IN THE HIGH COURT OF BOMBAY AT GOA

MISC. CIVIL APPLICATION NO. 947 OF 2013
IN
FIRST APPEAL NO. 162 OF 2006

M/s. Goa Golf Club Pvt. Ltd. … Applicants

V e r s u s

1. M/s. Fomento Resorts & Hotels Ltd.
And another. … Respondents

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A. V., Advocate for the Applicant.

Mr. Sudesh Usgaonkar and Ms. Rosette Pereira, Advocates for the Respondents.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **4th February, 2016**

ORDER *(Per F. M. Reis, J.)*

Heard Shri S. G. Desai, learned Senior Counsel appearing for the Applicants and Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents.

2. This is an application for withdrawal of the amount deposited in this Court vide Order dated 10.07.2006 thereby seeking direction to the learned Civil Judge, Senior Division at Panaji in Special Civil Suit no. 44 of 2004/B to refund to the Applicants Rs.21,60,894/- together with interest thereon on the said amount as well as the refund of a sum of Rs.46,00,000/- deposited by the Applicants in this

Court together with interest accrued thereon pursuant to the Orders dated 10.07.2006 whilst passing interim Order at the time of admitting the Appeal preferred by the Appellants. The above application came to be disposed of, inter alia, by an Order dated 28.04.2014, directing to refund fifty percent of the amount deposited before the learned Trial Court as well as before this Court along with interest accrued thereon to the Applicants whereas the remaining fifty percent of the amount deposited was ordered to be paid to the Respondents along with interest accrued thereon. The said Order was challenged before the Hon'ble Supreme Court in Special Civil Appeal no. 8257 of 2015 which came to be disposed of by an Order dated 05.10.2015, whereby the Hon'ble Supreme Court set aside the Order passed by this Court and requested this Court to dispose of the above Misc. Civil Application on its own merits by redressing to all the contentions raised before it.

3. Briefly, the facts of the case as stated by the Applicants are that the Applicants filed a Special Civil Suit no. 44 of 2004/B before the learned Civil Judge, Senior Division, at Panaji, on the ground that the Respondent no. 1 entered into an Agreement with the Applicants-Club allowing them to run an amusement centre in the hotel since the year 1995. Thereafter, the parties had entered into an Agreement dated 04.01.1999 allowing the Applicants-Club to run the amusement centre on certain terms and conditions. According to the Applicants, one of the terms was that the Club shall shift the slot machines to the premises owned or arranged by the Applicant-Club which would be leased to the Respondents on or before September, 2002. It is further their case that they had constructed their own premises on the rear side of the aforesaid Five-Star Hotel and a foot bridge was

constructed by the Applicants linking the hotel with the new premises constructed by the Applicants. Thereafter, the parties had entered into two Agreements dated 15.04.2001 for the period of eleven months which was subsequently renewed. The Agreement expired on 31.03.2003 and the Applicant-Club entered into this Agreement because the condition of the licence by the Government for running amusement a centre is that it should be run in a Five-Star Hotel only. By an Order dated 28.10.2003, the Government granted six months time to the Applicant-Club as the Agreement with the Respondent had expired on 31.03.2003 and as the Respondent refused to renew that Agreement, the Government had put a condition on the Club to obtain the necessary Order from the Court in a suit which the Club was intending to file against the Respondents for the continuation of the Agreement of 04.01.1999. The said suit was filed on 27.04.2004 and ad-interim orders were obtained on 28.04.2004 for status quo after giving notice to the Applicants. Ultimately, after hearing the parties on the interim application for injunction, the Trial Court by a speaking Order dated 21.07.2004, granted the interim injunction against the Respondents from interfering with the suit licence and the suit business till the final decision of the main suit. The Order passed by the learned Trial Judge in the application for temporary injunction was challenged by the Respondents herein before this Court in an Appeal From Order no. 59 of 2004 which came to be disposed of on 23.06.2005 whereby the Appeal was dismissed however, the Applicant-Club was directed to deposit a sum of Rs.10,00,000/- in the Trial Court within a period of six weeks and continue to deposit the recurring amount payable to the Appellants as per Clauses 37 to 39 of the Agreement of 1999 from 01.07.2005. The amount so deposited was also directed to be invested in a nationalised Bank in Fixed Deposit. The trial of the Civil Suit was ordered to be expedited. The Special Leave Petition was preferred against the said Order before the Hon'ble Supreme Court which came to be dismissed.

