

**In The Court of Smt. Priyanka Saikia, Munsiff No. 2,
Sonitpur, Tezpur**

Case No: Misc(J)case No. 248/2019

(I/c Title Suit No. 113/2019)

Sri Mukul Lahkar –vs- United Bank of India

07.12.2022

Both sides are represented.

Today the day is fixed for order.

I have already heard the learned counsel for the petitioner.

This instant Misc (J) case has registered on petition no. 3426/2019 dated 19.12.2019 filed by the petitioner under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC.

The main contention of the petitioner is that the defendant no. 4 is the owner and pattadar of land measuring 1 Katha 5 Lessas under Dag No. 766 and land measuring 2 Katha 5 Lessas under Dag No.767 of Periodic Patta No. 1163 (old) / 255 (new) of village Dekargaon, Da-Dhara (Vartak), Mouza- Bhairabpad, Tezpur, District-Sonitpur, Assam by right of purchase. M/S Multitech Construction is the proprietary concern of the plaintiff, who involves in works of Real Estate Business i.e. Developer cum Builder and also a Class 1 (A) contractor of Assam PWD. That the plaintiff approached the defendant no. 4 to let out a road facing space of land measuring 40'x60' i.e. 2400 square feet for construction of a business premises

and staff quarter at his expenses therein and the defendant no. 4 agreed to let out the said space of the land on monthly rental basis. Thereafter the plaintiff and the defendant entered into an agreement dated 01-09-2019 for letting out the said piece of land stated more specifically herein below at a monthly rent @ Rs. 9500/- per month since the month of September 2009. That thereafter the plaintiff and the defendant no. 4 entered into a written agreement of tenancy dated 1st day of September 2009 with some terms and conditions. The terms and conditions are as follows:

a. That the landlord i.e. defendant no. 4 do hereby transfer the land measuring 40'x60'= 2400 square feet out of total land measuring 1 Katha 5 Lessas under Dag No. 766 and land measuring 2 Katha 5 Lessas under Dag No. 767 of Periodic Patta No. 1163(Old)/ 255(New) of village Dekargaon, Da-Dhara (Vartak), Mouza Bhairabpad, Tezpur, District Sonitpur, Assam by way of monthly rent more fully described in the schedule below, unto and in favour of the tenant i.e. plaintiff for a period of 20 years commencing from 1st day of September 2009 to 31st day of August 2029.

b. That the tenant i.e. plaintiff has the right to construct multistoried RCC building over the schedule plot of land at his expenses to start his business therein.

c. That the tenant i.e. plaintiff agreed to pay the said mutually fixed rent of Rs. 9500/- (Rupees Nine

Thousand Five Hundred) only per month to the landlord on the first week of the subsequent month without default.

d. That the landlord i.e. defendant no. 4 has to pay for and discharge of land satisfy all rates, taxes, assessments and impositions which are now or during the said term be hereinafter imposed or assessed on the said land/premises, to the authority concerned or to the government.

e. That on the expiration of the period of tenancy, to yield and receive peaceful vacant possession, the defendant no. 4 has to refund the incurred amount in construction of the multistoried building over the schedule plot of land to the plaintiff.

f. That the tenant i.e. plaintiff shall not sublet, underlet part with possession or induct any other person, concern, or firms in the tenanted property or any part thereof in any manner whatsoever.

g. That the tenant i.e. plaintiff shall not keep or store any hazardous, dangerous, combustible or highly inflammable goods or articles in or around the tenanted properties. That tenant i.e. plaintiff and her men and agents shall not carry on any unlawful activities in or around the tenanted property.

h. That the landlord i.e. defendant no. 4 and his representatives shall have the liberty to inspect the condition of the schedule property at any reasonable hours with intimation to the tenant or its men.

i. That no parties to this presents can violate the aforesaid terms that in case of any dispute difference or question whatsoever arising between the parties hereto then such matter shall be referred to the competent Civil Court.

