

1. By consent of the parties, the appeal and the connected application are taken up together for hearing.

2. Being aggrieved by an order dated February 05, 2025, passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas, on an application of the respondent no. 1 herein in a suit filed by it being TS(COM) - 93/2024, the defendant no. 1 in the suit has come up by way of this appeal.

3. The appellant was a lessee in respect of the suit premises under the respondent no. 1 herein. A lease deed had been executed in the year 2016.

4. It appears that subsequently the lease expired by efflux of time and the appellant continued to be in possession of the suit premises under an agreement described as one for "Leave and Licence" executed on January 01, 2023 by and between the parties.

5. The agreement stated that the appellant herein (described as licensee) was granted permission by the licensor being the respondent no. 1 herein, to occupy the suit premises for 6 months starting on January 01, 2023 and ending on June 30, 2023. It was further stipulated in the agreement that the licensee shall pay license fee of Rs. 3,25,500/- and monthly maintenance charge of Rs. 4,49,500/- to the licensor in advance within the 7th day of each English calendar month.

6. It may be mentioned here that during the subsistence of the lease, an agreement had been executed by and between the appellant and the respondent no. 1 herein, on August 25, 2016, for maintenance of the suit premises which was being and still is being used for commercial purpose of running a motorcycle showroom. The said agreement was coterminous with

the lease agreement. Although the maintenance agreement was not formally renewed or no fresh maintenance agreement was executed by and between the parties when the license agreement was executed, it is obvious from the conduct of the parties that they proceeded on the basis that the maintenance agreement was still operative. Under the maintenance agreement, the landlord (respondent no.1) was obliged to maintain properly the premises/infrastructure and all the fittings in the manner it had been handed over as per the licensee's satisfaction. It was also provided that the landlord was responsible for "any repairing and whitewashing on the front portion of the said building".

7. The respondent No. 1 filed the aforesaid suit against the appellant herein on or about April 16, 2024, for recovery of possession of the suit premises and money decree to the tune of Rs. 64,05,100/- on account of alleged outstanding occupational charge for the period September 01, 2023 till March 31, 2024. A claim for damages assessed at Rs. 1 crore tentatively is also there in the plaint.

8. On an injunction application moved by the respondent no.1/ plaintiff under Order 39 Rules 1, 2 and 10 of CPC read with section 151 thereof, initially an ad-interim order of injunction was passed restraining the defendant no. 1 in the suit (present appellant) and/or its representatives from dealing with, transferring, alienating, encumbering, subleasing, letting out, causing any damage to or creating any third party right in respect of the suit premises till disposal of the suit. By the order impugned in this

appeal, the learned Judge confirmed the ad interim order of injunction and further directed as follows:-

“The Defendant/Respondent is directed under Order 39 Rule 10 read with Section 151 of the CPC, to pay the maintenance charges and occupational charges of Rs. 3,25,500/- + Rs. 4.49,500/- i.e. the Rs. 7,75,000/- respectively per month from February 2025 by the 10th day of each calendar months for every succeeding month till the disposal of the suit.

The Defendant/Respondent is also directed under Order 39 Rule 10 read with Section 151 of the CPC, to pay the arrear maintenance charges and occupational charges of Rs. 3,25,500 + Rs. 4,49,500/- i.e. the Rs. 7,75,000/- for each month for the period of September, 2023 till January, 2025 amounting to Rs. 1,31,75,000/- (rupees one crore thirty one lakhs seventy five thousand) along with interest @ 6 per cent per annum in equal monthly instalments within six months hereof or before the disposal of the suit, whichever is earlier. The first payment in this regard would be made on 15.03.2025. The order is passed without prejudice to the rights of the defendant, if any, to be decided in the trial of this suit and counter-claim.

The instant application under Order 39 Rule 1,2 & 10 read with Section 151 of the CPC, is thus disposed of on contest.”

9. Being aggrieved, the defendant no.1 in the suit is before us by way of this appeal.

10. Learned Senior Counsel appearing for the appellant submitted that the direction for payment of occupational charge whether current or arrear, could not be issued under Order 39 Rule 10 CPC. By issuing that direction, learned Trial Judge has pre-judged the issue as to whether or not the plaintiff is entitled to receive occupational charge and maintenance charge under or in connection with the license agreement and maintenance agreement. In any event, the plaintiff/landlord in breach of its obligation has failed to maintain the suit premises.