4. The suit filed by the Applicants came to be dismissed by Judgment and Decree dated 13.06.2006. Being aggrieved by the said Judgment and Decree, a First Appeal was filed before this Court being First Appeal no. 162 of 2006. During the pendency of such Appeal, the Applicants filed an application for interim reliefs against the Respondents which came to be disposed of by Order dated 10.07.2006 whereby the interim relief which was in operation before the learned Trial Court by its Order dated 31.07.2004 and modified by this Court by an Order dated 23.06.2005, would continue during the pendency of the Appeal on the Applicants depositing an amount of Rs.2,00,000/- per month in this Court from July, 2006.

5. The Appeal was dismissed as infructuous by an Order dated 28.04.2014 as it was contended by the Applicant that the Agreement dated 01.01.1999 could at the most be in operation up to the year 2012 in case all the contentions of the Applicants are accepted.

6. The Applicants have filed the above application, inter alia, contending that they have deposited amounts in this Court upto 08.04.2008 which totally amounts to a sum of Rs.46,00,000/- and no amounts have been deposited from May 2008 because of financial crunch. It is further their case that the total principal amount deposited of Rs.65,60,894/- including the amount deposited before the learned Trial Court. It is further their case that the learned Trial Judge in the

Judgment dated 13.06.2006 has held that the Applicants has established that the Respondent no. 1 had no right to interfere in any manner with the running of the amusement centre by the Applicants in the new premises of the Respondent no. 2. It is further their case, that it has been further held that the Respondent no. 1 has established that Clause 36 and 37 of the Agreement dated 01.01.1999 would not start until the lease was entered into between the Respondent no. 1 and the person who would be the lessor of the premises selected. It is further their case that the Respondent no. 1 is not entitled nor can claim the amount deposited and, as such, sought for the withdrawal of the amounts deposited before this Court as well as before the learned Trial Judge.

7. The Respondents filed their reply, inter alia, contending that as the temporary injunction was obtained by the Applicants during the pendency of the Appeal which was pending before this Court and as the injunction came to be vacated, the Respondents are entitled for the total amount deposited in this Court. It is further their case that once the suit has been dismissed, the amount deposited had to be paid to the Respondent and such amount could not be withdrawn by the Applicants. It is further the contention of the Respondents that the Order of the Government dated 28.10.2003 granted six months time to the Applicants to obtain a declaration that the premises of the Respondent no. 2 licensed to the Respondent no. 1 is part of Five-Star Hotel Cidade de Goa of the Respondent no. 1. Based on the interim Order granted by the learned Trial Judge in the suit, there is a categoric finding in the Judgment passed by the learned Trial Judge that the licence was granted to the Respondent. It is further their case that the amount which was deposited in this Court is for mitigating the damages of the Respondent

and, as such, the total amount is to be paid to the Respondents herein.

8. The Applicants, thereafter, filed an affidavit in rejoinder disputing the contentions of the Respondents. It is further their case that the dispute started between the parties after the Casino was shifted to the premises belonging to the second Respondent and deduction of the said amount from the amount payable to the first Respondent. It is also their case that the Respondent no. 1 also failed to sign the Lease Deed with the Respondents to the premises belonging to the Respondent no. 2. It is further their case that in the meantime, the police raided the new premises on 08.03.2001 at the behest of the Respondent no. 1 and, as such, the Agreement dated 15.04.2001 came to be executed between the parties. Even thereafter, two agreements dated 24.09.2002 came to be executed in the background facts as mentioned in the plaint of the said suit. It is further contended that the Respondent no. 2 was granted Five-Star status in 2006 and the Casino licence came to be granted on 10.03.2008. The contentions that there was short fall in the deposit was also disputed by the Applicants.

