

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2113 OF 2015
WITH
WRIT PETITION NO.2115 OF 2015**

Sai Om Developers Pvt Ltd

..Petitioner

Vs

Reebok India Company

.. Respondent

Mr. P.S.Dani, Senior Advocate, a/w Mr Shardul Sigh, Mr Nishith Doshi, Mr J. Fernandes, i/b D.S.K.Legal, Advocates for Petitioner.

Mr. Jitendra Shukla i/b Madhuri R Raibagkar Advocate for Respondent.

CORAM : R.G.KETKAR,J.

DATE : 28/01/2016

PC:

1. Heard Mr. P.S.Dani, learned senior counsel for the petitioner and Mr. Jitendra Shukla, learned counsel for the respondent at length.

2. These petitions are directed against the Judgment and order dated 8.10.2014 passed by the Appellate Bench of Small Causes Court at Bombay as also judgment and order dated 7.12.2013 passed by the learned trial Judge below Exh.9. The petitioner, hereinafter referred to as 'plaintiff', filed application Exh.9 praying inter alia, for injunction restraining the respondent, hereinafter referred to as 'defendant', from creating third party rights and/or parting with possession and/or inducting any third

party in the suit premises without consent or knowledge of the plaintiff and in breach of the leave and licence agreement dated 26.11.2008 and more particularly in terms of clauses 16.32 and 16.34; for direction to the defendant to deposit or pay every month amount of Rs. 3,98,297/- being the amount of arrears of compensation/licence fees, common amenity charges, amenity charges, service tax and other amounts as per Order 15-A of C.P.C.

3. By order dated 7.12.2013, learned Judge presiding over Room no.9 of the Small Causes Court Mumbai rejected that application. The plaintiffs preferred Misc. Appeal No.100 of 2014 in so far as rejection of prayer clause (a) of Exhibit-9. They preferred Revision Application no.92 of 2014 in so far as rejection of prayer clauses (b) and (c) are concerned. The Appeal and Revision application both were dismissed by common judgment and order dated 8.10.2014 by Appellate Bench of Small Causes Court. It is against these decisions the plaintiff has instituted above petitions.

4. Learned counsel appearing for the parties submit that without prejudice to the rights and contentions of the parties, Superintendent of the Court of Small Causes at Mumbai may be appointed to break open lock on the suit premises. Superintendent of Small Causes Court, Mumbai may be allowed

to take assistance of officer or bailiff for carrying out the inventory of the goods of the defendant lying in the suit premises. They further submit that question as to who was in possession of the suit premises and when possession was handed over may be kept open. They further submit that the defendant may be permitted to take away goods and the plaintiff may be handed over possession of the suit premises. Learned counsel appearing for the parties further assure that the parties will remain present on 8.2.2016 at 11 am at the suit premises for implementing this order. They submit that petitions may be disposed of in the above terms.

5. In view thereof, petitions are disposed of in the above terms. All parties including Small Causes Court shall act upon authenticated copy of this order and appoint Superintendent who is permitted to take assistance of any other officer/bailiff for carrying out inventory of the goods. Defendant is permitted to take away the goods. Superintendent and/or officer/bailiff shall hand over possession of the suit premises to the plaintiff.

6. All contentions as regards date of handing over possession are expressly kept open. All contentions on merits are also kept open. Writ Petitions are disposed of in above terms with no order as to costs. Order accordingly.

(R.G.KETKAR, J.)