11. It was further submitted that the plaintiff's men trespassed into the suit premises and caused disconnection of electric line. The appellant is operating from the showroom by using diesel generator set. The appellant has filed a suit against the respondent no. 1 herein claiming declaration of tenancy and consequential injunction to protect its possession in respect of the suit premises. Since the respondent no. 1/plaintiff accepted rent from the appellant even after the license agreement came to an end on June 30, 2023, by efflux of time, the plaintiff has become a tenant in respect of the suit premises. Learned Senior Counsel submitted that only if the respondent/plaintiff succeeds in the suit at the trial, he may be entitled to mesne profits. However, the direction issued by the learned Trial Court for making payment of occupational charge, current and arrear, with interest at the rate of 6 per cent per annum, is wholly improper and premature.

12. Appearing for the respondent no. 1/ plaintiff, learned Senior Counsel submitted that the appellant has not paid a single penny after August, 2023. It is enjoying a very valuable property in a commercial hub. The appellant is operating a Yamaha Motorcycle Showroom from the suit premises earning huge profits. The learned Judge committed no error in directing the appellant to make payment of occupational charge and maintenance charge.

13. Learned Senior Counsel further submitted that under the licence agreement, it was the obligation of the licensee (present appellant) to pay the electric charges according to the reading of the meter installed in the suit premises by West Bengal State Electricity Distribution Company Limited. The appellant having failed to do so, the electric company disconnected supply of electricity. The respondent/plaintiff is in no way responsible for such disconnection.

14. We have considered the rival contentions of the parties.

15. There are disputes between the parties as regards the legal status of the appellant in respect of the suit premises as also regarding maintenance of the suit premises. While the appellant claims to be a tenant, the respondent no. 1 denies such status of the appellant. While the appellant has filed a suit claiming declaration of its tenancy, the respondent no. 1 has filed a suit for recovering possession of the suit premises.

16. However, what is not in dispute is that the appellant is occupying the suit premises and utilising it for a commercial purpose. What is also not in

dispute is that till August 2023, the appellant paid licence fee / occupational charge and maintenance charge, aggregating Rs. 7,75,000/-, every month, to the respondent no. 1. After that the appellant has not paid anything although it is enjoying the suit premises.

17. Nobody can be permitted to enjoy another's property without compensating the owner of that property unless of course the owner does not want such compensation. The appellant must continue to pay and/or deposit with the Court the amount that it was paying every month to the respondent no. 1 till August 2023. In this connection one may refer to the recent decision of the Hon'ble Supreme Court in the case of ***Bijay Kumar Manish Kumar HUF v. Ashwin Bhanulal Desai, reported at (2024) 8 SCC 668*** which was cited by Mr. Kar, learned Senior Advocate appearing for the respondents.

18. By the impugned order the learned Trial Court has directed the appellant to pay the sum of Rs. 7,75,000/- (occupational charge of Rs. 3,25,500/- + maintenance charge of Rs. 4,49,500/-) every month to the respondent no. 1 for the period September 2023 till January 2025, along with interest at the rate of 6 per cent per annum and then to continue paying the said amount every month. The appellant says that it has actually paid the occupational and maintenance charges till December, 2023.

19. Since there is a dispute as regards the time period till which payment has been made by the appellant to the respondent no. 1, without going into such dispute, at this stage, we direct the appellant to pay occupational

charges at the rate of Rs. 3,25,500/- per month, to the respondent no. 1 for the period January, 2024 till April 2025 and then to continue to pay such amount from the month of May, 2025, till the disposal of the suit or until further order that may be passed in this regard by the learned Trial Court, whichever is earlier. No interest need be payable on the arrear occupational charges, at this stage.

20. In so far as maintenance charge is concerned, we are of the view that ends of justice will be served if instead of directing the appellant to pay the same to the respondent no. 1 at this stage, we direct the appellant to deposit the maintenance charge for the period January 2024, till April 2024, with the learned Trial Court, at the rate of Rs. 4,49,500/- per month and then to continue depositing such amount every month with the learned Trial Court till the disposal of the suit or until further order is passed in that regard by the learned Trial Court, whichever is earlier. We have been prompted to do so this in view of the prima facie dispute between the parties regarding maintenance of the suit premises by the respondent no. 1.

21. Although the appellant sought to resist any direction for payment of occupational charge or maintenance charge saying that Order 39 Rule 10 does not contemplated such a direction, we have not the respondent no. 1's accepted such objection. The appellant cannot enjoy and exploit valuable property commercially, free of cost. Learned Trial Court had inherent power to pass the direction that the learned Judge did. However, the order of the learned Trial Judge shall stand modified to the extent indicated above.

22. This order is passed without prejudice to the rights and contentions of the parties. We further clarify that we have not gone into the merits of the dispute between the parties.

23. Learned Trial Court is requested to decide the issues involved in accordance with law and without being influenced by any observation in this order.

24. Since we have not invited affidavits, the allegations in the stay petition shall be deemed not to be admitted by the respondents.

25. The appeal and the connected applications are, accordingly, disposed of.

26. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

I agree.

(Om Narayan Rai, J.)