9. Shri S. G. Desai, learned Senior Advocate appearing for the Applicants, has pointed out that the above application has to be considered in terms of Section 144 read with Section 151 of the Civil Procedure Code. Learned Senior Advocate further submitted that whilst examining such applications for withdrawal of the amounts, the Court has to consider the equitable considerations to come to a fair and just decision. The learned Senior Advocate further pointed out that on going through the Judgment of the learned Trial Judge, it clearly reveals that there is a specific findings on the issues framed to the effect that the

Respondent no. 1 has no right to interfere with the new premises of the Applicants herein. The learned Senior Advocate further pointed out that the learned Trial Judge whilst disposing of the suit has also come to the conclusion that the Applicants are not entitled to get the renewal of the Agreement of the year 1999. Learned Senior Advocate further submits that once the Court has ome to the conclusion that the Applicants are not entitled for the renewal of such Agreement, the question of getting any amounts deposited in the Court based on such Agreements would not arise at all. Learned Senior Advocate further submits that as the amounts were ordered to be deposited at the time of the disposal of the temporary injunction based on the Agreement of the year 1999 and as the learned Trial Judge has come to the conclusion that the Applicants are not entitled for the renewal of such Agreement, it is not open to the Respondent no. 1 to contend that the amounts are to be refunded to the Respondent no. 1. Learned Senior Advocate further pointed out that the temporary injunction which has been granted was subject to depositing the amount in this Court and, as such, according to him, the injunction was not in operation from the year 2008 from the time the Applicants stopped depositing the amount in this Court. Learned Senior Advocate further submits that the Respondent no. 1 did not act upon the Agreement of the year 1999 during the pendency of the above Suit and, as such, the question of granting any amount to the Respondent no. 1 based on such Agreement would be totally inequitable. Learned Senior Advocate further submits that it is well settled that such applications are to be examined on equitable considerations and allowing the Respondent no. 1 to withdraw any of the amounts deposited in this Court, would not be equitable. Learned Senior Advocate further pointed out that the Respondent no. 1 is not entitled for any of the amount deposited in this Court and, as such, the

Applicants be permitted to withdraw all the amounts deposited before the learned Trial Court as well as before this Court. Learned Senior Advocate further pointed out that even assuming that the Applicants have conducted business, they obtained licence from the State Government and, no benefit accrued to the Respondent no. 1 as the authorities were free to take action against the Applicants in terms of the relevant Rules.

In support of his submissions, learned Senior Advocate has relied upon the Judgment of the Apex Court reported in ***1994 LawSuit (SC) 567*** in the case of **Kavita Trehan vs. Balara Hygiene Products Ltd.**

10. On the other hand, Shri Sudesh Uisgaonkar, learned Counsel appearing for the Respondents, has pointed out that once the temporary injunction granted in favour of the Applicants came to be ultimately vacated after the Applicants have withdrawn the Appeal before this Court, the whole amount which has been deposited has to be allowed to be withdrawn by the Respondent no. 1. Learned Counsel further pointed out that the Courts whilst disposing of the application for temporary injunction on the basis of the prima facie findings, has come to the conclusion that the Agreement of the year 1999 continued to be in operation to govern the mutual obligations of the parties. Learned Counsel further pointed out that based on such findings, an injunction came to be granted in favour of the Applicants herein. Learned Counsel further submits that the suit itself was filed as the Casino Licence was renewed for a period of six months and the Applicants were directed to obtain reliefs from the Civil Court in case they wished to get an extension of such licence. Learned Counsel further pointed out that based on the application for temporary injunction, the competent authority renewed the

