

SUPREME COURT OF INDIA

Infinity Infotech Parks Limited

Vs.

Shiva Jute Mills Private Limited

SLP(Civil)No.21341 of 2019

(Deepak Gupta and Anirudha Bose,JJ.,)

07.02.2020

ORDER

Deepak Gupta,J.,

1. This petition is directed against the order passed by the High Court of Calcutta dated 31.07.2019 in C.O. No.541 of 2019 whereby it allowed the petition of the respondent no. 1 herein and directed the petitioner herein to restore the electricity of the property occupied by the respondent no.1 herein.

2. The grievance of the petitioner is that the respondent no. 1 who is occupying the 16th floor of the building in question comprising about 29,445 sq. ft., has not paid a single rupee on account of lease rent, maintenance charges, electricity charges and other charges and, therefore, the order directing restoration of electricity without requiring the tenant-sub lessee to pay the requisite charges is totally without jurisdiction.

3. We are only referring to the facts which are necessary for decision of this case and our discussion is restricted to passing an equitable order. The facts, shorn of unnecessary details, are that the petitioner- Infinity Infotech Parks Limited is a lessee in the building known as INFINITY BENCHMARK, Bidhannagar, in the District of North 24-Parganas, Kolkata. The 16th floor of the said building was divided into 3 offices. The entire 16th floor along with 5 car parking spaces was sub-leased by the petitioner in favour of the respondent no. 2- M/s. Pearl Studios Pvt. Ltd., which in turn sub-leased the entire premises in favour of respondent no. 1 vide lease deed dated 01.02.2012 and the admitted case of the parties is that from 01.02.2012, the respondent no. 1 is in occupation of the property. The claim of the petitioner is that it is entitled to Rs.7,29,240/- on account of lease rent up to 02.12.2019.

4. At the outset, we may note that certain disputes between petitioner and respondent no. 2 are the subject matter of arbitration proceedings and, therefore, we are not commenting on the merits of the same and are confining ourselves to the admitted fact that respondent no. 1 is in possession of the entire premises from 01.02.2012. We may also note that an

objection was raised that the sub-lease in favour of respondent no. 1 is unregistered and insufficiently stamped and, therefore, should be impounded. We feel that this is a matter for the trial court to decide and we have looked into the lease deed only to strike out a balance between the parties and anything said in this order is without prejudice to the rights of the parties with regard to the admissibility of the lease deed in evidence. We make it clear that we have passed this order at the interim stage and any observations made herein are only for passing this interim order and shall not be taken into consideration while deciding the main proceedings which must be decided on the basis of the evidence led before the trial court or the arbitral tribunal.

5. The petitioner claims Rs.7,29,240/- as lease rent from 01.02.2012 to 02.12.2019 which amount is not seriously disputed by the respondent no. 1.

6. The petitioner has also claimed a sum of Rs.15 per sq. ft. per month as maintenance charges inclusive of taxes for the 3 office areas measuring 29,445 sq. ft. Reference has been made to clause 5 and 7 of the lease deed, which are reproduced as under:

“V. To bear and pay proportionate share of all kinds of expenses for all periodical repairs for common areas of the said building, Air conditioning, additions, alterations, treatment, polishing, maintaining, rebuilding and cleaning, painting, entrances, common landings corridors, staircases, sewers, drains pipes, electric lines and installation, insurance and other conveniences including annual maintenance charges in respect thereof as may be incurred by the Sub-Lessor, from time to time and such proportionate share together with service tax shall be calculated and apportioned by the Sub-Lessor conclusively and the same shall be binding on the Sub-Lessee.

