

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2935 OF 2016

Progressive Education Society	...Petitioner
<i>Versus</i>	
Mrs. Surekha Avichal Dhiwar	...Respondent

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Mr.Siddhartha R. Ronghe, Advocate for the Petitioner.
Mr.Ashish S. Gaikwad, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 15th DECEMBER, 2016

P.C.

1. Heard Mr.Ronghe, learned Counsel for the petitioner and Mr.Gaikwad, learned Counsel for the respondent, at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 5.1.2016 passed by the learned Civil Judge, Junior Division, Pune below Exhibit-22 in R.C.S. No.788/2013. By that order, the learned trial Judge directed that the application Exhibit-22 filed by the plaintiff shall be decided on merits at the time of final adjudication.
3. Rule. Mr. Gaikwad waives service. Having regard to

the narrow controversy raised between the parties as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. Mr. Ronghe submitted that by agreement dated 1.10.2011, the premises being a shed/booth of 8 ft. X 10 ft. situate on S. No.85/1b/1/1/1/2 and S.N. 86/1/1, opposite Pune University main gate, Ganeshkhind Road, Pune – 53 (for short, 'suit premises'), more particularly described in Schedule-A of the said agreement was given on licence basis to the respondent, hereinafter referred to as the 'defendant'. The license was for a period of 11 months commencing from 1.10.2011 and ending on 31.8.2012. The defendant licensee agreed to pay royalty of Rs.7,500/- per month to the plaintiff towards conducting said centre for activity of photo copy, typing, STD booth etc. He submitted that the defendant had paid license fee for conducting the centre upto December, 2012. From January, 2013, the defendant did not make any payment towards the license fee and is occupying said premises. The plaintiff, therefore, filed application under Order XV-A of C.P.C. for directing the defendant to pay license fee @ Rs.9,000/- per month till the disposal of the suit along with interest. By the

impugned order, the learned trial Judge directed that the application Exhibit-22 shall be decided on merits at the time of final hearing. The learned trial Judge was of the view that unless and until the suit agreement is proved by the plaintiff no interim liabilities can be fixed upon the defendant to pay license fee to the plaintiff during pendency of the suit. It is against this order, the plaintiff has instituted the present Petition. Mr. Ronghe submitted that admittedly the defendant is occupying suit premises on the basis of the leave and licence agreement. Defendant has to pay the license fees. Mr. Ronghe submitted that by order dated 18.3.2016, the lease is renewed by the Government from 1.2.2007 upto 31.1.2037.

5. On the other hand, Mr. Gaikwad supported the impugned order. He submitted that the defendant was inducted in the suit premises as per the agreement dated 10.11.1994. He submitted that the Government had given this property to the plaintiff. Under the terms and conditions of the lease, the plaintiff is not authorized to sub-let the premises. In contravention of the terms and conditions, the plaintiff has inducted the defendant in the suit premises. He further submitted that in fact the defendant had submitted proposal

through the Collector and Divisional Commissioner for allotment of the suit property and said proposal of the defendant is under consideration. He, therefore, submitted that so long as the proposal is under consideration, the defendant is not liable to make any payment to the plaintiff. If at all the Court is inclined to direct the defendant, then the defendant may be permitted to deposit Rs.7,500/- per month in the trial Court.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and cannot be disputed that the defendant is inducted in the suit premises in pursuance of the agreement dated 1.10.2011. It may be that the defendant has submitted proposal for allotment of the property and the said proposal forwarded by the Collector and Divisional Commissioner is under consideration. As of today, the defendant is not allotted the suit property. Till such time the defendant is not allotted the property which is the subject matter of this Petition, she continues to be in possession of the suit premises on the basis of the agreement dated 1.10.2011. The defendant, therefore, ought to have paid the license fee to the plaintiff. If at all there are breaches on the part of the plaintiff, it is open for

the State Government to take appropriate action but that cannot be a ground for the defendant not to pay the license fee to the plaintiff. The learned trial Judge committed patent error in observing that liability cannot be fixed upon the defendant till such time agreement is proved by the plaintiff. The impugned order is liable to be set aside.

7. Mr. Gaikwad assures that within eight weeks from today the plaintiff will pay the arrears of license fee from 1.1.2013 upto 31.12.2016 within eight weeks from today. He further assures that from 1.1.2017 till the disposal of the suit, the defendant will go on paying license fee @ Rs.7,500/- for every month on or before 10th day of succeeding month/s. The defendant will not apply for extension of time for paying the amount of arrears from 1.1.2013 to 31.12.2016. In view thereof, the Petition is disposed of in the following terms :

- i) Impugned order below Exhibit-22 is set aside and the application Exhibit-22 is partly allowed.
- ii) The defendant is directed to pay the arrears of license fee @ Rs.7,500/- from 1.1.2013 to 31.12.2016 within eight weeks from today.

- iii) It is expressly made clear that no extension of period shall be applied for and consequently shall be granted.
- iv) It is further made clear that in case the arrears are not paid within eight weeks from today, the defendant shall hand over possession of the suit premises to the plaintiff.
- v) The defendant shall go on paying the license fee @ Rs.7,500/- per month from 1.1.2017 onwards pending the suit on or before 10th day of the succeeding month/s.
- vi) In the event the suit premises is allotted to the defendant, liberty is reserved to the defendant to make application in this Court for modification of this order.
- vii) Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)