

FARAD CONTINUATION SHEET NO.**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD****WRIT PETITION NO.9156 OF 2013****[Ulhas s/o Uttamsa Sahuji vs. Mrs. Yasmin w/o Salim
Charniya and another.]****WITH****WRIT PETITION NO.9167 OF 2013****[Ulhas s/o Uttamsa Sahuji vs. Nevin Siraj Charniya and
another.]**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	Mr. Hemant Surve, Advocate for petitioner. Mr. P.R. Patil, Advocate for Resp. Nos.1&2. CORAM : S.S. SHINDE, J. DATE : 24TH DECEMBER, 2013 PER COURT : . Heard learned Counsel appearing for the petitioner. He submits that, status of the petitioner whether he is licensee or tenant is yet to be determined. It is submitted that, respondents are not allowing to carry the business and use the suit premises. The Counsel invited my

attention to the impugned judgment and argument advanced before the trial Court and submits that, the petitioner was prevented from running the business as G.P.A. Therefore, according to the petitioner, when the trial Court is directed to hear and decide the suit on or before 01/04/2013, in stead of deciding the said suit, the trial Court has entertained the application and passed the impugned order which is drastic in nature. He invited my attention to the grounds taken in the petition and submits that, the petition deserves to be allowed.

2. On the other hand, learned Counsel appearing for respondents invited my attention to paragraph-10 of the written statement filed by the petitioner and submits that, in paragraph-10 it is stated by the defendant that, the defendant is in exclusive possession of the suit property

as tenant. He further invited my attention to the agreement for leave and licence and in particular clause-3 thereof and submits that, it was agreed between the parties that, the defendant will pay Rs.17,500/- per month. Therefore, he further invited my attention to the provisions of Order 15A of the Code of Civil Procedure and submits that, petition deserves to be dismissed.

3. I have heard learned Counsel appearing for the parties. With their able assistance perused the grounds taken in the petition, annexures thereto, impugned judgment and order passed by the trial Court. At this juncture, it would be apt to reproduce herein below the provisions of Order XV-A (High Court Amendment (Bombay), of the Code of Civil Procedure which reads thus :

HIGH COURT AMENDMENT [Bombay].-

Insert the following as Order XV-A
before XVI:-

Order XV-A

Striking off Defence in suit by a Lessor

1. (1) In any suit by a lessor for eviction of a lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed. continue to deposit such amount till the decision of the suit

In the event of any default in making the deposit, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not

be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff-lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination."

Explanation.- The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule.] (1-10-1983 and 11-1-1990)"

4. In the light of statement of the defendant in paragraph-10 of the written statement and clause-3 of the agreement for leave and licence and provisions of Order XV-A (High Court Amendment (Bombay), of the Code of Civil Procedure, the defendant is bound to pay rent as agreed, therefore, no

case is made out to interfere in extraordinary writ jurisdiction, both the writ petitions stand rejected.

[**S.S. SHINDE, J.**]