rs. 6,50,300/- as arrears of rent from the month of February, 2017 to September, 2017 and balance security deposit of Rs. 49,700/- is adjusted as arrears of rent for 18 days in the month of November, 2017.

- 18.** Considering the above, this Court finds that the plaintiff has proved the case and the defendant is liable to be evicted from the suit schedule premises. The defendant is directed to vacate the premises and to hand over the peaceful, vacant and khas possession of the suit schedule property to the plaintiff immediately. The defendant is also directed to pay the arrears of monthly rent of Rs. 32,900/- for the month of November, 2017 and Rs. 40,06,100/- being the arrears of monthly rent from the month of December 2017 to 15th December, 2021 total amounting to Rs. 40,39,000/-.
- 19.** To ascertain mesne profit, a Special Officer is to be appointed to inquire into the mesne profit. Ms. Suchismita Ghosh, Advocate, Mobile No. 7980857275/ 9903098035, is appointed as Special Officer to inquire into the matter about the entitlement of mesne profit by the plaintiff from the defendant with respect to suit premises. The Special Officer is directed to inquire into the matter after hearing the parties and to submit report before this Court within four (4) months from receipt of this order. The remuneration of the Special Officer is fixed at Rs. 2,00,000/-. At the first instance, the plaintiff shall pay the same to the

Special Officer and the plaintiff is entitled to recover the same from the defendant.

(Krishna Rao, J.)