

CS/SCJ No.

Harsh Goel Vs. Vyas Jayanti Bhai Mohan Lal
(Through Cisco Webex Video Conferencing)

17.07.2020

The matter is taken up through video conferencing in view of the order No. 17/DHC/2020 dated 14.06.2020 of Hon'ble Delhi High Court and order dated 14.06.2020 of Ld. District & Sessions Judge (H.Q.), Tis Hazari Courts, Delhi.

Present: Sh. Manan Aggarwal, Ld. Counsel for the plaintiff. (Mobile No. 9999507749) (Email Id: kumarandassociates89@gmail.com).

None for the defendant.

Report is received from the Nazarat Branch, West District, Tis Hazari Courts, Delhi that summons of present suit have been duly sent to defendant on their email ID as well as what's app number (9408834200), so provided by the plaintiff. Defendant was further telephonically informed by the Ahlmad of this court about today's VC hearing. The link for video conferencing of today's meeting was also duly sent in advance to defendant on his what's app number 9408834200. The screen shots of email sent as well as link of video conferencing sent to plaintiff forms part of record. However, neither the defendant nor his counsel has appeared to assist the court despite waiting on video conferencing for about half an hour. In these

circumstances, I deem it expedient to hear the arguments on the application under Order 39 Rule 1 and 2 CPC on behalf of plaintiff.

Brief factual matrix of the case as per plaintiff is that plaintiff and the defendant entered into a license agreement dated 26.11.2019, vide which plaintiff had taken the property of the defendant, i.e. Survey No. 366, Untava, Ta. Kadi, Distt. Mehsana, Gujarat-382705 (hereinafter referred to as the 'suit property'), on license for a period of 11 months 29 days w.e.f 01.09.2019 on monthly license fees of Rs. 1,10,000/-. It is averred that at the time of entering into license agreement, plaintiff had paid a security amount of Rs. 1,90,000/- to the defendant on 01.10.2019, which amount was to be refunded to the plaintiff on vacating the suit property and clearing the outstanding dues.

It is averred that license fee of the suit property had been paid by plaintiff to defendant till February, 2020. But, due to corona pandemic and lock down restrictions plaintiff could not run his office from the suit property for past few months and was accordingly forced to shut down his branch office situated at the property in question. One settlement agreement thereafter, was entered into between the parties on 22.06.2020, vide which it was agreed that plaintiff would pay license fees of 3 months to the defendant instead of 4. It was further agreed that 2 months license fees should be paid immediately

to the defendant.

It is averred that plaintiff duly paid 2 months license fees, i.e an amount of Rs.1,98,000/- after deducting TDS, to the defendant on 23.06.2020 through RTGS from Axis Bank, Mundka Branch, Delhi. However, when plaintiff sent his trucks to the suit property on 30.06.2020 for removing his goods, the defendant did not allow the goods to be removed and failed to abide by the settlement agreement dated 22.06.2020. It is alleged that defendant already has the security deposit of the plaintiff to the tune of Rs. 1,90,000/- which could be deducted by him for realizing remaining 1 month license fee, but he refused the suggestion of the plaintiff and did not allow the trucks of plaintiff to remove the goods. It is further alleged that due to wrongful act of the defendant, plaintiff is suffering monetary loss of Rs. 20,000/- per day since 30.06.2020 and he is unable to carry out his business smoothly. Hence, the present suit for permanent and mandatory injunction along with recovery of damages has been filed by the plaintiff against defendant.

Arguments heard and record perused carefully.

It is well settled that the power conferred under Order 39, Rule 1 and 2 CPC in granting or refusing temporary injunction essentially lies in the realm of discretion of the court. The power, therefore, has to be exercised with the greatest care, caution and in accordance with reasons and sound judicial principles. A person who

seeks a temporary injunction must satisfy the court, firstly that there is a serious question to be tried in suit to dispel cloud of doubt relating to his entitlement and there is probability of plaintiff being entitled to the relief sought by him. Secondly, the Court's interference is necessary to protect him from threatened species of injuries enumerated under Order 39, Rules 1 and 2, CPC which the Court considers irreparable before his legal right, can be established on trial. Lastly, the comparative inconvenience which is likely to ensue from withholding temporary injunction would be greater than that which is likely to arise from granting it.

Coming to the facts of the case in hand, the license agreement, vide which the suit premises were let out to the plaintiff by defendant for a period of 11 month 29 days on monthly license fee of Rs.1,10,000/-, is placed on record. The settlement agreement, which allegedly got executed between both the parties on 22.06.2020 is also filed on record. The factum of payment of 2 months license fees by plaintiff to the defendant is also manifest vide receipt of Axis Bank, Mundka Branch, Delhi, as filed on record. Thus, prima facie case is made out in favour of the plaintiff and against the defendant.

Suffice it to say, the security deposit of Rs. 1,90,000/- had admittedly been taken by the defendant from plaintiff at the time of commencement of license agreement, which amount could have been adjusted by the defendant towards remaining one month license fee.

Thus, balance of convenience also lies in favour of the plaintiff and against the defendant. Moreover, as defendant is not permitting plaintiff to remove his goods from the suit property, an irreparable loss is likely to ensue upon the plaintiff as he is facing hardships in running his business.

Thus, the application under Order 39 Rule 1 and 2 CPC is hereby allowed. It is made clear that nothing mentioned herein shall tantamount to an expression on the merits of the case.

Defendant is at liberty to file written statement with copy supplied to opposite side in advance.

Put up for further proceedings on **15.10.2020**. Copy of this order be sent to Ld. Counsel/parties at their email-IDs.


(AKASH JAIN)
ACJ/CCJ/ARC(W)/17.07.2020