

Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971

Proceedings No. 1692/R Of 2019 Order Sheet No. 16

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS
Balmer Lawrie & Co Ltd

22
3/11/2020

FINAL ORDER

The instant proceedings No. 1692/R of 2019 arises out of the application bearing No. Lnd. 12/40/IV/18/4653 dated 22.02.2018 filed by the Kolkata Port Trust (KoPT), the applicant herein, praying for an order of recovery of accrued interest on outstanding dues for prolonged period in respect of the public premises as defined in the Schedule 'A' of the original application, against Balmer Lawrie & Co Pvt Ltd, the O.P herein, under relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

The fact of the case in a nutshell is that O.P. came into occupation of the Port property being godown space measuring 157.75 Sq.m. or thereabout situated at Comp.No.B-2/7(Ground Floor) of erstwhile Strand Warehouse under (Plate No.SW-58) within North Port Police Station on monthly lease basis upon certain terms and condition w.e.f 10.02.1972. It is submitted by KoPT that said premises were severely damaged by fire on 14.02.2010. Now, the main contention of KoPT against the O.P is that, while in possession of Port property as a monthly term Lessee, O.P had paid the rental dues of KoPT but failed to liquidate the entire amount on account of interest for delayed payment. It appears that the rent bills were charged upto 14.02.2010, i.e. the day when the subject property was gutted down

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
[Signature]
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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(Eviction of Unauthorised Occupants) Act 1971

Proceedings No.

1692/R

Of

2019

Order Sheet No.

17

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

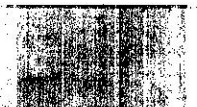
VS
Balmer Lawrie & Co. Ltd.

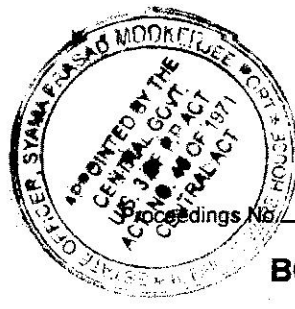
22
3/11/2020

by fire and hence, the interest for delayed payment of rent was also calculated upto 14.02.2010. The details of Interest payable by O.P. have been mentioned in KoPT's application dated 22.02.2018 as well as in the Statement of Accounts dated 04.02.2019.

It appears that the original application was filed by KoPT against Balmer Lawrie & Co Pvt Ltd. However, it appears from the statement of accounts, KoPT's and O.P's communications, the draft copy of lease deed for the subject occupation etc. that the case has been initiated against Balmer Lawrie & Co Ltd. It appears that a good number of hearings have taken place before passing of this Order and nobody has ever pointed out such discrepancies before this Forum. Further, Balmer Lawrie & Co Ltd has acknowledged their liability towards the subject occupation throughout the entire proceedings. Hence, it appears to me that such discrepancy in the name of O.P., as mentioned in the original application of KoPT dated 22.02.2018, might be a typographical one and did not prejudice the rights and liabilities of the parties to the present proceeding. In view of the above, it is therefore, directed that henceforth the name of O.P should be read as Balmer Lawrie & Co Ltd for all the material purposes of this proceeding.

By Order of:
THE ESTATE OFFICER
SYAMBAHARI, KOLKATA PORT TRUST
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CHANDAN K. GHOSH, ESTATE OFFICER
KOLKATA PORT TRUST
OFFICE OF THE ESTATE OFFICER
SYAMBAHARI, KOLKATA PORT TRUST





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Proceedings No. 1692/R Of 2019 Order Sheet No. 18

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

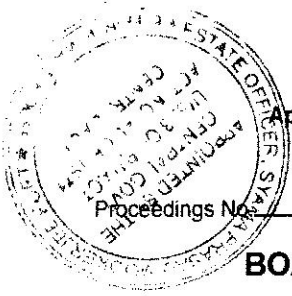
Balmer Lawrie & Co. Ltd.

