

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5992 OF 2015**

Indranil Jagdeesh Kuber

..Petitioner

Vs.

M/s. Mandke Construction Co.

..Respondent

Mr. N. P. Mule for the Petitioner

Mr. Jaydeep Deo for the Respondent

**CORAM : R. M. SAVANT, J.
DATE : 8th DECEMBER, 2015**

P.C.

1 The order dated 12-3-2015 passed by the Lower Appellate Court i.e. the Learned District Judge-9 Pune, rejecting the Revision Application filed by the Petitioner, is taken exception to by way of the above Writ Petition.

2 The cause for filing the Revision Application in the District Court was the order dated 18-10-2014 by which order, the application Exhibit 7 filed by the Plaintiff invoking Order 15A of the Civil Procedure Code, came to be allowed and the Petitioner herein i.e. the Defendant in the Suit in question was directed to deposit an amount of Rs.37,34,108/- in the Court towards the licence fees within 60 days of the said date. There is a leave and licence

agreement entered into between the Respondent as licensor and the Petitioner as a licensee and the licence fee payable is Rs.1,78,000/- per month for the area of 2050 sq.ft. which is a showroom situate at 47/8, Paud Road, Kothrud Pune. The said licence fees was payable from 1-2-2012 subject to an increase of 5% every year. The said agreement also provides for payment of service charges and the maintenance charges. It is provided in the said agreement that if any party commits a breach of any of the terms and conditions and fails to remedy the breach within one month of notice, the agreement shall stand terminated. On the ground that the licensee has not paid licence fees the Plaintiff filed the instant application Exhibit 7 for directing the Defendant to deposit an amount of Rs.37,34,108/- in the Trial Court. The said application was replied to on behalf of the Defendant and in the reply the stand taken was that the premises are not admeasuring 2050 sq.ft. but admeasuring 1470 sq.ft. The liability to pay service charges as also maintenance charges was also disputed.

3 The Trial Court on the basis that though the agreement provides for termination of the said agreement if either of the party commits breach, the Defendant having not done so is liable to deposit the said amount. The said amount has been calculated by the Plaintiff after giving credit for the amount already paid by the Defendant. The Trial Court accordingly allowed the application Exhibit 7 by its order dated 18-10-2014 and directed the Defendant

to deposit the amount of Rs.37,34,108/- towards the licence fees.

4 The Defendant carried the matter before the Lower Appellate Court by filing the Revision Application. After adjudicating the issue as to whether the Revision would be maintainable against the said order dated 18-10-2014 the Learned District Judge-9 came to a conclusion that the order passed by the Trial Court directing the Defendant to deposit the said amount of Rs.37,34,108/- does not merit any interference in the Revisionary Jurisdiction of the Court and accordingly dismissed the Revision Application.

5 The Learned Counsel appearing for the Petitioners Mr. Mule would once again seek to raise the issue of the area of the premises as also liability of the Defendant to pay service charges as also the maintenance charges. The Trial Court has observed that the said aspects can be gone into at the trial of the Suit and would therefore not impinge upon the liability of the Defendant to deposit the licence fees in terms of the licence agreement.

6 In my view, having regard to the nature of the order passed and the same being under Section 15A of the Civil Procedure Code, no case for interference in the Writ Jurisdiction of this Court is made out the Writ Petition is accordingly dismissed.

7 However it is clarified that this Court has not gone into the aspects as to who is liable for payment of service charges and maintenance charges, as also the area of the premises in question. The said issues are kept open for being adjudicated in the Suit.

(R.M.SAVANT, J.)