VII. It is made clear that the said service and maintenance together with air-conditioning charges as envisaged herein to be provided by the Sub-Lessor to the Sub-Lessee and such charges for the same shall be based upon all kinds of actual proportionate costs, charges and expenses of whatsoever nature plus 20% (twenty percent) management fee to be levied thereon and service tax as may be applicable shall be paid by the Sub-Lessee to the Sub-Lessor during the subsistence of this Sub-Lease and such proportionate share together with service tax shall be calculated and apportioned by the Sub-Lessor conclusively and the same shall be binding on the Sub- Lessee, provided further it is made clear that the Sub-Lessee shall pay aforesaid charges for common services and maintenance as enumerated in the Fifth Schedule as stated hereunder and air-conditioning charges to be provided in the said sub-demised space at the fixed rate of Rs.15/- per Sq.ft. for a period of one year from the date of commencement hereof and Sub-Lessor shall give rebate at the rate of Rs. 7/- per Sq.ft. out of the said charges of Rs.15/- per Sq.ft. for the initial period of two months from the date of commencement and thereafter with effect from 15th November, 2009 until the completion of one year the Sub-Lessee shall pay at the rate of Rs.15/- per Sq.ft. per month as stated hereinabove.”

7. The case of the petitioner is that the respondent no.1 has not paid a single rupee as maintenance charges and as per the terms of the lease deed, Rs.15/- per sq. ft. was to be paid except for the months of August and September, 2009 for which a rebate of Rs.7 per sq. ft. was to be given, meaning thereby that for these two months only Rs.8/- per sq. ft. was to be charged. On the other hand, on behalf of the respondent no. 1 it is claimed that no air-conditioning is being provided to the premises in its possession and, therefore, the rate of Rs.15/- per sq. ft. is not payable. Relying upon clause 7 quoted hereinabove, it is contended that the amount of Rs.15/- per sq. ft. was payable only for the first year from commencement of the sub-lease and, thereafter, it was to be paid on actual basis plus 20% as management fees to be levied thereupon and service tax as may be applicable. It is submitted on behalf of the respondent no. 1 that the management never raised invoices on the basis of the actual expenses incurred by it and, therefore, this amount was not paid.

8. We have considered the rival contentions of the parties and we make it clear that we are not deciding this plea on merits. However, we have no doubt in our mind that the sub-lessee cannot claim that no amount is payable by it. It has not paid a single rupee to the petitioner despite occupying the premises for more than 7 years. We cannot appreciate this conduct of the sub-lessee. In a multi-storeyed building of this nature there has to be provision for security guards, cleaning services, lift operators, parking attendants, etc. When the parties had agreed that Rs.15/- per sq. ft. per month would be paid in the first year, we can presume that the sub-lessee must have satisfied itself that these are the approximate expenses to be incurred by the petitioner for maintenance of the building. Since air-conditioning has admittedly not been provided by the petitioner, for the purpose of this order, we deem it fit and proper to fix the maintenance charges at 50% of the regular rate by giving a discount of 50% for not providing the air-conditioning, which comes to Rs.7.50 per sq. ft. The maintenance charges payable @7.50 per sq. ft. for 29,445 sq. ft. works out to Rs.2,20,837.50 per month which are rounded of to 2,20,000/- per month.

9. Coming to the second claim of electricity charges, the petitioner has claimed minimum demand charges at Rs. 384 per KVA per month plus electricity duty, transmission and distribution losses from the electricity bills placed on record by both the sides. It is not disputed that the entire building has a sanctioned load of 1445 KVA. The sanctioned load in respect of the premises on the 16th floor works out to 266.43 KVA. The contention of the respondent no.1 is that it has hardly used the premises and is only liable to pay the actual charges for the electricity consumed by it. It is also contended that since the petitioner has not raised invoices or produced the bills of actual consumption of the 16th floor, the respondent no.1 is not liable make such payment. We find that the respondent no.1 has placed on record bills of the year 2011 raised by the petitioner in respect of the same premises to the account of Pearl Studios Pvt. Ltd.-respondent no. 2 and these bills are for a sum of Rs.76,571/- + Rs.59,706/- + Rs.3,96,855/- i.e. total Rs.5,33,132/-, for a period of approximately one month. Electricity tariff has not come down and the contention of the respondent no.1 that it is only liable to pay electricity charges at the rate of Rs. 10,000/-, cannot be accepted. The area in its possession is almost 30,000 sq. ft. Even if there is no air- conditioning, the sanctioned load is 266.43 KVA. According to the bill of