That accordingly the plaintiff constructed the ground floor of the RCC complex over the land measuring 40'x60'= 2400 square feet and plaintiff had incurred more or less an amount of Rs. 55,00,000/- (Rupees Fifty Five Lakhs) so far, in construction of the ground floor and foundation of the said RCC building. After completion of the construction of the ground floor of the said RCC building has started his business of car servicing centre with allied activities in the front side of the said complex, and the plaintiff has also been using the rare side of the building as staffs quarters cum office, wherein minimum 35 numbers of employees are staying. The plaintiff has been paying land rent to the defendant no. 4 upto the month of November, 2019 since the commencement of the tenancy for the land measuring 40'x60'= 2400 square feet and the plaintiff is not a defaulter in any manner in paying monthly rent. On the other, the defendant no. 4 has no right to evict the plaintiff from the said suit land and premises. Moreover, so far the plaintiff in constructing the foundation cum ground floor of the said building has not been adjusted or refunded by the defendant no. 4.

On 13th day of December, 2019 some unknown person who represented themselves as employees of the

United Bank of India representing the defendant no. 1, 2 and 3 came to the suit premises and threatened the plaintiff and other staffs of the plaintiff to oust them from the staff quarters and also from ground floor of the RCC building standing on land measuring 40'x60'= 2400 square feet and when the plaintiff asked the representatives of the defendant no. 1, 2 and 3 the reason thereof than they delivered a copy of NOTICE dated 11-12-2019 of intended sale of the scheduled property. The representatives of the defendant no. 1, 2 and 3 told that the defendant no. 4 has taken loan by creating equitable mortgage of the scheduled land together with other plot of adjacent land with United Bank of India, Tezpur Branch. They further told the plaintiff that the defendant no. 1, 2 and 3 would take vacant possession of the scheduled suit premises by evicting the plaintiff and his employees cum staffs forcefully with the help of muscle men. That the plaintiff and his employees cum staffs are not a party, in the alleged loan transaction among the defendants no. 1, 2 and 3 and defendant no. 3. That thus the said loan transaction is not binding upon the plaintiff in any manner whatsoever. That the plaintiff is not involved in any manner, hence the plaintiff cannot be evicted from the suit premises forcibly without due process of law by the defendants.

Again on 17th December, 2019 further some unknown bank employees came to the suit premises and they attempted to oust the plaintiff from the suit premises

forcibly but due to timely intervention and resistance by the plaintiff, they failed to do so; but at the time of leaving the suit premises, the representatives of the defendant no. 1, 2 and 3 threatened the plaintiff to get ready to face dire consequences saying that they would evict the plaintiff from the suit premises by any means; footage of the said incident is recorded in the CC TV Camera. Also those representatives of the defendant no. 1, 2 and 3 have asked the plaintiff to arrange his business of car servicing and staff quarters cum office to be shifted somewhere else. Thereafter the plaintiff intimated the matter to the defendant no. 4 regarding the aforesaid incident of 17th December, 2019 and defendant no. 4 admitted that defendant no. 4 had taken loan by creating equitable mortgage with the United Bank of India.

The defendants wrongly and purposely crafted a cloud over the right and interest of the plaintiff in the suit premises, it is necessary to declare that the plaintiff is a bonafide tenant in respect of the suit premises. That Hon'ble Supreme Court in its decision vide AIR 1979 S.C. page no. 1745 seating in a larger bench held that the rent acts do not permit the tenancy to be terminated and the tenant continues to be a tenant till forfeited in the eye of law and then only evictable from the tenanted premises. That under the circumstances the plaintiff tenant continues to be a monthly statutory tenant up to 30-11-2019 and every month thereafter till the tenancy is lawfully terminated by incurring forfeiture in the eye of law i.e.

under Sec 111 of the T.P. Act. Hence, the plaintiff remains to be a tenant under the defendant no. 4 till evicted in due course of law.

