

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 242 of 2018

[Shiraz Sultan K. Moosa & another v. Ibrahim Ali Bhai Charitable Trust & another]

Dates of hearing : 15-05-2018 & 24-05-2018

Date of Decision : 16-08-2018

Plaintiffs : Shiraz Sultan K. Moosa and Nilofer Shiraz through Mr. Zia Ahmed Awan Advocate.

Defendant No. 1 : Ibrahim Ali Bhai Charitable Trust through Mr. Muhammad Mansoor Mir Advocate.

Defendant No. 2 : Nadeem Nisar through Mr. Muhammad Sajjad Abbasi Advocate.

ORDER

ADNAN IQBAL CHAUDHRY J. -

1. The plaintiffs are husband and wife. The defendant No.1 is owner/landlord of a plot at 246 Garden West, Karachi, with a building constructed thereon (the suit property). The property was previously identified as the 'Ebrahim Alibhai Auditorium' and presently as the 'Karachi Banquet Hall'. Pursuant to successive tenancy agreements from 1998 onwards, the defendant No.1 (landlord) let the suit property to the plaintiffs for contracting it to third parties as an Auditorium, and then, since 2003, as a banquet/marriage hall. The plaintiffs claim to have expended substantial money in the renovation, furnishing, decorating and equipping the suit property for use as a banquet/marriage hall.

Per the plaint, the defendant No.2 had been employed by the plaintiffs as manager for the banquet/marriage hall; that on 28-04-2015 the plaintiff No.1 and the defendant No.2 entered into a partnership agreement (unregistered) for running the banquet/marriage hall and for sharing its profits; that disputes arose between the plaintiff No.1 and the defendant No.2 when the latter did

not pay the plaintiff No.1's share in the partnership business; that on 28-12-2016 the defendant No.2 with help of armed men and with the blessing of the defendant No.1 (landlord), dispossessed the plaintiffs from the suit property, took over the banquet business along with all its record and even disposed off valuable equipment; that the said dispossession was challenged by the plaintiff No.1 vide a complaint under the Illegal Dispossession Act, 2005; however, per the plaint, the plaintiffs were forced by the defendants to withdraw the said complaint and to sign an Memorandum of Understanding (MOU) dated 02-03-2017.

Per clause 7 of the MOU, the plaintiffs and the defendant No.2 agreed to deliver peaceful vacant possession of the suit property to the defendant No.1 (the landlord) by 31-01-2018. Per clause 8 of the MOU, the defendant No.2 was to remove all furniture, fixtures and equipment from the suit property by 31-01-2018 and thereafter the defendant No.1 (landlord) would be at liberty to dispose off any item left behind. Per clause 10 of the MOU, the plaintiff agreed to pay rent to the defendant No.1 (landlord) for the months of November and December 2016, while rent from January 2017 to January 2018 was agreed to be paid by the defendant No.2. Per clause 15 of the MOU, though the defendant No.1 (landlord) did not accept/recognize the defendant No.2 as its tenant, it was agreed between the parties that uptill 31-01-2018 the defendant No.2 would continue business in the suit property on behalf of the plaintiffs.

It is the case of the plaintiffs that the MOU dated 02-03-2017 was executed by them under duress and should be declared void. They pray *inter alia* for possession of the suit property and for all equipment that had been installed thereat, or in the alternative damages from the defendant No.1 (landlord) for expenses incurred on the suit property.

2. Per the written statement of the defendant No.2, he had been let (rather sub-let) the suit property by the plaintiff No.1 vide tenancy agreement dated 05-04-2015; that the MOU dated 02-03-2017 was

signed by all parties with free consent; and that clause 15 of the said MOU categorically stated that from January 2017 to January 2018 it would be the defendant No.2 only who would run the banquet/marriage hall. The defendant No.2 has also stated that when the plaintiff No.1 threatened to oust him from the suit property, the defendant No.2 filed Suit No.2012/2016 before the XII Civil Judge Karachi (East) for a permanent injunction against the plaintiff No.1, which suit was disposed off on 20-01-2017 when the plaintiff No.1 stated before the Court that he would not dispossess the defendant No.2 except in accordance with law; that the defendant No.1 (landlord) had filed Rent Case No.46/2017 against the plaintiffs and defendant No.2 on the ground of default and sub-letting but that Rent Case was withdrawn on 13-03-2017 after the parties entered into the MOU dated 02-03-2017. With his written statement the defendant No.2 has filed copies of other legal proceedings including that of Suit No.203/2018 by the defendant No.2 against the defendant No.1 before the Senior Civil Judge to remedy the alleged breach of the MOU dated 02-03-2017.