Casino licence subject to the said Order which may be passed in the suit. Learned Counsel further submits that in case the temporary injunction was not granted in favour of the Applicants, the Casino license itself would lapse and the Applicants would not be in a position to carry out the amusement centre in the concerned premises. Learned Counsel further pointed out that the Respondent no. 1 never claimed any right to the premises belonging to the Applicants and, as such, the findings relied upon by the learned Senior Advocate appearing for the Applicants, in the Judgment passed by the learned Trial Judge would not in any way affect the claim of the Respondent no.1 that the amounts are to be paid to the Respondent no. 1. Learned Counsel further submits that the injunction was granted only to the licence and it cannot be disputed that the licence was in the name of the Respondent no. 1 and, as such, the question of relying on such licence to carry out Casino centre by the Applicants would itself suggest that the Respondent no. 1 would be entitled to the benefits which they had taken based on the temporary injunction granted by the Court. Learned Counsel further submits that the Applicants are not entitled for any of the amounts which have been deposited as such, the amounts are to be paid to the Respondent no. 1. Learned Counsel further pointed out that it is well settled that the injunctions are granted subject to terms in order that at the time of the final disposal of the suit, the amount so deposited can be paid to the party who has succeeded in the suit to mitigate his damages. Learned Counsel as such pointed out that the total amount which has been deposited is to be paid to the Respondent no.1.

11. We had called upon the learned Counsel to find out whether any

inquiry would be required to examine the distribution of the amount deposited in this Court. Both the learned Counsel however submitted that no evidence is required to be adduced and the Court may dispoe of the application based on the documents and material on record.

12. Upon hearing the learned Counsel, the records reveal that the suit filed by the Applicants was on the premise that the Applicants were entitled to the renewal of the Agreement of the year 1999 up to the year 2012. The application filed for withdrawal of the amount clearly points out that according to the Applicants, the Appeal became infructuous as, according to them even assuming all the contentions of the Applicants are accepted by this Court in the Appeal, seeking any renewal of the Agreement after the year 2012 would not arise. In such circumstances, the suit itself was filed on the basis that the Agreement of the year 1999 had not been terminated though it was the contention of the Respondent no. 1 that such Agreement no longer survives. Hence, the application for temporary injunction was granted on the basis that prima facie the Court came to the conclusion that the Agreement of the year of 1999 would continue to subsist. But, however, at the time of the final disposal of the suit while deciding issue no. 1 as to whether the Applicants proved that Agreement dated 01.01.1999 between the Applicant and the Respondent no. 1 is subsisting and shall continue till the year 2012, the learned Trial Judge upon appreciating the application on record, decided the said issue in the negative. The learned Trial Judge also whilst deciding the issue no. 2 as to whether the Agreement dated 15.04.2001 and the two Agreements dated 24.09.2002, executed subsequent to the Agreement dated 01.01.1999 are null and void, the learned Judge also decided the said issue in the