Hence, it is necessary to declare the plaintiff is a subsisting statutory tenant under the defendant in respect of the tenanted suit premises with consequential relief of permanent injunction prohibiting the defendant from evicting the plaintiff by force or in any other manner until evicted in due course of law, otherwise the plaintiff will suffer irreparable harm, loss and injury which cannot be compensated in terms of money. Besides it is also not possible for the plaintiff to shift the employees from the staff quarters at this juncture and on the other hand the plaintiff has invested a huge amount in constructing the foundation and ground floor of the RCC building. The plaintiff states that his tenancy right and legal character over the tenanted suit premises, on the basis of lawful tenant by paying monthly rent up to date is sought to be denied by the opposite parties and also by evicting him the opposite party no. 4 shall embezzle the huge amount that plaintiff has incurred in constructing the foundation and ground floor of the RCC building; as such the intervention of this Hon'ble Court is called for to protect the interest and right of the petitioner.

That the petitioner/plaintiff states that he has got string prima facie case against the opposite party, which necessitates the grant of permanent injunction until evicted in due course of law, against the opposite party and of

their hired men and agents to restrain them from carrying out their malicious activities against the petitioner to forcefully and illegally dislodge him from lawful tenancy right or by illegally dispossessing the petitioner from the tenanted suit premises as stated above along with his staffs and employees and thereby cause immense loss and hardship to the petitioner. Thus, with the intervention of the Hon'ble Court, the tenanted suit premises as well as aspirations of the petitioner shall be protected.

Under the facts and circumstances above, it is prayed therefore that the Hon'ble Court may be graciously pleased to admit this petition, and restrain the opposite parties from forcefully and illegally entering into and occupying the Schedule tenanted land and self constructed premises of the plaintiff and also restrain the opposite parties and their men and agents from causing illegal dispossession of the plaintiff from the below mentioned scheduled premises and / or any part thereof, by dispensing with the show cause notice on the said opposite party until further orders or till disposal of the suit for the ends of justice.

The opposite parties have appeared and contested the case by filing written objection. Opposite party No.1 to 3 stated that the said property under said daga no and patta no mentioned in the schedule of the plaint, with the all the part and parcel of the building standing thereon, was under equitable mortgage to the answering Opp. Parties and the mortgage is created as per hypothecation agreement executed between the answering opp. parties

with the Opp. party no. 4 and he had not made payment of the EMI of the said equitable mortgage loan of the said property and further the Opp. party no. 4 had also mortgaged the plots of land and building of 4 Katha covered under Dag No. 928 of Periodic Patta No. 451 situated at village- Puthikathi, Mouza- Bhairabpad, Tezpur, Sonitpur, Assam with answering Opp. parties along with the said land and building and the Opp. Party No. 4 had yet to make payment of total amount of Rs. 2,48,60,061.57 (Rupees Two Crore Fourty Eight Lacs Sixty Thousand sixty one rupees and fifty seven paise) only with further interest w.e.f. 01/09/2019 and expenses and other charges after declaring the loan account against the said loan account as NPA and these material facts were willfully been suppressed by the petitioner only to gain wrongfully. The answering Opp. parties had no personal knowledge about the truth of the statements that the petitioner had proprietary concern with M/s Multitech construction who involves in works of real estate business and developer cum builder and also a class 1 (A) contractor of Assam PWD. the Opp. party No. 4 had no right to mortgage or to let out any part and parcel of the said plots of land and building which was mortgaged to the answering Opp. Parties, hence, the alleged agreement as contended in Para 3 dated 01/09/2019, if any, is void ab-initio and has no force in the eye of law hence, the alleged monthly rent amounting to Rs. 9,500/- (Rupees Nine Thousand Five Hundred) only for the area of 2400 sq feet, as alleged in

