

Jayanta Kumar Das v Tanika

Present: Sh. Tarun Aggarwal, Ld. Counsel for plaintiff.  
(9999960284/ [advtarun1983@gmail.com](mailto:advtarun1983@gmail.com))  
Ms. Tanika, Defendant in person  
(Tanikatondon@gmail.com)

Matter is taken up for hearing by way of video conferencing.

Ld. Counsel for plaintiff has filed affidavit of service of summons. The defendant has appeared in person and acknowledged that the summons have been received on the whatsapp and email.

Ld. Counsel for plaintiff submits that the defendant is the tenant under the plaintiff in the property bearing no. B-22, First floor, part of Khasra no. 1989, Khatauni no. 9 situated in Village Tihar, B-Block, Hari Nagar, Delhi-110064. It is further submitted that the defendant has locked the premises and has left without paying any rent since March 2020. Ld. Counsel for plaintiff presses his application u/o 39 Rule 1 & 2 CPC.

It is submitted that the property in question was purchased by the plaintiff vide sale deed executed by one Smt. Manjit Kaur w/o Balbir Singh. The sale deed is annexed with the plaint. It is further submitted that the said property was given on rent to the defendant vide registered lease deed for a monthly rent of Rs. 14,000. It is submitted that the defendant has not paid rent since March 2020 and has locked the premises and has left. It is submitted that the plaintiff has terminated the tenancy of the defendant vide notice dated 02.06.2020 for not paying arrears of rent and has asked for vacating the premises. It is submitted that the plaintiff apprehends that the defendant might create some third party right in the suit property. It is prayed that the defendant be restrained from creating any third party right in the suit property and be directed to pay a sum of Rs. 14,500/ per month on account of illegal possession of suit property.

Reply to the application has not been filed, however the defendant categorically admitted that she is a tenant under the plaintiff and the rate of rent is Rs.14,500/ per month. The defendant has also admitted that she is in arrears of rent since March 2020. It is submitted that the rent could not be paid due to announcement of lockdown and prevailing pandemic situation. It is submitted that six months time may be given for paying the arrears of rent. It is further submitted that some time may be given to engage the counsel and file written statement as the rent agreement was for three years and the same has not expired yet.

Submissions heard. Record perused.

The plaintiff has placed on record the title deed whereby he is claiming himself to be the owner of the suit property. The ownership of the plaintiff is not disputed by the defendant. The defendant has, however, admitted that the plaintiff is the landlord and that she is a tenant under the plaintiff. Further, the plaintiff has also placed on record the lease deed executed between the plaintiff and defendant. Thus, the plaintiff has successfully established a prima facie case in his favour. The balance of convenience is in favour of the plaintiff and it is needless to say that if defendant parts with the possession or creates any third party right or interest in the suit property, irreparable loss would be caused to the plaintiff.

As regards the other relief i.e. directing the defendant to pay a sum of Rs.14,500/ per month, the same is in the nature of temporary mandatory injunction. It

is settled that for grant of interlocutory mandatory injunction the plaintiff has to establish a strong case which has higher standard than prima facie case and the injury that might ensue by non-grant is irreparable i.e. which can not be compensated in terms of money and balance of convenience. In the considered opinion of this court, the plaintiff has not met the above essentials. No irreparable injury would be ensued to the plaintiff.

**Accordingly, the application of the plaintiff under O 39 Rule 1&2 stands partly allowed.** The defendant is hereby restrained from parting with the possession or creating any third party right/interest in the suit property i.e. property bearing no. B-22, First floor, part of Khasra no. 1989, Khatauni no. 9 situated in Village Tihar, B-Block, Hari Nagar, Delhi-110064.

The defendant is directed to file her Written Statement on or before the next date of hearing with directions to supply advance copy to the opposite side.

Copy of the order be sent to both the parties.

Put up for further proceedings on 05.08.2020

Nitish Kumar Sharma  
CJ(01),West/THC  
13/07/2020