

Sequeira

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

**APPEAL FROM ORDER (St.) NO. 5222 OF 2016
Along with
Civil Application (St.) No. 5224 of 2016**

M/s.Aura Alkalies and Chemicals Pvt. Ltd. .. Appellant

Vs.

Free Press House Limited. .. Respondent

Mr.P.S.Dani - senior Advocate a/w Mr.Prahlad Paranjape,
Mr.M.S.Bodhanwalla, Mr.Rushabh Sheth and Ms.Pooja Batra i/b
Ms.Bodhanwalla & Co., for the Appellant / Applicant.

Mr.Sanjay Udeshi a/w Mr.Rushabh Parekh i/b M/s.Sanjay Udeshi &
Co., for the Respondent.

Mr.Mayur Khandeparkar a/w Ms.Kirtida Chandarana i/b
Mahornosh Humranwala – party Noticee for Ms.Fizzah Shah.

**CORAM: N.M. JAMDAR, J.
Wednesday, 16 March 2016.**

Oral Order :

Admit. By consent of parties, taken up for final disposal. Heard learned counsel for the parties and the learned counsel for the Noticee.

2. The dispute pertains to the commercial premises no.46, 4th floor of building No.126 known as Free Press House, situated at Free Press Journal Marg, Nariman Point, Mumbai. The Appellant is the Plaintiff who was a lessee of the premises which had been let out to it by the Noticee.

3. The dispute in the suit had arisen since the Respondent Company had refused to permit the Plaintiff to lay an internet cable to its premises. This was done by the Respondent on specific instructions of the Noticee on the ground that lease period had expired and the suit filed by the Noticee for eviction of the Appellant is pending in the Small Causes Court.

4. The learned counsel for the parties after arguing the Appeal for some time state on instructions from their clients that the Appeal can be disposed as under and no reasons be given thereof, since the proceedings are pending. Accordingly, by consent the Appeal is disposed of as under -

i. The Appellant will file its reply on or before 29 March 2016, to the Application taken out by the Noticee for fixing compensation of the premises, in Small Causes Court, Mumbai in T.E.& R.Suit No.60 of 2015.

ii. The Appellant as well as the Noticee will proceed with the hearing of the Application for compensation on the next fixed date i.e. 6 April 2016. Rejoinder if any to be filed on or before 2 April 2016. It is expected that learned Small Cause Court will decide the proceedings regarding grant of compensation on the next date i.e. 6 April 2016.

5. The parties will not seek adjournments in the proceedings for fixing compensation.

6. The learned counsel for the Noticee, on instructions, states that the Noticee is prepared to give no objection for fixing the cable for internet to the premises in question for the use of the Appellant, without prejudice to the rights and contentions of the Noticee in the suit as regards the lease as well as the occupation of the Appellant. This statement is accepted.

7. The learned counsel for the Noticee states that the fact that the Noticee has given its no objection to fixing of cable internet in the suit premises should be considered as one of the factors by the Small Causes Court while fixing the compensation. The learned counsel for the Appellant has no objection for taking this factor into consideration by the Small Causes Court while fixing compensation of the premises. In view of this consensus between the parties as far as the issue now only be limited to fixing of suitable amount / component in the compensation for the purpose of grant of permission by the Noticee to the Appellant. The learned counsel for the parties i.e. the Appellant, Noticee and the Respondent-Company agree to this position.

8. Once the compensation is so fixed by the Small Causes Court after hearing both the Appellant and the Noticee and upon tendering such compensation by the Appellant it will be open to the Appellant or the Noticee to inform the said fact to the Respondent Company who will thereafter permit the Appellant to lay the cable as required.

9. If the Appellant thereafter fails to pay the compensation as directed by the Small Causes Court it will be open to the Noticee to apply to this Court for revocation of its no objection.

10. In view of this agreement between the parties, the Appeal as well as the Suit No.332 of 2016, does not survive.

11. The learned counsel for the Appellant states that Suit will be withdrawn after the order is passed by the Small Causes Court in the proceedings for fixing compensation. In view of this statement further proceedings in the Small Causes Court bearing Suit No.332 of 2016 will stand stayed. Parties to act on an authenticated copy of the order.

(N.M. JAMDAR, J.)