22
3/11/2020

Considering the submission and documents as submitted by KoPT, Notice to Show Cause dated 04.03.2019 (vide Order No.04 dated 12.02.2019) was issued by this forum to the O.P. under Section 7 of the Public Premises (Eviction of Unauthorized Occupation) Act, 1971 to show cause as to why an order requiring to pay such accrued interest on outstanding dues should not be made against O.P. The O.P. was also called upon to appear before this Forum in person or through authorized representative capable of answering all material questions connected with the matter along with the evidence which the Opposite Party intends to produce in support of this case.

The said notice was served through Speed Post as well as by hand delivery to the recorded addresses of O.P. at 21, Netaji Subhas Road, Kolkata-700001. It appears from the record that said Notice was not returned back. However, the report of the Process Server dated 07.03.2019 depicts that the copy of the said Notice was served upon O.P personally and affixation was also made on O.P's address on the same day at about 5 P.M. After getting couple of opportunities as per principles of natural justice, finally on 23.04.2019 O.P entered appearance through one Shri Pradyot Kumar Ghosh, Sr.Manager, Secretarial & Legal, with a prayer of being

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3/11/2020
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No.

1692/R

Of

2019

Order Sheet No.

19

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

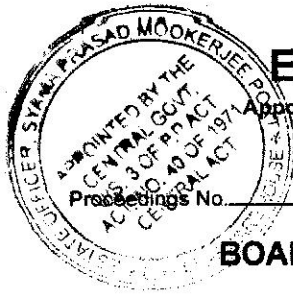
Balmer Lawrie & Co. Ltd.

22
3/11/2020

provided a Statement of Accounts to scrutinize the alleged claim of KoPT. However, direction was given by the Forum to both the parties to the proceeding to reconcile such Statement of Accounts before the next date of hearing & O.P was specifically directed to file their reply/written objection to the Show Cause. Thereafter, without having been filed any reply to the Show Cause, O.P repeatedly requested the Forum for extension of time. Thereafter dated 13.09.2019, O.P made an application addressing the Trustee's Estate Manager for reconciliation of such amount due from it and accordingly Forum directed KoPT to reconcile such due within the month of September. Thereafter dated 08.11.2019, O.P confirmed that such reconciliation has been completed between both the parties on 30.10.2019. Thereafter dated 21.01.2020, KoPT submits such report on reconciliation. Finally on 18.02.2020, when verbally as well as by way of an application dated 30.01.2020, O.P claimed that no outstanding dues are payable by O.P and such claim is barred by limitation, considering lingering of the matter by way of further hearing unnecessary, the instant proceeding was reserved for final order.

Now, while passing the Final Order, I have carefully considered the documents on record and the submissions of the parties. The main focal point of KoPT's allegation is O.P's default in

4/11/2020



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(Eviction of Unauthorised Occupants) Act 1971

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2019

Order Sheet No.

20

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

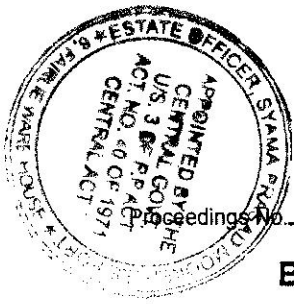
Balmer Lawrie & Co. Ltd.

22
3/11/2020

payment of accrued interest on outstanding rental dues.

Now the plea taken by O.P. for denial of KoPT's claim on account of interest, is required to be adjudicated seriously as the issue involves mixed question of fact and law as well. It is my considered view that payment of interest is a natural fall out and one must have to pay interest in case of default in making payment of the principal amount due to be payable. Needless to mention that one of the basic conditions of lease that the lessee/ O.P. is liable to pay rents in timely manner to the lessor KoPT and any breach in such terms shall invariably attract the penal charges by way of interest. All canons of law permits charging of interest if payments are being made in delayed fashion. For occupation and enjoyment of Port property, the charges leviable upon the tenants/occupiers are based on the Schedule of Rent Charges as applicable for a tenant/occupier in respect of respective zone as indicated in such Schedule of Rent Charges. Every tenant/occupier of the Port property is under obligation to pay such charges for occupation and it has been specifically mentioned in the different Schedules of Rent Charges as were notified from time to time. I am firm in holding that such notifications have a statutory force of law and tenants/occupiers cannot deny the charges on account of interest as per

