

(2022) 08 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 16355 Of 2022 (GM-CPC)

M/S. Ceekay Tea Break Pvt Ltd.

APPELLANT

Vs

Bangalore International Airport Ltd.

RESPONDENT

Date of Decision : 18-08-2022

Acts Referred:

Citation : (2022) 08 KAR CK 0020

Hon'ble Judges : R. Nataraj, J

Bench : Single Bench

Advocate : G.S. Kannur, Brijesh Patil, Udaya Holla, Manu Kulkarni

Final Decision : Disposed Of

Judgement

R.Nataraj, J

1. The plaintiff in O.S.No.461/2021 on the file of the Principal Senior Judge, JMFC, Devanahalli has filed this writ petition challenging the correctness of the order dated 10.08.2022 passed by the appellate Court in M.A.No.14/2022 by which the order of interim injunction granted by the trial Court was set aside and the trial Court was directed to consider the application (I.A.No.1) afresh by considering the question of jurisdiction of the trial Court to entertain the suit.

2. The parties shall henceforth be referred to as they were arrayed before the Trial Court.

3. The suit in O.S.No.461/2021 was filed for perpetual injunction restraining the defendants from dispossessing or causing any obstruction or preventing the plaintiff from carrying on the business in the suit schedule property. Along with the suit, an application was filed for interim injunction to restrain the defendant, its security guards or any authorized persons from dispossessing the plaintiff without due process of law or from preventing the plaintiff or its staff from entering into the suit schedule premises to carry on business activities.

4. The trial Court refused to grant an exparte order of interim injunction but

ordered notice to the defendant. This was challenged by the plaintiff before this Court in W.P.No.22358/2021. This Court passed the following interim order on 07.12.2021:

"In consideration of these submissions, the respondent is restrained from interfering with the petitioner's possession of the subject premises until further orders and if any amenity to the subject property is denied or disrupted, the respondent is directed to restore such amenity forthwith subject to further orders of this Court."

5. Later, the writ petition was disposed of in terms of the order dated 07.02.2022 by recording the undertaking given by the learned counsel appearing for the defendant on the following terms:

i) The writ petition is disposed of directing the trial Court to consider and dispose of I.A.No.1 in accordance with law within a period of 10 days from the date of receipt of copy of this order.

ii) The trial Court shall dispose of the application i.e., I.A.No.1 without being influenced by any observations made in this order.

iii) Further, respondent undertakes that he will not precipitate the matter without prejudice to the stand taken in the written statement and objection to I.A.No.1.

6. Later the defendant filed its written statement contending that the plaintiff was only a licensee whose license was revoked and therefore, the plaintiff had no right to continue to occupy the premises in question. It also claimed that the trial Court had no jurisdiction to file the suit as the dispute between the parties was a commercial dispute which had to be tried under the Commercial Courts Act, 2015. It also claimed that the plaintiff had not paid the license fee and the license granted by the local authority to run the business in the premises in question had expired. The defendant also filed an application for rejection of the plaint as it was triable by a Commercial Court.

7. The trial Court after considering the material on record granted interim injunction in terms of the order dated 03.03.2022 and restrained the defendant, its security guards or any authorized person from dispossessing or preventing the plaintiff or its staff from entering the suit schedule property for carrying on its business. This order was challenged by the defendant in M.A.No.14/2022 before the Appellate Court. The Appellate Court held in terms of the order dated 10.08.2022 as follows:

"The Miscellaneous Appeal filed by the Appellant/Defendant is allowed and order passed by Trial Court dated 03.03.2022 is set aside and trial Court is requested to consider the application filed by the plaintiff/respondent afresh by taking note of the issue of jurisdiction to entertain the suit. All other contentions are kept open. Office to send the copy of order to trial Court."

8. Being aggrieved by the order of the appellate Court in M.A.No.14/2022, the

plaintiff has filed this writ petition.

9. The learned Senior counsel representing the plaintiff submitted that the appellate Court in M.A.No.14/2022 must have protected the possession of the plaintiff pending disposal of the application in view of the undertaking of the defendant recorded in W.P.No.22358/2021. He submitted that after the disposal of M.A.No.14/2022, the defendant has blocked the entrance to the premises in question and has disconnected the electricity supply to the premises in question. He further submits that the plaintiff is now completely restrained from carrying on the business activities in the premises in question.

10. Learned Senior Counsel representing the defendant submitted that there is a clear bar of jurisdiction and therefore, the appellate Court was justified in setting aside the order of interim injunction granted by the trial Court. He contended that the trial Court was bound to first decide the question of jurisdiction and thereafter decide the issue of grant of interim injunction to the plaintiff. He contended that the plaintiff is operating in the premises without any license from the local authority and that the plaintiff is charging more than the maximum retail price marked on the commodities. He further submits that the plaintiff being an erstwhile licensee whose license is revoked, has no right to continue in the premises as held by the Co-ordinate bench of this Court in the case of DIVISIONAL CONTROLLER KSRTC AND ANOTHER VS. G.P. RAGHAVENDRA reported in ILR 2002 KAR 1803 and in the case of SRI. G.RAJA VS. THE GOVERNMENT OF KARNATAKA, DEPARTMENT OF TRANSPORT AND OTHERS reported in ILR 2015 KAR 5201.

11. I have considered the submission made by the learned Senior counsel representing the plaintiff and defendant.

12. The fact that the plaintiff was in occupation of a premises belonging to the defendant is not in dispute. Though the document under which the plaintiff was placed in possession of the premises in question was termed as a license agreement, the plaintiff claims that he was a tenant in the premises. Therefore, the question whether the plaintiff was a licensee or a lessee has to be determined by the Civil Court after full fledged trial.

13. Be that as it may, the fact that the plaintiff was conducting the business in the premises in question under the defendant is not in dispute. This Court in W.P.No.22358/2021 had recorded the undertaking of the learned counsel for the defendant that until disposal of the I.A.No.1 before the trial Court, the defendant would not precipitate the matter which was without prejudice to its stand taken in the written statement. The net effect of such an undertaking was that the status quo of the possession of the plaintiff in the premises in question, would be continued till the decision on I.A.No.1 by the Trial Court. Now that the appellate Court in M.A.No.14/2022 has set aside the order of injunction granted by the trial Court and has directed the trial Court to consider the application afresh after determining the question of jurisdiction, it goes without saying that I.A.No.1 is

still pending on the file of the trial Court. Therefore, the undertaking given by the defendant before this Court shall continue to apply until I.A.No.1 is disposed of by the trial Court. Therefore, it is appropriate to direct the defendant not to precipitate the issue until disposal of I.A.No.1 before the trial Court. If the defendant has placed any obstruction to restrict the entry and exit of the defendant and its employees and if the electricity supply to the premises in question is disconnected, the same shall be removed and restored respectively within one day. This is however, subject to the plaintiff paying up to date license fee by the end of 19.08.2022.

The trial Court is directed to dispose of the application (I.A.No.1) within a period of one month from the date of receipt of copy of this order.

The writ petition stands disposed off on the above terms.