

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 189 of 2019

BETWEEN : **SOUTHERN MOTORS LIMITED**

PLAINTIFF

AND : **MILLENNIUM APPAREL PTE LTD** formerly known as **MILLENNIUM APPAREL LTD**

DEFENDANT

Counsel : **Plaintiff: Mr. A. Chand**

: **Defendant: Mr. Gosai S**

Date of Hearing : **29.10.2019**

Date of Judgment : **31.10.2019**

JUDGMENT

INTRODUCTION

1. Plaintiff filed this action by way of originating summons seeking inter alia to obtain inventory of items in the premises that was rented to Defendant. Defendant had an apparel factory on the premises rented by Plaintiff and had admittedly accrued arrears of rentals since February, 2019 and Plaintiff's bailiff had locked the premises of factory on 18.4.2019. Defendant had not provided any evidence of payment of rentals for the said period from February, 2019 to April, 2019 before the premises was locked. The premises was also locked by Defendant preventing entry of Plaintiff and or its agent/bailiff. At the moment bailiff of the Plaintiff cannot enter the premises and take inventory of the items that they intend to exercise distress of rent. Plaintiff through a registered bailiff can exercise its rights in terms of Distress of Rent Act 1961. There is no provision in this Act, or any other statute that, granted bailiff a right to evict a tenant by placing locks on a

premises. Once bailiff had locked the premises it cannot again claim for distress of rentals after 18.4.2019 as tenant was prevented from occupying the premises.

FACTS

2. Plaintiff was the landlord of Defendant for premises described as Lot 88 Jerusalem Road, Nabua being Crown Lease Number 13876 for a period over 17 years.
3. Defendant was operating a factory in the said premises and had defaulted rentals from February to 18.4.2019, when the bailiff of Plaintiff locked the factory premises.
4. Plaintiff had engaged a bailiff to execute distress of rent and allegedly he was prevented from entering the premises of the factory to obtain an inventory. This fact was denied by the Defendant in paragraph 8(iii) of affidavit in response of the Defendant.
5. Defendant had also placed locks to prevent bailiff entering the premises.
6. Plaintiff seeks order of the court to enter the premises to obtain an inventory.

ANALYSIS

7. Plaintiff filed originating summons seeking orders of the court *inter alia* to enter premises and obtain inventory of the items.
8. Admittedly bailiff of Plaintiff had locked the premises of factory on 18.4.2019. I was not pointed out any statutory provision including and not limiting to Distress of Rent Act, 1961 or any common law right for a bailiff to restrain entry of a tenant, in the exercise of distress.
9. Such an act amounts to 'constructive eviction' of a tenant from the premises without due process of law.
10. Thereafter, the premises were locked by both parties where plaintiff is the registered owner and Defendant was conducting a business of apparel factory. Plaintiff also sought to sell the items seized by bailiff.
11. At the hearing Plaintiff abandoned the orders for stop departure of the Directors, when the court requested the counsel to state the law on which such an order was sought. Originating summons did not indicate law on which such order was sought.
12. The Plaintiff also abandoned order 'c' contained in the originating summons regarding restraining order with respect to possession of the premises by the Defendant. Again,

there was no indication as to the law on which such restraint was made in the originating summons.

13. At the hearing counsel for Plaintiff relied on Section 3 of the Distress for Rent states as follows;

'Distress to be levied by certified bailiff

3.-(1) From and after the commencement of this Act no person, other than a landlord in person, shall act as a bailiff to levy any distress for rent unless he shall be authorised to act as a bailiff by a certificate in writing to that effect, and such certificate may be general or apply to a particular distress or distresses, and may be granted at any time in such manner as may be prescribed by rules made under the provisions of this Act.

(2) Any resident magistrate may exercise the power of granting certificates in cases in which such magistrates may be authorised to do so by rules made under the provisions of this Act.

