

*Arul*

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
COMPANY PETITION NO. 356 OF 2013**

Satish Chimanlal Shah & Ms. Amita Chimanlal Shah ...Petitioners

*Versus*

The Mobile Store Limited (Essar Telecom Retail Limited) ...Respondent

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**Mr. Manoj Mhambrey**, *for the Petitioners.*

**Mr. Dinesh Tiwari**, *with Mr. Swapnil Ambure, i/b M/s. Dinesh Tiwari & Associates, for the Respondent.*

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**CORAM: G.S. PATEL, J.**

**DATED: 17th March 2016**

**PC:-**

1. On the Petitioner's own showing, a substantive Suit to recover the very amount that is the subject matter of this Petition, i.e., the differential in property tax allegedly payable under a leave and license agreement between the Petitioner and the Respondent, has already been filed in the Court of Small Causes, Mumbai. The Petitioner who is the Plaintiff there has also sought mesne profits.

2. It appears that an interim order for deposit was made against the Defendant (the present Respondent). This was carried higher. That order was confirmed. The Respondent did not deposit the

amount. An application was filed for striking out the defence. This was allowed, challenged and ultimately confirmed. The position, therefore, is now that the Petitioner has filed his Suit for recovery, *inter alia*, of the amount claimed in this Petition pending adjudication, but in which the Respondent's defence has been struck off and in which Suit there is an additional prayer for mesne profits.

3. I do not see how it is even remotely possible to entertain this Company Petition for winding up on the ground that the very amount pending final adjudication in a civil suit is today already "a debt due from the Respondent".

4. The Company Petition is dismissed. This, however, will be entirely without prejudice to all the rights and contentions of the Petitioner.

**(G. S. PATEL, J.)**