

Assam Schedule VII. Form No. 143

HIGH COURT FORM NO. (J) 13

Form of Order Sheet

DISTRICT- SONITPUR

IN THE COURT OF MUNSIFF NO. 1, SONITPUR, TEZPUR

PRESENT : Sri V. Bhuayn

Misc(J) Case No. 199 of 2022
(I/c- T.S Case No. 147 of 2022)

-V/S-

Sl No. of Orders	Date	Order	Signature
	29-10-22	<p>Both parties are represented.</p> <p>Today is fixed for order.</p> <p>With the following order I intend to dispose of this Misc.(J) Case.</p> <p>Petitioner's case in brief is that the defendant is the owner of schedule land and RCC Building of Hotel Kanyapur situated at N.T Road, Tezpur. That the being plaintiff and defendant are tenant and landlord in relation formally since 01.01.2022 which is reflected from the tenancy agreement. The defendant agreed to rent out the road side portion measuring 430 Sq ft to the plaintiff from 1st January, 2022 for monthly rent of Rs. 15,000/-. The as per the agreement the defendant allowed the plaintiff to use his infrastructure and also allowed the plaintiff to modify the interior of the tenanted premises. In pursuant to the agreement the plaintiff has been running her medical establishment under the name and style of Reliance</p>	Contd..

29.10.22 Contd..	<p>Diagnosics till date by paying rent to the defendant. Thereafter, both plaintiff and defendant mutually extended the tenancy period which has been subsisting till now. The defendant against the monthly rent of the tenanted premises issued rent receipts to the plaintiff but despite the plaintiff paying rent up to the month of July, 2022 the defendant has not issued any receipt to the plaintiff. Thereafter, without any just reason the defendant served a registered notice dated 01.08.2022 upon the plaintiff stating inter alia to evacuate the premises within the month of August.</p> <p>Notice was issued to opposite party and the opposite party appeared upon receipt of notice and submitted their written objection, wherein the opposite party has stated that the tenancy agreement dated 01.01.2022 came to an end long before which is not in force and no renewal was made. The petitioner remained as a tenant up to the service of notices to quit and vacate dated 01.08.2022. The New Act "The Assam Tenancy Act, 2021" came in force in 2021 and the repealed section under the new Act is 47 which repealed the Assam Urban Areas Rent Control Act, 1972 in the year 2021. The jural relation between the petitioner and opposite party as landlord and tenant came to an end long back, after commencement of demolition of the old building Hotel Kanyapur, the defendant already entered into a development agreement registered on 01.09.2022 to raise a multi storey building by demolishing the old dilapated building prone to earthquake and seismic zone eventualities. Hence, the opposite party prays for rejecting the petition with cost and also to vacate status quo order dated</p>	Contd..
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29.10.22 Contd..	<p>12.08.2022.</p> <p>I have perused the case record and also bestowed my anxious consideration on the submissions made by the learned counsels of both the parties.</p> <p>Upon perusal of the case record, it is seen that vide order dated 11.08.2022 passed in the instant case, both the parties were directed to maintain status quo over the schedule land till the disposal of the prayer for ad-interim temporary injunction.</p> <p>Now, as per law, to pass an order of injunction under Order 39 Rule 1 and 2 of CPC, 3 basic principles namely (a) prima facie case, (b) balance of convenience, and (c) irreparable loss and injury has to be considered. [<i>Makers Development Services (P) Ltd. V. M. Visvesvaraya Industrial Research & Development Centre, (2012) 1 SCC 735</i>].The grant of ad-interim temporary injunction is an equitable relief.</p> <p>Now, coming to the instant case, the petitioner has stated that the petitioner/plaintiff and the defendant/opposite parties are landlord and tenant in relation since 1st day of Januray, 2022 for a period 3 months. The petitioner claims that both the parties orally extended the tenancy period which has been subsisting till now. But the opposite party vehemently denied the claim that the same has extended. In this context, I have gone through the tenancy agreement dated 01-01-2022 and it is seen that as per clause no. 11 of the said agreement, the same may be mutually renewed by both the parties for any stipulated period, in this regard it is pertinent to note that as per</p>	Contd..
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29.10.22 Contd..	<p>clause 11 of the said agreement, nowhere has it been mentioned that the same is renewed may be renewed via oral agreement, the petitioner/plaintiff has not provided any documents to show that the tenancy agreement has been renewed/extended. The opposite party has mentioned in their written objection that notice to quit and vacate has been served on the petitioner on 01.08.2022, which has been annexed by the petitioner along with the petition.</p> <p>Materials on record reveal that the tenancy agreement was for a period of 3 months hence, the same has expired as on 31.03.2022 and there is no document on record to show that the same was mutually renewed by both the parties as per clause 11 of the said agreement, hence it can be assumed that the agreement expired. Therefore, even though the petitioner is in possession of the schedule land, it can at best be said to be tenant by sufferance. The said tenancy has been determined by efflux of time. As per Section 108(q) of the Transfer of Property Act, on the determination of the lease, the lessee is bound to put the lessor into the possession of the property.</p> <p>The petitioner being in juridical possession since the expiry of lease is protected by the law against wrongful dispossession. Therefore, the petitioner being tenant at sufferance is entitled to possession until he is evicted by due process of law. In the instant case, the notice of vacation has been annexed along with the petition by the petitioner/ opposite party. In the said notice dated 01.08.2022, the defendant/ opposite party directed the petitioner to evacuate the</p>	Contd..
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29.10.22 Contd..	<p>premises within the month of August, hence within 30 days which is in accordance with clause 12 of tenancy agreement dated 01-01-2022 which laid down that the agreement may be withdrawn by giving 10 days notice. It appears from the notice of evacuation dated 01.08.2022 that the defendant followed due process.</p> <p>In view of the foregoing discussion, there does not appear to be justifiable ground to consider that prima facie case lies in favour of the petitioner.</p> <p><i>In Dalpat Kumar Vs Prahlad Singh & Ors, AIR 1993 SC 276</i> , the Hon'ble Supreme Court of India while considering the balance of convenience observed that the Court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, and in the case of refusal of injunction should compare it with that which is likely to be caused to the opposite party, if the injunction is granted. Considering the above as well as taking into account the various documents submitted by both the parties, it appears that the mischief likely to be caused to the petitioner for granting the temporary injunction does not outweigh the prejudice that is likely to be caused to the opposite party since despite the petitioner being served with notice of evacuation/eviction for evacuating the premises within the month of August, but the petitioner failed to do so. Whereas the opposite party has already started the demolition works and the same came to a grinding halt due to the order for maintaining status quo, due to which the opposite party is suffering losses day after</p>	Contd..
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	29.10.22 Contd..	<p>day. Situated thus, it appears that grant of ad-interim temporary injunction is going to prejudice the defendant and the same can be said to outweigh the injury likely to be caused to the petitioner.</p> <p>Therefore, taking into account the surrounding facts and circumstances, it is seen that prima facie case and balance of convenience is not in favour of the petitioner.</p> <p>In light of the above discussion, I deem it fit to reject the prayer for ad-interim temporary injunction in favour of the petitioner.</p> <p>Status Quo order dated 11.08.2022 passed in the instant case is hereby vacated.</p> <p>The instant Misc(J) case is hereby disposed of.</p>	
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