

sg

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO.2287 OF 2010

HJ Corporate Services Pvt. Ltd.

...Plaintiff

vs.

M/s. Greater Nashik Infracon Private Limited

...Defendant

.....

Mr. Anup Dasgupta, a/w. Ms. Deepika Sekar, i/b. Jhangiani Narula and Associates, for the Plaintiff.

None for the Defendant.

....

CORAM : S.C. GUPTE, J.

DATED : DECEMBER 4, 2015

P.C. :

. The suit has come up for ex-parte decree in pursuance of an order passed by this Court on 24 November 2015.

The Plaintiff tenders its witness, Nirmala S. Makar, Director of the Plaintiff and submits an affidavit in evidence in lieu of examination-in-chief together with a compilation of documents.

Mrs. Nirmala S. Makar P.W.1 on S.A. :

Name : Nirmala S. Makar

Occupation : Director of HJ Corporate Services Pvt. Ltd.

Address : 1117, Maker Chambers V, 11th floor,
Nariman Point, Mumbai 400 021.

The affidavit of 23 November 2015 is my affidavit, which I tender in lieu of my examination-in-chief. I identify and acknowledge my

signature in the affirmation clause of the affidavit. The contents of the affidavit are true and correct.

2. The affidavit of P.W.1 taken on record as her examination-in-chief. The documents of the Plaintiff are marked as mentioned below.

3. The suit is for a money decree for a sum of Rs.1,13,23,361/- as per Particulars of Claim annexed to the plaint, together with interest at the rate of 12% per annum from the date of filing of the suit till payment and/or realisation. The Plaintiff is the owner of office premises bearing Office Space Nos. 103 and 104 together with Car Parking Space No.64 situated at Maker Chambers VI, Nariman Point, Mumbai – 400 021(“licensed premises”). By and under agreements of leave and licence, both dated 25 September 2008, entered into between the Plaintiff and the Defendant, the Plaintiff granted to the Defendant the licence to use and occupy the licensed premises for a period of 34 months from 1 December 2008 with respect to Office Space No.103 and Car Parking Space No.64, and for 36 months with respect to Office Space No.104. The Plaintiff has produced original agreements of leave and licence, both dated 25 September 2008. The agreements are admitted in evidence, marked as **Exhibits P-1 and P-2**, respectively.

4. Under the agreements, the periods of 34 and 36 months, respectively, are lock-in periods. The Defendant was not entitled to terminate the agreements prior to 31 months and 33 months, respectively, and except after giving notice of three months in advance. The agreements require the Defendant to maintain an interest free security deposit with the Plaintiff, respectively, in the sums of R.54,12,000/- for Office Space No.103

and Car Parking Space No. 64 and Rs.23,59,500/- with respect to Office Space No.104. These amounts were duly deposited by the Defendant with the Plaintiff. The Defendant has been in possession of the licensed premises, respectively, from 1 December 2008 and 1 October 2008.

5. The Defendant by its letter dated 21 February 2009 offered to surrender the licensed premises and handover possession thereof to the Plaintiff on or before 28 February 2009. This was opposed by the Plaintiff by its letter dated 24 February 2009 *inter alia* having regard to the lock-in period under the leave and licence agreements. The letters in this behalf, namely, the Defendant's letter of 21 February 2009 and the Plaintiff's reply of 24 February 2009 tendered in evidence are admitted and marked as **Exhibits P-3 and P-4**, respectively.

6. By a letter dated 6 March 2009, the Defendant purported to handover possession of the licensed premises with a request to the Plaintiff to refund the security deposit. The surrender of the premises, which was acknowledged by the Plaintiff vide its letter dated 10 March 2009, was in breach of the terms and conditions of the leave and licence agreement. The Plaintiff accepted possession of the licensed premises without prejudice to its right to recover the licence fees for the balance period under the leave and licence agreement after adjusting the security deposits. The letters exchanged by the parties in this behalf, namely, the Defendant's letter dated 6 March 2009 and the Plaintiff's reply dated 10 March 2009, are tendered in evidence. These letter are admitted in evidence and marked as **Exhibits P-5 and P-6**, respectively.

7. Further correspondence ensued between the parties, which is

tendered in evidence, namely, letters dated 18 March 2009, 26 March 2009, 9 April 2009, 22 April 2009 and 12 May 2009, which are marked, respectively as **Exhibits P-7 to P-11**. Since the licensed premises were lying vacant after their surrender, the Plaintiff looked for offers from third parties for licensing of the premises. The offers received by the Plaintiff were communicated to the Defendant vide its letter, which is tendered and admitted in evidence, marked as **Exhibit P-10**. The Defendant's letter in reply is tendered in evidence and marked as **Exhibit P-12**.

8. Pursuant to negotiations between parties, the Plaintiff entered into a leave and licence agreement with M/s. Global Energy Pvt. Ltd. for Office Space No.104. The agreement of the Plaintiff and M/s. Global Energy Pvt. Ltd. is tendered in evidence and marked as **Exhibit P-13**. So also, by a leave and licence agreement dated 17 September 2009, the Plaintiff agreed to licence the premises, being Office Space No.103 and Car Parking Space No.64 to M/s. Global Energy Pvt. Ltd. The leave and licence agreement produced by the Plaintiff is tendered in evidence and marked as **Exhibit P-14**.

9. Further correspondence between the parties and also their respective Advocates, namely, letter dated 23 July 2009, two letters dated 15 September 2009, notice dated 29 March 2009, the Defendant's Advocates' notice dated 29 March 2010 and the Plaintiff's Advocates' notice dated 26 April 2010, which are tendered in evidence, are marked as **Exhibit P-15 to P-20**, respectively.

10. As deposed to by P.W.1 in her examination-in-chief, total licence fee recoverable from M/s. Global Energy Pvt. Ltd. for Office Space

No.103 and Car Parking Space No.64 works out to Rs.1,52,18,267/-, whilst the licence fee recoverable for Office Space No.104 works out to Rs.74,28,375/-.

11. The agreements clearly provide for a lock-in period. The purported surrender of licensed premises by the Defendant to the Plaintiff on the date mentioned above, is clearly in breach of the stipulation contained in the agreements regarding this lock-in period. The Defendant is, in the premises, bound to pay the entire licence fee for the two office premises. Such licence fees for Office Space No.103 and Car Parking Space No.64 works out to Rs.1,52,18,267/- whilst for Office Space No.104 works out to Rs.1,06,17,750/-, both for the unexpired lock-in period.

12. After giving credit to the Defendant for the licence fee paid by M/s. Global Energy Pvt. Ltd. and also after adjusting the respective security deposits kept by the Defendant with the Plaintiff in pursuance of the leave and licence agreements and after considering non-payment of TDS, a total sum of Rs.1,13,23,361/- is due and owing by the Defendant to the Plaintiff.

13. The Plaintiff has proved its entitlement to recover the amount of Rs.1,13,23,361/-. In the facts of the case, I also propose to award pendente lite interest at the rate of 12 per cent on the principal amount.

14. Accordingly, there will be a decree in favour of the Plaintiff in terms of prayer clause (a). The Plaintiff shall also be entitled to the costs of the suit. It is ordered accordingly.

(S.C. GUPTE, J.)