

Assam Schedule VII: Form No. 132

**HIGH COURT FORM NO. (J) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT / CASE
IN THE COURT OF THE CIVIL JUDGE, TEZPUR, SONITPUR**

Present: **N.J. Haque, LLM, AJS**
Civil Judge
Tezpur, Sonitpur

3rd day of May 2019

MISC. (J) NO. 7/2019
(Arising out of TS No.8/2019)

Sri Spandan Kashyap

S/o Sri Pranab Saikia
Vill – Bam Parbatia, Saikia Chuburi
Mouza- Bhairabpad
PO & PS - Tezpur
Dist – Sonitpur, Assam

-- Petitioners

-Vs.-

Sri Narayan Choudhury

S/o Late Satya Narayan Choudhury
Vill – Baraholia, Ward No.6
Mouza- Mahabhairab
PO & PS - Tezpur
Dist – Sonitpur, Assam

---- Opp. Party

Ld. Advocate appeared for the petitioner : - Mr. S. Borthakur
Ld. Advocate appeared on behalf of OP : - Sri S. Mishra

This is a petition filed for temporary injunction under Order 39 Rules 1 and 2 of Code of Civil Procedure and the misc. case came up for final hearing on-3rd day of May 2019.

1. Instant Misc. case arisen out of a petition filed by petitioner Spandan Kashyap under Order 39 Rule 1 and 2 CPC praying for passing an order of temporary injunction against the O.P restraining and prohibiting him, his agents, employees etc. from taking forcible occupation of the management and affairs of Sachin Bar and Restaurant and restore the electricity connection in the said Bar and Restaurant and not to surrender IMFL OFF License, as described during the pendency of the suit.

Petitioner's case in, brief:

2. Petitioner's case appears to be in a nutshell is that petitioner and O.P are known to each other and O.P obtained IMFL OFF license from Govt. of Assam for selling of Indian made foreign liquor and as the O.P failed to run his business, he asked the petitioner to run the business. Thereafter, on 30-04-2016 a Deed of Partnership was executed between the petitioner and O.P for running **Sachin Bar and Restaurant** and said deed was notarized before Notary Public vide No.8924/16 and petitioner is running Sachin Bar and Restaurant by investing Rs.10 Lakhs till the month of December,2018 without disturbance. The petitioner further paying rents of said premises regularly and renewal fees of license but in the 1st week of January,2019 and on 16-01-2019 O.P threatened the petitioner to vacate and hand over the management of Sachin Bar and Restaurant within 28-02-2019. That petitioner has invested more than Rs.50 Lakhs and without determining the amount of investment made by the petitioner, the O.P has no right or authority to ask the petitioner to hand over the management and affairs of Sachin Bar and Restaurant. As such, the petitioner filed the instant petition for injunction.

OPs case in, brief:

3. O.P on receiving notice from the court appeared and contested the case by filing written objection both in law and facts. The O.P denied the entire allegations of the petitioner and further submitted that there is no prima-facie case, balance of convenience and irreparable loss or injury to grant any relief in favour of the petitioner. That O.P never put his signature on the Partnership Deed dated 30-04-2016 and he never went to Notary Public for execution of Deed of Partnership. O.P shall examine signature of petitioner by sending the same to the FSL. That petitioner is just a tenant of O.P and there was no any Deed of Partnership with the petitioner. It is further pleaded by the O.P that the tenancy agreement dated 01-04-2017 was for one year and as per the said agreement, daily rent was fixed @ Rs.2,400/- and that will be increased @ 20% after one year. That as per the terms and conditions of agreement dated 01-04-2017, the

petitioner is liable to pay taxes and the petitioner till 11-10-2018 defaulted in payment of daily rent to the O.P and from 05-02-2019 and onwards stopped paying daily rent till date. That petitioner is liable to pay arrear rent of Rs.4,54,800/- up to 04-04-2019. That O.P never threatened the petitioner to vacate and hand over management of Sachin Bar and Restaurant within 28-02-2019. It is false that petitioner has invested huge amount and he never invested amount of Rs.50 Lakhs. That petitioner becomes defaulter in payment of daily rent as such he is liable to be evicted. That arrear electricity bills in the month of January, 2019 become Rs.7,06,866/- and without paying that electric charges and sales tax, income tax, GST, pollution fees, the petitioner has been carrying on business with muscle power. As such, under the above said circumstances, O.P prayed to reject the petition filed by the petitioner.

Discussion, Decisions and Reasons thereof:

4. During the hearing of this case, it is seen that neither party has adduced any oral as well as documentary forms of evidences. Petitioner side along with his prayer of injunction submitted Xerox copies of certain documents and per contra, OP further submitted certain documents in support of his pleadings.
5. Considering the pleadings of both the sides, this court finds that to arrive at a proper conclusion of the dispute between the parties many facts requires to be adjudicated in the original suit.
6. I have heard both the sides and perused the entire case record along with the Photostat copies of the documents submitted before this Court.
7. On perusal of those documents in the light of pleadings put forwarded by both the sides, this Court finds that there is no dispute in regard to the ownership of Sachin Bar and Restaurant and the restaurant standing upon the land admitted belongs to the O.P. The petitioner in his prayer further admitted that O.P is license holder of the said shop.
8. The pleadings of both sides divulges many facts regarding the maintainability and admissibility of Partnership Deed allegedly executed between the parties regarding running of the business

styled as Sachin Bar and Restaurant. It further divulges that question regarding payment of monthly rents of said holding where Sachin Bar and Restaurant is situated challenged by the O.P and the O.P further challenged that petitioner failed to pay the taxes, GST, license fees, pollution fees and electricity bills and all those averments has to be adjudicated in the light of evidences in original Title Suit. Prior to that, considering the pleadings and real points of controversy between the parties that divulges before this Court, this Court thinks it fit and proper to preserve the subject matter of the suit by way of passing an order of status-quo till final conclusion of the dispute.

9. At this stage, considering the nature of dispute pending between the parties without entering into the merit of the dispute in hand and without further discussing three golden principles of granting injunction, this Court finds that the suit property is required to be protected from any sorts of hostility during the pendency of the TS No.8/19. More also, during the time of hearing both the sides have conceded in passing an order of status-quo over suit property till disposal of real point of controversy between the parties in the original suit vide TS No.8/19.
10. Therefore, in the light of the above said discussions, considering the nature of submissions coupled with nature of dispute pending between the parties, this Court is constrained to opine that at this stage without entering into the merits of the suit, passing an order of status-quo over the suit land shall meet the justice.

ORDER

11. Accordingly, an order of status-quo over the suit land is passed and both the sides are directed to maintain status-quo over the suit land till final disposal of TS No.8/19.
12. Instant order has been passed u/s 151 of CPC. Both the sides shall bear their respective costs.
13. Misc. (J) case is disposed of accordingly.

Civil Judge
Sonitpur, Tezpur