petition, was illegal for violation of the provisions of SARFAESI Act 2002. The period of alleged tenancy for 20 Years commencing from 1st day of September 2009 to 31st Day of August 2029, as contended in the plaint of the instant suit is strict violation of the provisions of Indian Registration Act hence, the alleged agreement dated 01/09/2009 was unlawful, contrary and illegal. That as the said agreement was illegal. After service of Statutory Demand notice dated 02/09/2019, the notice for possession dated 02/12/2019 and notice of intended sale of the said property dated 11/12/2019 had also been served and published the matter of E-auction in the leading daily newspaper 'Telegraph' on 21st Day of December, 2019 and the vernacular Assamese newspaper 'Dainik Asom' dated 21st December, 2019 wherein the date of E-auction was fixed on 28/01/2020, time 11:30am to 3:30pm, with unlimited extension of 5 minutes each as reflected in the said notice published in the said newspapers. Prior to that Notice of possession of the said property dated 02/12/2019 had also been served to the answering Opp. parties as borrower of the said loan amount for equitable mortgage of the said property and guarantor Mrs. Darsana Baruah Sarmah and they received accordingly on the same day. That the Opp. Party No. 4 had also submitted one non-encumbrance certificate being NO GT/21/PT/2004-2005/468N DATED 24/1/2017 from the Sr. Sub-Registrar, Tezpur wherein it was that the said property was free from all encumbrance from 31/12/2004

to 31/12/2016 and further he submitted one affidavit stated that the said property was free from all encumbrance from 31/12/2019 till 24/1/2017 before the answering opp. parties. That the counsel Sri T.K.Maitra. of Tezpur on 18/7/2008 and 01/7/2011 had submitted Lawyers report concerning to the said plots of land as mortgagable and encumbrance free on the basis of field verification report of valuer and documents submitted by the opp. party no 4 hence the plaintiff claimed of alleged tenancy with defendant no 4 was false and baseless. That further the Opp. Party No. 4 had also signed the demand promissory note dated 16/02/2017 in favor of the answering Opp. parties wherein he had clearly stated that he had to pay the sum of Rs. 2,43,62,000/- (Two crore forty three lacs sixty two thousand) with interest thereof. the petitioner was in joint ventures with Opp. party No. 4 in the process of restraining the execution of e-auction sale of the schedule property as fixed in the Notice of e-auction published on 21/12/2019 as the date of e-auction was fixed on 28/01/2020 for selling the said plots of land and building.

That the statements of letting out the space of 2400 sq/feet with building standing on the said plots of land and payment of rent by the petitioner to Opp. party No. 4 and the right of the Opp. party No. 4 to evict the petitioner from the suit land and premises as falsely contended in the said petition paragraph were illegal, motivated and concocted.

Opposite party No. 4 has also appeared and objected the petition by filing written objection and deposed that due to financial hardship of opp. party No.4, the petitioner of the suit constructed the ground floor and foundation of the said building over the suit premise by incurring amount of Rs.55,00,000/- and admitted that petitioner has started his business by paying monthly rent of Rs.9,500./- only per month. In the first part of 2019, the petitioner continuously pressurize to the opp. Party No.4 to return the said invesred money. Therefore, opp party No.4 made a part payment of amount of Rs.10,00,000/- to the petitioner on 28.11.2019 through the RTGS. It is further admitted by the opp party No.4 that he had taken a loan by creating equitable mortgage over the said suit premises with United Bank of India and the petitioner was aware about the loan at the time of agreement dated 01.09.2009. Therefore, opp. party No.4 prayed to dismiss the petition.

Heard and perused the case record and the documents submitted by the petitioner.

