

M/S Mehra Jewels Palace Pvt Ltd vs M/S Miniso Lifestyle Pvt. Ltd. & Anr on 11 September, 2020

Author: Mukta Gupta

Bench: Mukta Gupta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CS(COMM) 376/2020

M/S MEHRA JEWELS PALACE PVT LTD.

Represented by: Mr.Kirti Uppal, Sr.
Ms.Aastha Dhawan and
Bhardwaj, Advocates.

versus

M/S MINISO LIFESTYLE PVT. LTD. & ANR. D

Represented by: Mr.Akash Tyagi, Ad

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA
ORDER

% 11.09.2020 The hearing has been conducted through Video Conferencing. I.A. 8045/2020 (under Section 149 CPC extension of time for filing court fee)

1. By this application the plaintiff seeks extension of time for filing the court fees. Court fee be filed within two weeks

2. Application is disposed of.

CS(COMM) 376/2020 I.A. 8044/2020 (under Order XV-A CPC r/w Section 151 CPC)

1. Plaint be registered as a suit.

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

3. Learned counsel for the defendants enters appearance and accepts summons in the suit and notice in the application.

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

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5. Replication and rejoinder affidavit along with the affidavit of admission/denial be filed within three weeks thereafter.

6. Case of the plaintiff is that the plaintiff entered into a lease agreement with defendant No.1 and one Keikaku India Pvt. Ltd., the predecessor in interest of defendant No.2 on 4th January, 2018. The term of lease deed between the parties was for a period of nine years commencing from 1st December, 2017 ending on 30th November, 2026. Since the defendants defaulted in payment of rent for a sum of 27 lakhs for the month of April, 2020 in respect of the terms, defendant No.1 emailed to the plaintiff on 30th March, 2020 that due to Covid-19 the business was affected and it had to shut the store. Subsequently, the defendant No.1 took the plea of force majeure on account of lockdown imposed and sought waiver of the rent.

7. Case of the plaintiff in its email dated 28th May, 2020 was that the force majeure clause only provided for postponement of the date for making the contractual payment and not for waiver or suspension thereof. In any case since despite negotiations the defendants did not agree and was insisting on a revised schedule even after lockdown was opened, the plaintiff terminated the lease by issuing a termination notice dated 19th August, 2020. Hence the present suit seeking possession and recovery of rents till the date when the lease deed was terminated and thereafter mesne profits besides damages.

8. The force majeure clause, that is, clause-12 of the lease deed between the plaintiff and defendants provided that neither party shall be liable to the other party for any delay or omission in the performance of any obligations under this agreement where the delay or omission is due to any force majeure condition, that is Acts of God, flood, earthquake, tempest, war, Signing Date:11.09.2020 21:21:15 This file is digitally signed by PS to HMJ Mukta Gupta riots, embargoes etc.

9. Thus prima facie the case of the defendants was covered by force majeure clause and at least for the months of April and May, 2020 when the premises could not be opened due to the embargo and the defendants could have omitted to perform the contract. However, subsequent to the opening of the leased premises defendants cannot continue to take the plea of force majeure. Therefore, considering the fact that the defendants had defaulted in making payments of the lease amount for the period of June, July, August, 2020 as well till the date of termination notice was issued, the defendants will deposit a sum of 90 lakhs provisionally within a period of four weeks with the Registrar General of this Court, who will keep the said amount in the fixed deposit.

10. List the suit and application on 24th November, 2020.

11. Learned counsel for the plaintiffs and defendants states that in the meantime, parties would be willing to try mediation.

12. Consequently, the authorised representatives of the parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 16th September, 2020 at 4.00 PM in the first instance and thereafter as and when directed by the learned Mediator.

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

MUKTA GUPTA, J.

SEPTEMBER 11, 2020 'vn' Signing Date:11.09.2020 21:21:15 This file is digitally signed by PS to HMJ Mukta Gupta