(3) If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this section or if any bailiff holding such a certificate shall levy a distress otherwise than in accordance with this Act and any rules made thereunder, the person so levying shall be guilty of an offence, and shall be liable, on conviction, to a penalty not exceeding forty dollars or to imprisonment for any term not exceeding three months, in addition to any other liability which he may have incurred by his proceedings.

(4) Any person who shall authorise any person not holding a certificate under this section to levy a distress contrary to the provisions of this Act shall be guilty of an offence, and shall be liable, on conviction, to a fine not exceeding forty dollars in addition to any other liability which he may have incurred by his proceedings.

(5) A certificate granted to a bailiff under this section may at any time for good reason be cancelled or declared void by a resident magistrate.'

14. A bailiff can exercise distress in terms of the above provision of law, but this exercise needs to be carried out without abuse. So a bailiff needs to be restrained in the exercise of distress.
15. In the paragraphs 7 and 8 (iii) of the affidavit in response of Defendant, it had stated that bailiff on 18.4.2019 without any notice as to inventories locked the premises. In reply to

that Plaintiff admitted closure of factory by its bailiff on the said date and stated that bailiff was obstructed from exercising distress. These are disputed facts, but now both parties have placed locks on the premises that had virtually kept premises closed, without any resolution of the issued before parties.

16. Plaintiff as the landlord seeking an order of the court to enter premises and also to obtain an inventory of the items therein. Plaintiff had also alleged that some items in the premises were already removed by Defendant. Plaintiff had not shown any law that authorized its bailiff to close the factory.
17. The lock placed by bailiff of Plaintiff should be removed and access should be given to the tenant. There is no law that support closure of Defendant's factory. Defendant should provide access to Plaintiff, in order to exercise distress.
18. Counsel for the Defendant did not indicate how he is objecting to such an order to fulfill requirements of Distress of Rent Act, 1961.
19. Defendant is preventing Plaintiff and or its agent or bailiff from entering the premises and obtaining an inventory of the items. This is allegation of obstruction of the work of bailiff and there is evidence of resistance and likelihood of breach of peace.
20. So it is desirable under the circumstances to obtain the assistance of Police and remove any hindrance or additional locks to access to the property rented, for the Plaintiff or bailiff to fulfill its obligation in terms of Distress of Rent Act, 1961 to obtain an inventory of the items.
21. It should also be noted that till the tenant is evicted in a lawful manner Defendant's access to the premises should be respected by landlord, too. I have not been pointed out any provision of law that allowed Plaintiff to obstruct entry of tenant to the premises by Plaintiff and or its agent. Plaintiff should be mindful of limited scope in the exercise of distress.
22. No rent can be levied on the premises 18.4. 2019 till the tenant is given access to the premises.
23. The bailiff may take all necessary steps to recover the arrears of rent in terms of Distress of Rent Act, 1961. Neither party submitted tenancy agreement.

CONCLUSION

24. Plaintiff is allowed to exercise its rights under Distress of Rents Act, 1961 in terms of law and for that Police assistance is granted considering the circumstances and likelihood of

breach of peace. So both parties are ordered to remove additional locks that prevented access to each other. Plaintiff is allowed to obtain inventory of the items in the said premises and exercise distress to recover arrears of rents upto 18.4.2019. Considering the circumstances of the case no cost granted.

FINAL ORDERS

- a. With the assistance of the Police, both parties are hereby ordered to remove respective locks that prevented each other's access to enter premises where Defendant was operating an apparel factory at Building A, 88 Jerusalem Road Vatuwaqa, Suva.
- b. Plaintiff is allowed to enter and take inventories of the items therein in terms of law.
- c. After obtaining inventory Plaintiff through its bailiff is authorized take lawful steps in terms of Distress of Rent Act 1961 and or any other law to recover arrears of rents till 18.4.2019.
- d. Considering the nature of the action no cost awarded.

Dated at Suva this 31st day of October, 2019.



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Justice Deepthi Amaratunga
High Court, Suva