Upon perusal, it is seen that petitioner is the lawful tenanted of the opposite party No.4 by executing a deed of tenancy from 2015. On perusal of all these it clearly apparent that on 21.09.2019 some unknown person who represented themselves as employee of the opposite party no. 1 and 2 came to the suit premises and they threatened the petitioner to oust him from the suit premises and when the petitioner asked them the reason for their such threat to oust the petitioner from the suit premises they told the

petitioner in connection with a loan transaction which the opposite party no. 3 was a defaulter in payment of the monthly EMI, so the opposite party no. 1 would take possession of the suit premises and demanded that the Petitioner to vacate the suit premises. That in the alleged loan transaction between Punjab National Bank and the opposite party no. 3, the Petitioner who is not a party and thus the said loan transaction is not binding upon the Petitioner in any manner whatsoever on this trend of the said so-called loan transaction the petitioner cannot be evicted from the suit premises forcibly without due process of law by the opposite party no. 1. Hence, in my considered view the petitioner contains prima facie case as well as balance of inconvenience in his favour as if the petitioners will evicted from the suit premises then the same may be alienated to a third party and it may lead to multiplicity of proceedings.

Heard argument from the learned counsel of both parties. Also perused the case record along with the injunction petition, and the other documents filed by the petitioner.

In the light of the pleadings of the parties to decide the injunction prayer filed under Order XXXIX Rule 1 and 2 of CPC, the followings are appears to be the points for determination :

(i) Whether there is a prima-facie case in favour of the plaintiff/ petitioner ?

(ii) Whether balance of convenience is in favour of the plaintiff /petitioner ?

(iii) Whether the plaintiff petitioner is going to suffer irreparable injury/loss in the event of court not granted temporary injunction against the defendant/opposite party ?

Order XXXIX, Rule 1 (c) of C.P.C. provides that “ temporary injunction may be granted where, in any suit, it is proved that the Opposite Party threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossessing the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders”.

It is settled law that relief for granting of temporary injunction is subject to the court’s satisfying that :

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of being entitled to the relief asked for by the plaintiff/defendant;

(2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

I have gone through the entire case record along with all the documents annexed with the petition submitted by the petitioner. In the instant case the petitioner has pleaded that some unknown person who represented themselves as employees of the United Bank of India representing the defendant no. 1, 2 and 3 came to the suit premises and threatened the plaintiff and other staffs of the plaintiff to oust them from the suit premises. It is also stated that the plaintiff and his employees cum staffs are not a party, in the alleged loan transaction among the defendant no. 1, 2 and 3 and defendant no. 3. That thus the said loan transaction is not binding upon the plaintiff in any manner whatsoever. As such, at the first sight of the entire case-record it appears that there is a prima facie case in favour of the petitioner. Therefore, if the nature and character of the suit land is transformed then it will be the petitioner, who would suffer greater inconvenience and irreparable loss.

From the above observation and reasons, I am constrained to hold that three golden principles for granting temporary injunction are found in favour of petitioner. But simultaneously, it is also to be born in mind that the opposite parties are contending that one equitable mortgage is created as per hypothecation agreement

executed between the answering opp. parties with the Opp. party no. 4 and he had not made payment of the EMI of the said equitable mortgage loan of the said property and further the Opp. party no. 4 had also mortgaged the suit premises with answering Opp. parties along with the said land and building and the Opp. Party No. 4 had yet to make payment of total amount of Rs. 2,48,60,061.57 (Rupees Two Crore Forty Eight Lacs Sixty Thousand sixty one rupees and fifty seven paise) only with further interest w.e.f. 01/09/2019 and expenses and other charges after declaring the loan account against the said loan account as NPA and these material facts were willfully been suppressed by the petitioner only to gain wrongfully. Opp. Party No. 4 also admitted the fact the he had taken a loan by creating equitable mortgage of the suit premises. Hence, opposite parties prayed to reject the same.

So, considering the rival pleadings of both the parties, I am of the considered view that if an order to maintain status quo of the suit land is passed, it will be just and proper.

Accordingly, till disposal of the main suit, both the parties are directed to maintain status quo of the suit land as on today and no party will change the nature, character or feature of the disputed land nor any party during pendency of suit shall dispose the disputed land.

With the above observation and order, the instant Misc. (J) Case stands disposed of accordingly.