

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 6960 OF 2014

Dharam Dilip Parmar

..Petitioner

Vs.

Ashish Kiran Shah

..Respondent

....

Mr. Sumit Kothari, Advocate i/b Harshad Sathe and Saurab Butala
for Petitioner.

Mr. Rajesh More, Advocate for Respondent.

....

CORAM : N.M. JAMDAR, J.

DATED : 28 APRIL 2015

P.C.:

Rule. Rule made returnable forthwith. Respondent
waives service. Taken up for final disposal.

3. By this petition, the petitioner challenges the order passed by the learned Small Causes Court Judge, Pune below Exhibit 41 in Civil Suit No. 303/2012 filed by the respondent seeking possession of the premises from the petitioner. In this suit, when the matter was fixed for hearing, the petitioner filed an application on 5 March 2014 stating that the petitioner is ready to hand over the possession of the suit premises to the respondent, provided respondent refunds the security deposit. Accordingly, the petitioner sought permission

to deposit the keys of the suit shop. The learned Small Causes Court Judge by order dated 25 June 2014 directed the petitioner to deliver the keys of the suit shop and the issue regarding adjustment of deposit was deferred to be heard at the time of final hearing.

4. The learned Small Causes Court Judge has clearly misunderstood the request of the petitioner. The request of the petitioner was conditional. The petitioner has sought liberty to deposit the keys on the condition that security deposit will be returned to the petitioner. It is not unconditional offer to surrender the possession.

5. The learned Counsel for the respondent submitted that if the arrears of license fee are deducted, no amount is payable. Thus there appears to be dispute as to how much amount is to be refunded to the petitioner, if at all. In view of this dispute, which the learned Judge has kept open to be decided at the time of hearing of the suit, direction to the petitioner to hand over the keys of the suit shop to the respondent was clearly not warranted. If the issue as to the monetary aspect is to be decided at the time of hearing, it will be appropriate that the stand of the petitioner taken in the application dated 5 March 2014 is also considered at the time of hearing.

6. Accordingly, the impugned order dated 25 June 2014 passed by the Small Causes Court Judge, Pune is quashed and set

aside. The application filed by the petitioner on 5 March 2014 will be heard at the time of final hearing of the suit on merits. All contentions of both the parties are kept open in that regard.

7. Writ Petition is disposed of in above terms.

(N.M. JAMDAR, J.)