negative. The learned Judge also decided the issue no. 3 in favour fo the Respondent no. 1 and against the Applicants. Whilst deciding issue no. 5, the learned Judge held that the Applicants had proved that the Respondent no. 1 had no right to interfere in any manner with the running of the amusement centre by the Applicants in the new premises. Thus, on perusal of the Judgment of the learned Trial Judge, it has been clearly held that the Agreement of the year 1999 was not subsisting as claimed by the Applicants herein. Whilt deciding issue no. 5, the learned Judge found that the premises were not of the Hotel of the Respondent no. 1 and, as there was no subsisting relationship between th Respondent no. 1 and the Applicants based on the Agreement of the year 1999, the Respondent no. 1 did not have any right to the premises or the amusement activities carried out in the own premises of the Respondent no. 2. The learned Judge further found that as per the licence granted by the Government, the Applicants are not entitled to run the Casino inside the premises of Hotel Cidade de Goa which admittedly belongs to the Respondent no. 1. What curls out of the above findings is that the learned Trial Judge has by, prima facie findings, held whilst disposing of the temporary injunction application that the Agreement of the year 1999 was subsisting but, however, the findings by the learned Trial Judge whilst disposing of the suit on merits were in the contrary. It was also found that the Applicants could not carry out Casino business without being attached to a Five-Star Hotel. The entire dispute as such appears to be that the Applicants wanted to carry out their business in the new premises without being attached to a Five Star Hotel and the Order of the Government clearly reveals that unless the new premises were an extension or part of such hotel, the licence could not be granted to the Applicants herein. In fact, on perusal of the Order dated 25.01.2005 passed by the State Government, it clearly shows that as the Applicants had produced a copy of the Order passed on 31.07.2004 by the learned Civil Judge Senior Division at Panaji, whereby the application for temporary injunction was granted partly and, as such, the Respondent no. 1 was restrained from interfering in any manner whatsoever with the suit licence and the suit business till the final disposal of the suit. Consequently, further extension to the licence was granted until the suit was decided by the Court. In such circumstances, the licence upon which the Applicants were permitted to carry out Casino activities in the new premises was based on the licence which was issued in view of the temporary injunction granted by the learned Trial Judge. The extension was also granted till the suit came to be decided. Thus, the suit was finally disposed of wherein the Applicants withdrew the First Appeal before this Court. The contention of Mr. S. G. Desai, learned Senior Advocate appearing for the Applicants, that the Applicants had not derived any benefit from the Order passed in the temporary injunction application as such cannot be accepted. Evidently, the Casino business was carried out by the Applicants in the new premises based on the licence which was issued in view of the temporary injunction granted by the learned Trial Judge.

13. Section 144 of the Civil Procedure Code reads thus :

> "144. Application for restitution.**-** (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified ii any suit instituted for the purpose, the court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or

otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified and, for this purpose, the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation; reversal, setting aside or modification of the decree or order.

Explanation: For the purposes of sub-section (1), the expression *"court which passed the decree or order"* shall be deemed to include, —

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the court of first instance;

(b) where the decree or order has been set aside by a separate suit, the court of first instance which passed such decree or order;

(c) where the court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

> (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)

14. The Apex Court in a Judgment reported in ***2016(1) SCC 411*** in the case of ***Citibank N.A. v. Hiten P. Dalal,*** has observed at Para 19 thus :

> "19. In the ultimate analysis we find that the law on restitution under Section 144 CPC is quite well settled. It vests expansive power in the court but such power has to be exercised to ensure equity, fairness and justice for both the parties. It also flows from more or less common stand of parties on the principle of law that for ascertaining the value of the property which is no longer available for restitution on account of sale, etc., the court should adopt a realistic and verifiable approach instead of resorting to hypothetical and presumptive value. It is also one of the established propositions that in the context of restitution the court should keep under consideration not only the loss suffered by the party entitled to restitution but also the gain, if any, made by other party who is obliged to make restitution. No unmerited injustice should be caused to any of the parties."

15. Taking note of the said observations of the Apex Court, we shall now proceed to examine what relief can be granted in the above application to ensure equity, fairness and justice for both the parties. On perusal of the Order dated 23.06.2005 passed n AO no. 59 of 2004, we find that this Court has observed that when the Applicants-Club continues to run the business by virtue of the injunction

order granted against the Respondent no. 1, it goes without saying that they are liable to pay to the Respondent no. 1 consideration as per the Agreement of the year 1999 and in particular Clauses 37, 38 and 39 of the Agreement of the year 1999. Accordingly, this Court directed the Applicants to deposit lumpsum amount towards the arrears and continue to deposit the recurring amount as per Clauses 37 to 39 of the Agreement of the year 1999. Accordingly, it is not disputed by the learned Counsel that a total sum of Rs. 21,60,894/- has been deposited before the learned Trial Court and a further sum of Rs.46,00,000/- has been deposited in this Court.

