

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

**WRIT PETITION NO. 12762 OF 2016
WITH
WRIT PETITION NO. 13773 OF 2016**

Aliance Restaurant and Bar Private
Limited, Mumbai.

.... Petitioner

Versus

Mr. Sanjay Puri

.... Respondent

M.M.Vashi, Senior Advocate a/w Ms. Panthi Desai I/b. M/S.
M.P.Vashi & Associates for Petitioner in both Writ Petitions.
Ms. Rajni Iyer, Senior Advocate a/w Paresh Shah and Ms. Aditi
Singh I/b. Shah & Sanghavi for Respondent in both Petitions.

***CORAM : N. M. Jamdar J.
Tuesday 20 December 2016***

ORAL ORDER

. The Petitioner and Respondent in both these Petitions are the same and the dispute is also common, therefore both the petitions are disposed of by this common order.

2. The Petitioner, in Writ Petition No. 13773 of 2016 ,has been directed by the Small Causes Court, Mumbai dated 27 November 2015 to pay Rs. 8,00,000/- per month from October 2014 to November 2015 and also that the Petitioner should not

create third party rights or part with possession and appointment of Commissioner. By the order dated 13 July 2016 the Appellate Bench of the Small Causes Court, dismissed the Revision filed by the Petitioner.

3. In Writ Petition No. 12762 of 2016 the Petitioner has challenged the order passed by the learned Small Causes Court, Mumbai dated 5 July 2016 striking off the defence of the Petitioner. The impugned order passed in Writ Petition No. 12762 of 2016 is a sequetor to the order impugned in Writ Petition No. 13773 of 2016. Therefore, the learned Counsel for the parties have addressed the Court primarily on the merits of the Writ Petition No. 13773 of 2016.

4. The petitioner is occupying a structure on the Ground Floor and First Floor of a building situated at Famous Studio Lane off E'moses Road, Worli, Mumbai. The premises are consist of 3814 square feet (carpet) as well as open area approximately 600 square feet. The property is situated in prime commercial locality of the city. An application was taken out by the Respondent/Plaintiff seeking direction against the Petitioner to pay a mesne profit at the rate of Rs. 15,00,000/- per month from 9 April 2015 and also the sum of Rs. 8,00,000/- per month as an agreed amount of license fee and amenity charges and other reliefs. The learned Small Causes

Court Judge did not grant prayer on mesne profit, however, directed that the amount of Rs. 8,00,000/- per month as license fee and amenity charges be deposited by the Petitioner from October 2014 to November 2015. This order has been confirmed in the Revision.

5. The learned Counsel for Petitioner submitted that the Petitioner has instituted a Suit bearing No. 499 of 2015 on the Original Side of this Court, whereby the Petitioner has questioned the liability of the Petitioner to pay the amount of Rs. 8,00,000/-. It is contended that under the Leave and License Agreement, an amount is not Rs. 8,00,000/- but only Rs. 3,00,000/-. The Amenity Agreement which is not registered, is a distinct agreement. The learned Counsel submitted that the Respondent/Landlord who is also an Architect had failed to carry out the interior work in time, as agreed between the parties, and therefore, the Petitioner could not start in time the Restaurant in the premises, for the purpose for which they were taken. The learned Counsel submitted that these aspects of the matter have not been considered by both the Courts.

6. The learned Counsel for the Respondent on the other hand placed on record the order passed by the learned Single Judge of this Court on 15 October 2015 in Notice of Motion No. 1625 of 2015 taken out in the suit filed by the Petitioner. It was contended that all the arguments which are advanced regarding the underlying

object of the Lease and the Agreement ,regarding the Respondent not carrying out the interior work, have not been accepted by this Court. No relief inspite of being asked for has been granted to the Petitioner in the Suit. It was submitted that it is not believable that the amount will be only Rs. 3,00,000/-, considering the locality and that the petitioner as per his own pleading had deposited the cheques of the amount of Rs. 7,20,000/- ,deducting the TDS. It was also submitted that the Petitioner has only challenged the order passed in the revision.

7. As far as the contention that the Petitioner is liable only to pay an amount of Rs. 3,00,000/- and not Rs. 8,00,000/-, the contention raised in the Counter-claim of the present Suit, is also a contention advanced in Suit No. 499 of 2015. Similar argument was advanced before the learned Single Judge and the learned Single Judge recorded that there is no written record of any agreement to refurbish the premises. This order has not been challenged by preferring an appeal. Even otherwise, the Petitioner's own case regarding deposit of 36 cheques of Rs. 7,20,000/- is in consonance with the assertion of the Respondent/Plaintiff that the amount agreed was of Rs. 8,00,000/-. Prima facie, the Agreement for Leave and license and the Amenities Agreement will have to be read together and there is no perversity view taken by both the Courts on this count. Therefore, even by the conduct of the

Petitioner it is clear that the Petitioner was liable to pay Rs. 8,00,000/- per month. In this context, the argument that the Lease Agreement was only for three years or that the Amenities Agreement was not registered loses its significance. As long as the Petitioner has occupied the premises, the agreed amount of license fee will have to be paid. Infact, the learned Small Causes Court Judge has granted lesser relief to the Respondent by restricting the deposit of amount only for the period from October 2014 to November 2015 and has not granted the claim for mesne profit and the future deposit.

8. In the circumstances, it cannot be said that there is any error committed by both the Courts, neither there is any failure of justice. The Petitioner is liable to deposit the amount since he is using the premises. As far as the order impugned in Writ Petition No. 12762 of 2016, as stated earlier it is a sequetor of the order passed by the learned Small Causes Court Judge on 27 November 2015. Accordingly, no error is found in both the impugned orders. No interference is warranted under Article 227 of the Constitution of India.

9. Both the Writ Petitions are rejected.

(N. M. Jamdar, J.)