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KOLKATA PORT TRUST
4/11/2020



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1692 / R

Of 2019

Order Sheet No. 21

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

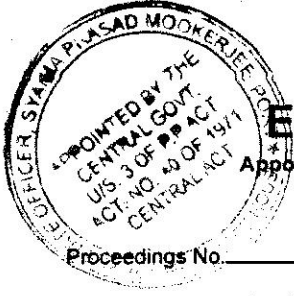
Balmey Lawrie & Co. Ltd.

22
3/11/2020

notification in the Official Gazette until such rate of interest is modified/enhanced by further notification/s. Moreover, it is my considered view that such periodical liability on account of interest for delayed payment is coming under the purview of the definition "rent" as defined under P.P Act. Therefore, I have nothing to disbelief in respect of KoPT's claim against O.P. as per statement of accounts maintained regularly in KoPT's office in regular course of business.

On the question of time barred claim of KoPT on "limitation" and whether the proceedings u/s 7 of the Act is maintainable, I have borrowed my contention from the several decisions of the Hon'ble Judiciary, in particular the decisions of the Hon'ble Supreme Court, wherein it was decided that the Limitation Act has no application in the proceedings before the Estate Officer which is not a Civil Court, governed by the Civil Procedure Code. Sec. 15 of the P.P. Act puts a complete bar in entertaining any matter before the Civil Court in respect of Public Premises. As such, I am firm in holding that Limitation Act has no application in the instant case. The Division Bench judgment of Madhya Pradesh High Court reported in AIR 1980 MP 196 (D.B) (L.S. Nair -VS-Hindusthan Steel Ltd. & Ors.) has its applicability in all sense of law. The judgment of the Delhi High Court in Nandaram's case 87 (2000) DLT 234 also supports the view taken by Hon'ble Calcutta High Court. In this connection I am fortified by a judgment of the

By S. P. MOOKERJEE
THE ESTATE OFFICER
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SYAMA PRASAD MOOKERJEE PORT TRUST



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1692/R Of 2019 Order Sheet No. 22

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Balmex Laurus & Co. Ltd.

22
3/11/2020

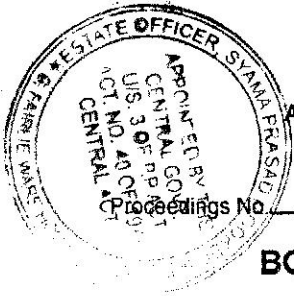
Hon'ble High Court, Calcutta in S.N. BHALOTIS VS- L.I.C.I. & Ors. reported in 2000(1) CHN 880 with reference to the judgment reported in AIR 1972 Tripura 1 (Hemchandra Charkraborty -Vs- Union of India) where in it was clearly held that proceedings initiated by an Estate Officer are not in the nature of suit nor the Estate Officer acts as a Court while deciding proceedings before him.

Under such circumstances, I am unable to appreciate the suggestion of the O.P. on this count also and I am firm in holding that Limitation Act has no application in the instant case and as such there is no bar in proceeding with the instant case and accepting the claim of KoPT on account of Interest accrued for delayed payment. In fact, I have nothing to disbelief in respect of KoPT's claim against O.P. as per statement of accounts maintained regularly in KoPT's office in regular course of business.

It is my considered view that a sum of Rs.1,18,747.54 as claimed by the Port Authority on account of interest for delayed payment in relation to Plate in question, is payable by O.P. for the period 30.04.2006 to 14.02.2010 (both days inclusive) and it is hereby ordered that O.P. shall make payment of the aforesaid sums to KoPT by 24.11.2020

Accordingly I sign the formal order requiring payment of the arrear dues for interest on

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT
3/11/2020
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT



Estate Officer, Kolkata Port Trust

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

1692) R

Of

Order Sheet No.