16. On perusal of the said Agreement dated 01.01.1999, the clauses at Para 3 of such Agreement, would be relevant as they pertain to situation when the Applicant has a new premises of his own. Clause 37 provides that when slot machines are shifted to the premises owned or arranged by the Applicants, such premises have to be leased to the Respondent no. 1 at Rs.2,00,000/- for every month. In the present case, it is not disputed that the premises were not leased to the Respondent no. 1. It further provides that the Applicants would be liable to pay to the Respondent no. 1 a sum of Rs.2,50,000/- per month to be increased at fifteen percent per annum. But, however, Clause 39 stipulates that such amount referred to at Para 38, was an advance and the amount had to be adjusted on percentage of shares of the wins as provided therein. On the basis of such calculation as provided in Clause 39 of the said Agreement, the Applicants have deposited before the learned Trial Judge amounts at different rates as shown in the Chart produced by Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondent no.1, which is marked 'X' for identification. Though Shri Usgaonkar,

learned Counsel appearing for the Respondent no.1 has disputed the correctness of the said amount, we find that there is no material adduced to dispute the correctness of the figures of the amount deposited based on such terms. Besides, a lump sum amount was also ordered to be deposited from the year 2003 of a sum of Rs.10,00,000/-. Learned Counsel appearing for the Respondent no. 1 pointed out that a minimum amount of Rs.2,50,000/- referred to at clause 38 had to be paid by the Applicants. We are not inclined to accept the said contention as such, amount was only an advance and had to be adjusted on the basis of the percentages referred to in Clause 39. As such, we find that the total amount deposited before the learned Trial Judge during the pendency of the suit as directed by the Court has to be paid to the Respondent no. 1 / ~~Applicants~~ herein.

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17. In the absence of any material to examine the correctness of the said amount and as the Applicants themselves have deposited the amount based on their own calculations, we find that the contention of Mr. S. G. Desai, learned Senior Advocate appearing for the Applicants, that the said amount is to be refunded to the Applicants and the contention of the learned Senior Counsel appearing for the Applicants that In view of the findings of the learned Trial Judge that the Agreement did not survive, cannot be accepted. In fact, as already pointed out herein above based on the temporary injunction Order, the Applicants have obtained a benefit whereby they could carry on the Casino business in the premises based on the Casino licence issued in favour of the Respondent no. 1. As pointed out herein above, the calculations to deposit the amounts every month during the pendency of the suit were made by the Applicants themselves in terms of the said Clause in the Agreement of the year 1999 as directed by the Hon'ble

Apex Court and, as such, it is not open to the Applicants to dispute the correctness of such amounts. Apart from that, the amount of Rs.10,00,000/- deposited towards arrears up to the date of the monthly deposits, would also have to be paid to the Respondent no. 1 as, admittedly, no amounts were paid by the Applicants to the Respondent no. 1 during such period though the Casino business continued by the Applicants. As such, we find that the total amount deposited before the learned Trial Judge during the pendency of the suit including the amount of Rs.10,00,000/- towards arrears are to be paid to the Respondent no. 1 along with interest accrued thereon.

18. With regard to the amounts which were deposited in this Court, we find that the Applicants obtained the Five Star status to their establishment only during the pendency of the Appeal. Based on such Five Star status granted in favour fo the Applicants, the licence was issued in the name of the Applicant only in the year 2008. Thus, in the year 2008, the Applicants could carry out their business based on the Casino licence issued in the name of the Applicants. The business carried out by the Applicants in their own premises was by taking support of the Casino Licence which stood in the name of the Respondent no.1. This became possible only because of the said interim Order passed in the above. As such, the Respondent no. 1 would be entitled to the amount in terms of Clause 39 of the Agreement dated 01.01.1999 upto the year 2008. This Court whilst passing the interim reliefs, has directed a lump sum of Rs.2,00,000/- per month which the Applicants deposited upto the year 2008 which they unilaterally stopped depositing such amount as directed without even informing the Court of this aspect. Considering that the Applicants carried out business in their own premises taking

