

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 22nd August, 2024

DIVISION BENCH : THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Com.A. No.01 of 2023

Appellant : Smt. Januki Pradhan

versus

Respondent : Zuventus Healthcare Limited

Appeal under Section 13(1A)
of the Commercial Courts Act, 2015

Appearance

Mr. S. S. Hamal, Senior Advocate (Legal Aid Counsel) with Mr. Tashi Wongdi Bhutia, Advocate (Legal Aid Counsel) for the Appellant.

Ms. Rachhitta Rai, Advocate for the Respondent.

JUDGMENT

Meenakshi Madan Rai, J.

1. The dispute between the Plaintiff (Appellant herein) and the Defendant (Respondent herein), pivots around the allegation of the Appellant that the Respondent, despite being in possession of a godown owned by her at Majitar, Rangpo, had failed to pay the licence fees of ₹ 45,000/- (Rupees forty five thousand only), per month, owed to her from January, 2017 to July, 2018. The total amount was computed as ₹ 8,55,000/- (Rupees eight lakhs and fifty five thousand only), with pendente lite and future interest @ 12% per annum. Money Suit No.278 of 2018 (*Smt. Januki Pradhan vs. Zuventus Healthcare Limited*) was thus filed before the Learned Judge, Commercial Court, Gangtok, by the Appellant for arrears of licence fees and consequential reliefs.

2. The Learned Trial Court settled the following four issues for determination;



- (1) *Whether the defendant is liable to pay to the plaintiff monthly licence fee of ₹ 45,000 per month from January 2017 till date for occupying the said premises?*
- (2) *Whether as per clause 2.5 of the agreement dated 12.01.2016 the plaintiff was supposed to ensure uninterrupted transportation of goods of the defendant between the said premises and the main road and whether the plaintiff has failed to provide peaceful possession of the said premises?*
- (3) *Whether the plaintiff had asked the defendant to make the payment of ₹ 8,000 to Shri R. B. Majhi which was to be adjusted with the final rent payable while vacating the said premises?*
- (4) *Whether there is any subsisting agreement between the parties and whether the defendant has already surrendered possession of the said premises to the plaintiff?*

(i) In issue no.1 the Learned Trial Court discussed Exhibit-II, being the Leave and Licence Agreement dated 12-01-2016, by which the Respondent *inter alia* agreed to pay to the Appellant a sum of ₹ 45,000/- (Rupees forty five thousand only), per month, for use of the godown. The agreement was valid from 01-02-2016 to 31-07-2016. The Court noted that the Respondent however continued to remain in possession of the godown even after 31-07-2016, right up to June, 2017, which DW Deepak Kumar Verma (General Manager of the Respondent-Company) admitted under cross-examination. Vide Exbt-D1, being a letter dated 01-06-2017, addressed to the Appellant, the Respondent expressed its intention to vacate the godown and hand it over to her from 01-06-2017. Exbt-D3, being the receipt of courier service would indicate that the letter had been sent to the address of the Appellant on 13-06-2017. It was opined that the letters dated 01-06-2017 (Exbt-D1) and 10-06-2017 (Exbt-D2), clearly revealed the Respondent's intention to vacate the premises with sufficient notice to the Appellant. The Appellant cannot be permitted to be adamant by claiming arrears on one hand and on the other hand not taking



back possession of the godown from the Respondent. The Court determined that the Appellant can be permitted to claim rent/fees for the godown from January, 2017 to August, 2017 and not thereafter. The Respondent therefore was liable to pay a total sum of ₹ 3,60,000/- (Rupees three lakhs and sixty thousand only), with interest @ 12% from January, 2017 to August, 2017.

(ii) In issue no.2 the Court observed that the Appellant had failed to provide peaceful possession of the godown to the Respondent despite clause 2.5 of the agreement dated 12-01-2016 (Exhibit-II), enjoining upon her to do so.

(iii) In issue no.3 it was concluded that the evidence of DW Deepak Kumar Verma did not substantiate the issue raised and decided it against the Respondent.

(iv) In issue no.4 the Court reached a finding that although the Appellant may not have accepted possession of the godown, the Respondent had surrendered its possession after May-June, 2017, the agreement between the parties having ended on 31-07-2016, as per clause 2.1 of the agreement. Thus, only the mutual understanding for payment of licence fees @ ₹ 45,000/- (Rupees forty five thousand only), per month, till August, 2017, subsisted between them.

3. On the anvil of the findings of the foregoing issues it was ordered that the Respondent had to pay to the Appellant a sum of ₹ 3,60,000/- (Rupees three lakhs and sixty thousand only), from January, 2017 to August, 2017, with interest @ 12% for the same period.

4. Before this Court, the Learned Senior Counsel for the Appellant while confining his line of argument to the allegation that payment of ₹ 8,55,000/- (Rupees eight lakhs and fifty five



thousand only), is due from the Respondent to the Appellant, reiterated that there was no communication received from the Respondent by the Appellant to indicate the intention of the Respondent to vacate the premises. In the absence of such indication, they were liable to pay licence fees from July, 2017, till date, for its occupation.

5. *Per contra*, denying such liability, the Learned Counsel for the Respondent contended that the agreement between the parties, as proved by the exhibited documents, establishes that the Respondent was in possession of the godown upto June, 2017. The Respondent has no quarrel with the impugned judgment, which requires them to pay a sum of ₹ 3,60,000/- (Rupees three lakhs and sixty thousand only), with interest @ 12%, from January to August, 2017, but they are not liable to pay the amount as claimed by the Appellant.

6. We have duly considered the submissions advanced, perused the pleadings and evidence on record. We have also perused the assailed judgment. Whether the findings of the Learned Trial Court suffers from any error requires to be determined herein.

7. Exhibit-II is an agreement dated 12-01-2016, between the Appellant and the Respondent, whereby the Respondent had agreed to pay ₹ 45,000/- (Rupees forty five thousand only), per month, to the Appellant as licence fees for the said premises for the period 01-02-2016 to 31-07-2016. On 01-06-2017, after the said period terminated, the Respondent issued a letter to the Appellant stating that, they would like to hand over possession of the godown to the Appellant with effect from 01-06-2017. Another letter dated 10-06-2017 (Exbt-D2), was also issued to the



Appellant by the Respondent indicating their intention to vacate the godown and also informing her that vide e-mail dated 26-05-2017, the Respondent had issued a notice, one month prior thereto, that they were vacating the godown, the period of agreement vide Exhibit-II having ended on 31-07-2016. The Appellant was aware of the terms of Exhibit-II. She was also well aware that there was no renewal of the terms of the document at any time after its expiry. No evidence of such renewal or enquiries made on this facet by the Appellant appears to have been furnished before the Learned Trial Court. The Appellant as observed by the Learned Trial Court appears to be adamant about not accepting the vacated premises. This is not permissible.

8. In conclusion, in view of the facts and circumstances of the dispute, the submissions advanced and the records before us, we are of the considered view that there is no reason to differ with the findings of the Learned Trial Court on each of the issues as no errors arise therein. We are in agreement with the Learned Trial Court that the amount of ₹ 3,60,000/- (Rupees three lakhs and sixty thousand only), is to be paid by the Respondent to the Appellant for the period January, 2017 to August, 2017, with interest as ordered.

9. The impugned judgment is accordingly upheld.

10. Appeal stands dismissed.

11. Copy of this judgment be forwarded forthwith to the Learned Trial Court for information along with its records.

(Meenakshi Madan Rai)
Judge

22-08-2024

(Biswanath Somadder)
Chief Justice

22-08-2024

