

Lifestyle International Pvt Ltd. (Max ... vs Anant Raj Projects Limited on 5 November, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(COMM) 488/2020
I.A.10129/2020 (under Order XXXIX Rule 1 and 2 CPC)
I.A.10131/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

LIFESTYLE INTERNATIONAL PVT LTD.
(MAX RETAIL DIVISION) Plaintiff
Represented by: Mr. Sandeep Sethi, Senior Advocate
with Mr. Saransh Jain, Ms. Shloka
Narayanan & Mr. Tejpal Singh
Rathore, Advocates.

versus

ANANT RAJ PROJECTS LIMITED Defendant
Represented by: Mr. Rohit Aggarwal, Advocate
with Ms. Gunjan Sinha Jain,
Mr. Kanchan Chaudhary &
Mr. Shiksha Singh, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 05.11.2020 The hearing has been conducted through Video Conferencing. I.A.10130/2020 (exemption)

1. Exemption allowed subject to just exceptions.
2. Original documents, if any, be filed within two weeks of the resumption of the normal Court functioning.
3. Application is disposed of.

I.A.10132/2020 (under Section 151 CPC- seeking service through electronic mode) CS(COMM) 488/2020 PageGUPTA

1. By this application the plaintiff seeks permission to serve the defendant through email.

2. Since learned counsel for defendant has entered appearance on advance notice as per the practice/directions, this application has become infructuous.

3. Application is disposed of accordingly.

I.A.10131/2020 (under Order XI Rule 1 (4) Commercial Courts Act)

1. Additional documents, if any, be filed within 30 days.

2. Application is disposed of.

CS(COMM) 488/2020 I.A.10129/2020 (under Order XXXIX Rule 1 and 2 CPC)

1. Complaint be registered as suit.

2. Issue summons in the suit and notice in the application.

3. Learned counsel for the defendant accepts summons in the suit and notice in the application.

4. Complete paper book has already been supplied to learned counsel for the defendant by learned counsel for the plaintiff.

5. Written statement to the suit and reply affidavit to the application along with affidavit of admission-denial be filed within 30 days.

6. Replication and rejoinder affidavit along with affidavit of admission- denial be filed within three weeks thereafter.

7. List the suit and the application before the learned Joint Registrar on 6th January, 2021 for admission-denial of documents.

8. List before the Court on 26th February, 2021.

CS(COMM) 488/2020 PageGUPTA

9. The present suit has been filed by the plaintiff seeking a prohibitory injunction against the defendant restraining it from disturbing the plaintiff's peaceful use, occupation and enjoyment of the premises being a store in unit bearing Nos.108,109 and 121A admeasuring 11,366.434. sq. ft. (approx.) super built up area at the First Floor of Moments Mall, in short, 'the suit space'.

10. In respect of the suit space the plaintiff and defendant had entered into a registered Licence Agreement dated 11th November, 2014 as per which the plaintiff was put in exclusive possession of the suit space for a period of 10 years starting from 9th June, 2014 with a Lock in Period of 42 months. The Agreement between the parties also provided for the Force Majeure Clause.

11. Considering the Covid-19 situation the plaintiff wrote a letter to the defendant on 19th March, 2020 expressing its inability to pay licence fee in the wake of pandemic, whereafter the lock-down was imposed. To the letter dated 19th March, 2020, of the plaintiff, the defendant replied on 30th April, 2020, whereafter parties entered into revised terms of payment of licence fee on 6th June, 2020.

12. The claim of the plaintiff is that in terms of the revised payment schedule, the plaintiff has made payments to the defendant on 26th June, 2020, 24th July, 2020, 31st July, 2020, 3rd September, 2020 and 19th October, 2020. Despite the plaintiff making payments to the defendant in terms of the revised terms dated 16th June, 2020, the defendant issued the letter dated 25th August, 2020 directing the plaintiff to vacate the suit space. The said letter/notice is a general letter addressed to almost all the occupants of the defendant's Mall and irrespective of the fact that revised terms have been CS(COMM) 488/2020 PageGUPTA agreed between the parties and the plaintiff was making payment in terms of the Revised Terms, the plaintiff has been asked to vacate the suit space.

13. Learned counsel for the defendant who enters appearance on advance notice states that in the Revised Terms dated 16th June, 2020, the parties had also agreed that the plaintiff will consider re-location and re-development of the Mall. Draft letters for re-development/re-location were sent to the plaintiff, however, there was no response and thus, the defendant insists on vacation of the suit space. Learned counsel for the defendant states that the revised terms dated 16th June, 2020 were never given effect to as it was a consolidated proposal for settlement with the plaintiff also agreeing to the re-development/re-location.

14. Considering the fact that after the plaintiff expressed his inability to make the payment of the rentals as agreed between the parties, revised terms of payment were entered into between the parties on 16th June, 2020 and the plaintiff is paying the rental in accordance thereto and also the fact that the Clause 3, Sub-Clause (c) provided that even after the Lock in Period it was the licensee's right to terminate and there was no provision for the right in the licensor to terminate the licensed premises, except as provided in Clause 23 of the Agreement between the parties, this Court finds that the plaintiff has made out a prima facie case in its favour and in case no ad interim injunction is granted, the plaintiff would suffer an irreparable loss. The balance of convenience also lies in favour of the plaintiff.

15. Consequently, till the next date of hearing the defendant, its agents, assignees, etc. are restrained from seeking possession or asking the plaintiff to vacate the suit space, as noted above, subject to the plaintiff continuing to make the payment as agreed between the parties, which from the month of CS(COMM) 488/2020 PageGUPTA October, 2020 is as per the licence fee agreed vide agreement dated 11th November, 2014 as also the revised terms dated 16th June, 2020.

16. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

NOVEMBER 05, 2020

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CS (COMM) 488/2020

PageGUPTA