04.11.2019, the demand charges are Rs. 384 per KVA per month. Therefore, at present the minimum demand charges for 266.43 KVA works out to Rs.1,02,309.12. In any event, the respondent no.1 cannot escape its liability has to pay the minimum demand charges. It is contended that earlier demand charges were at a lower rate of Rs. 317 per KVA but we are sure that there may have been some months where the respondent no.1 may have utilised more than the minimum demand and it is liable to pay minimum charges which for the purpose of this order are ascertained at Rs.1,00,000/- per month. In addition to the minimum demand charges, some fixed charges are payable to the West Bengal State Electricity Distribution Company Ltd. in addition to the energy consumed charges. Keeping all these factors into consideration we feel that as an interim measure the respondent no.1 shall pay at least Rs.1,10,000/- per month on this account.

10. It was also urged on behalf of the respondent no.1 that there were some periods during which the electricity was disconnected and, therefore, it should not be asked to pay any charges for the said period. We are not in agreement with the said submission. The respondent no.1 did not pay a single rupee either on account of lease rent, maintenance charges, electricity charges or other charges and in such event, the petitioner had no option but to disconnect the electricity. We are, therefore, of the view that the High Court clearly misdirected itself in directing restoration of the electricity without ensuring payment of some amount to the petitioner.

11. As far as the claim of the petitioner for other charges including water charges are concerned, we are not passing any order at this stage. We are also not passing any order for payment of interest at this stage. These can be finally determined by the Court which decides the matter. Therefore, the liability only on account of minimum electricity charges of Rs.1,10,000/- per month from 01.02.2012 till 31.01.2020 works out to Rs.1,05,60,000/-.

12. In view of the aforesaid discussion we set aside the order of the Calcutta High Court and direct as under:

I. We are of the view that respondent no. 1 must pay the following amounts for the restoration of electricity:-

i) Lease Rent of Rs.7,29,240 (for the period from 01.02.2012 to 02.12.2019).

ii) Maintenance charges of Rs.2,11,20,000 (@ Rs.2,20,000 per month from 01.02.2012 to 31.01.2020).

iii) Electricity charges of Rs.1,05,60,000 (@ Rs.1,10,000 per month from 01.02.2012 to 31.01.2020).

II. Out of the total of Rs. 3,24,09,240 payable by respondent no.1, we direct it to pay Rs.1,00,00,000 within one month from today. Respondent no.1 shall pay the rest of the amount in three equal instalments of Rs.74,69,746, Rs.74,69,747, and Rs. Rs.74,69,747 to be paid on 15.03.2020, 15.04.2020 and 15.05.2020 respectively.

III. In case the respondent no.1 pays the amount of Rs.1,00,00,000/- to the petitioner then within 3 days of this payment, the petitioner shall restore the electricity.

IV. With respect to the lease rent, electricity charges, maintenance charges and other charges, the petitioner shall raise a bill on or before 10th day of each month. The first such bill shall be raised on 10th March, 2020 and the amount shall be paid by respondent no.1 latest by 20th March, 2020. Even in case of any dispute, it shall deposit a sum of Rs.3,50,000/- every month without prejudice to the rights of the parties. The dispute with regard to the remaining amount can be decided in accordance with law.

V. The respondent no.1 through its Chief Executive (Authorised Signatory) shall file an affidavit undertaking to comply with the aforesaid direction within 2 weeks from today.

VI. If any of these conditions are violated, the petitioner shall be entitled to disconnect the electricity.

13. The petition is disposed of in the aforesaid terms. Pending application(s), if any, stand(s) disposed of.