3. Per the counter-affidavit of the defendant No.1 (landlord), after 31-01-2018, the date agreed in the MOU dated 02-03-2017, neither the plaintiffs nor the defendant No.2 can lay any claim of possession of the suit property; that the dispute in the suit is essentially between the plaintiffs and the defendant No.2 for partnership accounts with which the defendant No.1 has no concern; that the defendant No.1 has filed Suit No.307/2018 before the IVth Senior Civil Judge Karachi (East) against the plaintiffs and the defendant No.2 to enforce the MOU dated 02-03-2017 for possession of the suit property.

4. By CMA No.1638/2018 the plaintiffs pray for the preservation of the banquet/marriage hall and for restraining the defendants from creating third party interest therein. By CMA No.6451/2018 the plaintiffs pray for the appointment of a Receiver over the suit property and to take over the banquet/marriage hall business.

5. It will be seen that the injunctions prayed for by the plaintiffs by the aforesaid applications depend on the plaintiffs establishing a *prima facie* case that the MOU dated 02-03-2017 was signed by them under duress, for if they fail, given clauses 7, 8, 10 and 15 of the said MOU discussed in para 1 above, the plaintiffs have no case for relief prayed for in the aforesaid applications. It was vehemently argued by their learned counsel Mr. Zia Ahmed Awan, that the plaintiffs were practically held at gun-point by the defendant No.2 to sign the MOU and to withdraw their complaint under the Illegal Dispossession Act, 2005 and that they had been given life threats by the defendant No.2 if they did not do so. He submitted that after signing the MOU the plaintiffs had to flee to Canada to save their lives. But apart from a bald statement in the plaint that the plaintiffs were 'compelled' and 'forced' to sign the MOU, nothing has been pleaded of the circumstances in which the plaintiffs were 'compelled' and 'forced' to sign the MOU. In fact, para 23 of the plaint suggests that the plaintiffs had accepted the MOU inasmuch as, after the said MOU dated 02-03-2017 the plaintiff No.1 accepted two cash cheques dated 29-11-2017 from the defendant No.2 for Rs.5,397,725 and Rs.10,000,000 *albeit* these were dishonoured when presented in the bank account of the "administrator" of the plaintiff No.1. The fact that the plaintiffs filed this suit to assail the forced MOU after 1 year, also does not make this a *prima facie* case.

But be that as it may, even if the MOU dated 02-03-2017 were to be ignored, the injunctions sought by the plaintiffs under the aforesaid applications can only be considered if the plaintiffs can maintain a case for possession of the suit property. If the plaintiffs were dispossessed unlawfully from the suit property on 28-12-2016 as they allege, then their remedy under civil law for getting possession back was under Section 9 of the Specific Relief Act, 1877 for which Article 3 of the Limitation Act, 1908 prescribes a period of 6 months from the date of dispossession. This suit was filed by them on 04-02-2018 making the remedy of possession hopelessly time-barred. The remedy of possession under Section 8 of the Specific Relief Act, 1877

would not be available to the plaintiffs as they admittedly do not claim to be owners of the suit property. Therefore, while the plaintiffs may pursue this suit for the other relief prayed for, which will be considered on its own merits, that cannot do so for possession of the suit property. **Consequently, CMA No.1638/2018 and CMA No.6451/2018 are dismissed.**

6. By CMA No.7135/2018 the defendant No.1 has prayed for rejection of the plaint. The ground taken for rejection is essentially that after executing the MOU dated 02-03-2017 the plaintiffs have no cause of action for the suit. Suffice to say the plaint does disclose a cause of action and that it is the very validity of the MOU dated 02-03-2017 that has been challenged by them. Therefore, there is no ground to reject the plaint under Order VII Rule 11 CPC. **Consequently, CMA No.7135/2018 is dismissed.**

JUDGE