support of the temporary injunction granted during the pendency of the Appeal, we find that the Respondent no. 1 would be entitled for such amounts in terms of Clause 39 of the said Agreement upto the said date. The amounts ordered to be deposited by this Court is without carrying any calculation as contemplated in Clause 39 of the said Agreement. In such circumstances, as the parties chose not to lead any evidence in support of their rival claim, we find that an average amount per month based on the amounts deposited before the learned Trial Judge would meet the ends of justice. It is not disputed that the Applicants did not create any lease of such premises in favour of the Respondent no. 1 in terms of the said Agreement so that the Respondent no. 1 could also provide the facilities of the

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Casino to the Hotel of the Respondent no. 1. As already pointed out, in view of the temporary injunction which was in operation in favour of the Applicants, the Casino business could continue in the premises of the Applicant who did not / have a Five Star status during the relevant period. The Applicant obtained the Casino licence after his premises were recognised as having a Five Star status. The temporary injunction was granted on the prima facie contention of the Applicants that the said Agreement of the year 1999 was still in operation which was found not correct whilst dismissing the suit filed by the Applicants. As such, the Applicants have obtained benefits on the basis of the temporary injunction Order in their favour and, as such, is bound to compensate the Respondent no. 1 accordingly. The contention of Mr. Usgaonkar, learned Counsel appearing for the Respondents, that the Applicants were supposed to increase the payment from time to time, cannot be accepted as no material is placed on record on that count. Apart from that, the present application is being disposed of based on equitable considerations only to disburse the amount deposited in this Court subject to which an injunction was granted in favour of the Applicants. As such, we find that the Applicants have deposited a sum of Rs. 11,60,894/- before the learned Trial Judge for a period of eleven months and the average amount would work out to Rs.1,05,000/- per month. Hence, the amount deposited in this Court from the month of July 2006 till April 2008, would have to be apportioned between the Applicants and the Respondents whereby a sum of Rs.1,05,000/- per month would be paid to the Respondent no. 1 and the remaining amount deposited in this Court would be paid to the Applicants herein. In the meanwhile, based on the earlier Order passed by this Court, it is brought to out notice that the Applicants have withdrawn fifty percent amount deposited in this Court. The Respondent no. 1 has also withdrawn fifty percent of the amount deposited in this Court as well as before the learned Trial Judge based on the order passed by the Hon'ble Supreme Court. Before hearing the above application, both the learned Counsel have furnished undertakings that they would deposit the amounts in terms of the Orders which may be passed on the above application.

19. In view of the above, we pass the following :

ORDER

(i) The total amount deposited before the learned Trial Judge along with interest accrued thereon is ordered to be paid to the Respondent no. 1.

(ii) The amount deposited in this Court shall be apportioned in favour of the Applicants herein to the Applicants at the rate of Rs.95,000/- per month and the remaining sum of Rs.1,05,000/- per month in favour of the Respondent no. 1 herein for the said period.

(iii) The amounts ordered to be deposited before the learned Trial Judge as well as before this Court shall be paid to the respective parties in the above manner along with respective interest accrued thereon.

(iv) The application stands disposed of in the above terms.

20. At this stage, Shri Pavithran AV, learned Counsel holding for Mr. S. G. Desai, learned Senior Advocate appearing for the Applicants, seeks stay of the operation of the above Order.

21. Shri Sudesh Usgaonkar, learned Counsel appearing for the Respondents, objects to such relief.

22. In the peculiar facts and circumstances of the case and in the interest of justice, the operation of the Order passed today is stayed for a period of six weeks.

K. L. WADANE, J. **F. M. REIS, J.**

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