

Techprop Developers Private Limited Vs. Rose Valley Patrika Limited

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Court : Kolkata

Decided On : Jul-25-2017

Judge : Soumen Sen

Appellant : Techprop Developers Private Limited

Respondent : Rose Valley Patrika Limited

Judgement :

ORDER

GA No.2382 of 2017 EC No.142 of 2017 CS No.118 of 2015 GA No.2341 of 2017 GA No.2095 of 2017 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction TECHPROP DEVELOPERS PRIVATE LIMITED Versus ROSE VALLEY PATRIKA LIMITED BEFORE: The Hon'ble JUSTICE SOUMEN SEN
Date : 25th July, 2017.

Appearance: Mr.Aniruddha Chatterjee, Advocate Mr.Rahul Karmakar, Advocate Mr.U.Mullick, Advocate Mr.Sohan Banerjee, Advocate ...for the Applicant.

Mr.Abhrajit Mitra, Sr.Advocate Mr.Jishnu Chowdhury, Advocate Mr.Sarvapriya Mukherjee, Advocate Mr.Aritra Basu, Advocate Mr.D.N.

Chunder, Advocate ...for the Decree-Holder.

A third party is resisting the decree.

application has stated that the The applicant in this defendant was in financial distress and, in order to save the defendant, an arrangement was entered into between the plaintiff, the defendant and the applicant by which the editor and employees of the applicant were allowed to run a newspaper from the suit premises since 2014 and the decree-holder allowed the applicant to function from the suit premises.

It is contended that the decree-holder handed over possession and promised that it would execute necessary agreement and on that obtained basis necessary the applicant registration.

installed The machinery applicant was and had completely unaware of a collusive decree obtained by the parties and only on 17th June 2017 the applicant became aware of the said decree.

The averments made in the petition apparently contradict the pleadings made by the applicant in the writ petition being WP No.1379 of 2015.

In the writ petition, the applicant stated that the application has registered in its name a daily Bengali newspaper Khabar 365 Din.

The said newspaper was initially launched by the The defendant.

defendant closed down its business.

Thereafter, by an arrangement alleged to have been entered into between the defendant and the applicant, the applicant started running the newspaper from the suit premises.

The said arrangement was entered into in view of the financial and other difficulties entered by the defendant which prompted the defendant to close down the publication of the said newspaper.

circumstances, an arrangement was entered into Under such between the defendant and the applicant by reason whereof the applicant was permitted to run the newspaper from the said property.

about June 2015, the applicant came to learn from On or the representative of the defendant that a suit for eviction of the defendant had been filed by the plaintiff on the alleged ground that the defendant is in illegal possession of the said property after receipt of the notice of termination dated 5th January 2015 issued by the plaintiff.

The applicant was further informed of an order dated 15th June 2015 passed in an interlocutory application filed in the suit in terms whereof the defendant was permitted to apply for installation of a separate meter with the CESC authorities who were directed to process the said application and install a meter at a place to be installed by the CESC authorities upon compliance of all other formalities.

The applicant has been inducted said and/or defendant.

permitted to occupy the property by the The writ petition was essentially filed for a separate meter connection as the owner had refused to allow the defendant to enjoy electricity due to arrears in payment of electricity dues.

The stand taken in the writ petition with regard to entry of the applicant in the premises is attempted to be improved in this application filed by the applicant now right in respect of the suit property.

averred that the decree-holder handed seeking an independent In this application, it is over possession with a promise to execute a tenancy agreement in favour of the applicant which should have been within the knowledge of the applicant and had it been true it should have formed part of the pleading in the writ petition affirmed in December 2014.

The applicant has relied upon a Division Bench judgment of this Court with regard to the electricity supply in which an observation was made by the Honble Division Bench with regard to whether subletting is permissible or not and whether it has given a cause of action to the landlord to terminate the tenancy and seek eviction of the person in occupation.

It is needless to say that even a person in unauthorized occupation must get electricity till he is dispossessed from the premises.

But depending upon the nature of relationship between the parties and on the terms of the contract, if any, governing the parties, this general principle would apply.

The ratio of the decision as it appears to me is that a trespasser is entitled to electricity.

The Division Bench has also recorded that the applicant is a subtenant under the original tenant of the landlord meaning thereby the defendant in this proceeding.

Before I test the legal right of the applicant to which I am invited by referring to Order 21 Rule 103 of the Code of Civil Procedure, one thing cannot be brushed aside namely that the applicant did not pay any amount, whether we call it occupation charge or rent, since its induction in 2014 as alleged in this application.

Even on the basis of the last paid rent that the decree-holder was receiving from its tenant, a sum little over Rs.4 crore would be due and payable on account of such occupation charges had there been no termination of the lease.

The applicant, before could be allowed to defend its possession and tested on the veracity of the statements made in the application, upon depositing a sum of Rs.4 crore within 2 weeks from date with the Registrar, High Court, Original Side, shall be entitled to be heard on its right as alleged in the application, failing which there shall be no stay of the decree.

However, there shall be an unconditional order of stay of the execution of the decree for a period of two weeks.

In the event the order is complied with and a communication to that effect is made to the advocate on record of the decree-holder as well as the Receiver appointed in this matter, the Receiver shall not proceed with the execution of the decree.

The Registrar, High Court, Original Side shall deposit the said amount in a short-term suitable fixed deposit account yielding highest return subject to any order that may be passed in this proceeding.

The matter stands adjourned for four weeks.

(SOUMEN SEN, J.) S.

Kumar

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