



O.A.No.544 of 2024

RESERVED ON
28.08.2024

PRONOUNCED ON
03.10.2024

K. KUMARESH BABU, J.

This Application has been filed to pass an order of injunction restraining the respondents, their men, agents and persons acting or claiming through them from disturbing my peaceful possession of the property morefully described in the Schedule to the accompanying Judges summons pending adjudication of disputes in the arbitration proceeding between the parties.

2. Heard Mr.V.Rajesh Babu, learned counsel for the applicant, Mr.K.H.M.Afzal, learned counsel appearing on behalf of the first respondent.

3. The learned counsel for the applicant would submit that the applicant is the owner of one of the dwelling unit at Casagrand MIRO and the first respondent is the Casagrand MIRO Owners Welfare Association (CGMOWA). In respect of a portion of the property which was fit for running a supermarket, a tender notice dated 21.06.2022 was issued calling for quotation from the Owners of the Units to take on lease the said portion of the property for running a supermarket. The said tender notice had indicated



that the period of lease would be for a period of three years. The applicant had participated in the tender and was declared as the successful bidder and the property was given on lease for a monthly rent of Rs.19,500/- However, when the lease was made, the property was only given on a rent for a period of two years commencing from 04.08.2022 with an option for further renewal for a period of two years. Even though, the period of lease was lesser than the tender period, in view that the renewal clause that was available in the agreement, the applicant did not raise the issue with regard to the period of original lease. The applicant had invested more than Rs.25,00,000/- for making the property fit for running a supermarket.

4. While that being so, the first respondent had issued a fresh tender notice on 15.07.2024. Even though, such issuance of tender notice was contrary to the original tender document and the lease agreement due to last minute pressure, the applicant had also submitted its bid under protest. Unfortunately, the applicant was not successful and the second respondent was declared as the successful bidder. The first respondent had by an e-mail dated 23.07.2024 had demanded the applicant to vacate and handover the possession on or before 10.08.2024.

5. The learned counsel would submit that they had invested more than



Rs.25,00,000/- and have stocks worth Rs.10,00,000/- and immediate dispossession would only lead to the applicant suffering a loss of Rs.35,00,000/- . Therefore, he had approached the first respondent not to take any steps to evict the applicant unlawfully. However, there is a threat of disconnection of all amenities and therefore, this applicant had sought to invoke the clause of arbitration under the lease deed for referring the matter to Arbitrator pending this application and had also sought for an injunction restraining the respondent from interfering with the peaceful possession of the property more fully described in the schedule to the Judge's summons.

6. Countering his arguments, Mr.K.H.M.Afzal, learned counsel appearing on behalf of the first respondent would contend that it is true that a tender notice was issued for a period of three years. However, while entering into the lease, the lease agreement was only for a period of two years. The applicant did not seek for extension of the period of lease beyond the period of two years invoking the renewal clause within a reasonable time and therefore, a fresh tender notice was issued by the first respondent on 15.07.2024 for grant of lease. The applicant had also participated in the said tender wilfully and had been unsuccessful. The second respondent herein had quoted a sum of Rs.32,500/- as monthly rent for running the supermarket in the said premises. Having participated in the tender and after coming to know



that the applicant had been unsuccessful, the applicant is trying to misuse the powers of this Court under Section 9 of the Arbitration and Conciliation Act, 1996 and continued to be in unlawful possession thereby obstructing the first respondent from collecting the higher rental income which would only go to the benefit of the members of the Association of which the applicant is also a member. He would therefore, submit that the applicant is now estopped from filing an application. Atmost he would submit that if there has been a breach of any Clause of the agreement, the applicant could only claim damages and cannot restrain the first respondent from transferring the lease to the third party after the expiry of lease for quite some time. Therefore, he would pray this Court to dismiss the application for interim relief.

7. The learned counsel for the second respondent would submit that he had lawfully participated in the tender invited by the first respondent and he would submit that the applicant had contract only for a period of two years to run the supermarket and therefore, having been unsuccessful with the tender, the applicant cannot turn around and say that the tender itself was invalid.

8. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record.



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9. It is an admitted fact the applicant had been granted a lease of the demise premises for a period of two years only. The contention of the learned counsel for the applicant was that the tender period of lease was for a period of three years and the actual lease that was given was for a period of two years, which is contrary to the tender condition and therefore, the period of lease ought to be minimum for a period of three years. From the records, it could be seen that the original tender was floated by the first respondent on 21.06.2022 and the rental agreement was entered between the applicant and the first respondent on 12.07.2022. Having entered the lease on 12.07.2022 and for a period of two years not having raised the issue with regard to the period of lease and having participated in the further tender notice that was issued on 15.07.2024 and being unsuccessful, the applicant cannot be heard to say that she should be allowed to continue the business atleast as per the period in the tender notification. The applicant cannot seek to continue in possession by filing the present application for injunction. Atmost she would be earlier entitled for damages if she is able to successfully establish the denial of her rights to continue to be in possession as per the tender notice dated 21.06.2022. Hence, I do not find any reasons to grant an interim order as prayed for in the application and in fine, the application is dismissed.



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Index : Yes/ No

Speaking/ Non-speaking order

Neutral Citation : Yes/ No

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