23

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

VS

Balmer Lawrie & Co. Ltd.

22
3/11/2020

account of delayed payment by O.P. u/s 7 of the Act as per rule made thereunder. I make it clear that in the event of failure on the part of O.P. to pay the amounts to KoPT as aforesaid, Port Authority is entitled to proceed further for recovery of its claim in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Sayan Sinha)

ESTATE OFFICER

***ALL EXHIBITS AND DOCUMENTS ARE REQUIRED TO BE TAKEN BACK WITHIN ONE MONTH FROM THE DATE OF PASSING OF THIS ORDER**

4/11/2020



**REGISTERED POST WITH A/D.
HAND DELIVERY
AFFIXATION ON PROPERTY**

THE ESTATE OFFICER, KOLKATA PORT TRUST
(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971
1st Floor, 6, Fairlie Place Warehouse,
Kolkata-700001

Court Room At the 1st Floor
6, Fairlie Place Warehouse

Form " E "

PROCEEDINGS NO.1692/R OF 2019
ORDER NO. 22 DATED: 3.11.2020

Form of order under Sub-section (1) and (2A) of Section 7 of the Public
Premises (Eviction of Unauthorised Occupants) Act,1971.

To
M/S Balmer Lawrie & Co. Ltd
Administration Department,
21, Netaji Subhas Road,
Kolkata-700001.

WHEREAS you were in occupation of the public premises described in
the Schedule below. (Please see on reverse).

AND WHEREAS, by written notice dated 04.03.2019 you are called
upon to show cause on/or before 12.03.2019 why an order requiring you
to pay a sum of Rs 1,18,747.54 (Rupees One Lakh Eighteen Thousand
Seven Hundred Forty Seven and paise Fifty Four only) being the interest
payable for delayed payment of rent in respect of the said premises
should not be made;

And whereas I have considered your objections and/or evidence
produced before this Forum.

NOW, THEREFORE, in exercise of the powers conferred by sub-section
(1) of Section 7 of the Public Premises(Eviction of Unauthorised
Occupants) Act 1971, I hereby require you to pay the sum of Rs
1,18,747.54 (Rupees One Lakh Eighteen Thousand Seven Hundred Forty
Seven and paise Fifty Four only) for the period 30.04.2006 to 14.02.2010
(both days inclusive) to Kolkata Port Trust by 24.11.2020.

PLEASE SEE ON REVERSE

In the event of your refusal or failure to pay the interest within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue through the Collector.

SCHEDULE

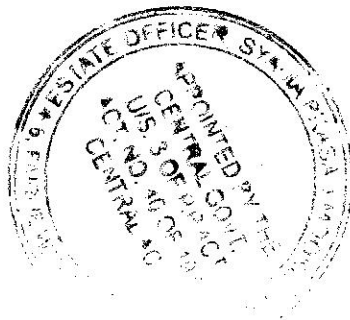
Plate No.SW-58

The said piece and parcel of godown msg.157.75 sq.m. or thereabouts was situated at Comp.No.B-2/7(Ground Floor) of erstwhile Strand Warehouse, Thana-North Port Police Station. It was bounded on the North by the Compartment No.A5 of erstwhile Strand Warehouse, on the East by the Compartment No.B-1/1 of erstwhile Strand Warehouse, on the South by the passage alongside Compartment No.B-2/2 of erstwhile Strand Warehouse and on the West by the platform of erstwhile Strand Warehouse and alongside Trustees vacant land.

Trustees' means the Board of Trustees' for the Port of Kolkata.

Dated: 4.11.2020

Signature and seal of the
Estate Officer



COPY FORWARDED TO THE ESTATE MANAGER/CHIEF LAW OFFICER, KOLKATA PORT TRUST FOR INFORMATION.