

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

WRIT PETITION NO.10002 OF 2015

Shri. Jafar Mohammed Yakub Chauhan .. Petitioner

Versus

Mustak Ahmed Mohammed Mobin .. Respondent

Mr. S. L. Singh, for the Petitioner.

Mr. P. J. Ramchandani, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 26th FEBRUARY 2016

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 22.11.2014 passed by the Appellate Bench of the Small Causes Court, by which order the Revision Application filed by the Petitioner herein came to be allowed and resultantly, the order passed by the Trial Court dated 27.09.2013 below Exh.9 in LE & C Suit No.61/74 of 2013 came to be set aside and the Petitioner directed to deposit an amount calculated on the basis of Rs.8000/- per month as interim monthly licence fees from the date of the institution of the suit till its final decision under Order 15-A of the CPC.

2. The suit in question has been filed by the Respondent/ original Plaintiff for eviction of the Petitioner/Defendant. It was the case

of the Plaintiff that an oral licence was granted in favour of the Defendant and licence fees agreed were Rs.8000/- per month. Per contra, it was the case of the Petitioner/Defendant that he has become a tenant in respect of the premises and that the licence fees are Rs.2500/- per month. The Respondent/Plaintiff filed an application invoking Order 15-A of the CPC for direction to be issued to deposit the amount on account of arrears up to date of the order and thereafter continue to deposit for each succeeding month pending the suit. Though the Plaintiff sought to claim an amount at the rate of Rs.61,500/- as licence fees under Order 15-A of the CPC, the said application Exh.9 was proceeded on the basis of the rival claims namely that it was the claim of the Plaintiff that the licence fees were Rs.8000/- as per the agreement, whereas it was the claim of the Defendant that the licence fees are Rs.2500/-. The Plaintiff in support of his claim that the licence fees should be directed to be deposited at Rs.61,500/- had relied upon an Architect's Valuation Report. The Trial Court though the application was filed under Order 15-A of the CPC proceeded on the basis as if it was adjudicating the mesne profits and applying the principles which are applicable to an adjudication of mesne profits fixed the compensation at Rs.25,000/- per month and also directed the Defendant to pay Rs.50,000/- towards electricity charges etc by its order dated 27.09.2013.

3. The Defendant carried the matter in Revision by filing Revision Application No.6 of 2014. The Appellate Bench of the Small Causes Court which exercised the revisionary jurisdiction came to a conclusion that the Trial Court proceeded on an erroneous premises by adjudicating the said application which was referable to Order 15-A on the premises that it was an application under Order XX Rule 12 and erroneously fixed the compensation at Rs.25,000/- per month as also directed the Defendant to pay Rs.50,000/- towards electricity charges. The Appellate Bench of the Small Causes Court held that having regard to Order 15-A of the CPC, it would only be the rent or licence fees which is claimed in the suit that would be directed to be deposited and the deposit could not be made on the basis that the said application was an application for mesne profits. In the instant case, where as indicated above, the rival claims is to the effect that the licence fees as Rs.8000/- as per the Plaintiff and licence fees are Rs.2500/- as per the Defendant. The Appellate Bench of the Small Causes Court held that it would be appropriate to fix the amount on the basis of the licence fees claimed by the Plaintiff and accordingly set aside the order passed by the Trial Court directing interim compensation payable Rs.25,000/- per month and directed interim compensation to be paid at the rate of Rs.8,000/- and deposit at the said rate to be made as contained in the operative part of

the impugned order. In my view, having regard to Order 15-A of the CPC, the discretion is vested in the Trial Court in a case where there is a divergence of claims in so far as the amount payable as licence fees or rent is concerned. The Appellate Bench of the Small Causes Court in the said circumstances has deemed it appropriate to accept the claim of the Plaintiff that the licence fees was Rs.8,000/-. In my view, therefore, no case for interdiction in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

4. The amount deposited by the Petitioner/original Defendant in this Court would be transferred to the Small Causes Court, Mumbai, by the Registry of this Court. On account of confirmation of the order passed by the Appellate Court of the Small Causes, the Petitioner would now be liable to deposit the amount fixed by the Appellate Bench of the Small Causes in the Small Causes Court by depositing the difference. On the amount being transferred to the Small Causes Court, the Respondent/original Plaintiff is at liberty to move an appropriate application for withdrawal of the amount before the Small Causes Court. If any such application is filed, the same would be considered on its own merits and in accordance with law.

[R.M. SAVANT, J]