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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7082 OF 2017

The Learning Experience Bombay & Ors ...Petitioners
Versus
CM Enterprises ...Respondent

Mr RS Apte, Senior Advocate*, i/b DK Ailawadi, for the Petitioners.*
Mr Prasad Dani, Senior Advocate*, with Dhanahsree Gaikaiwari, i/b Bilawala & Co., for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 30th November 2017

PC:-

1. The controversy is narrow. The Respondent, represented by Mr Dani, are in possession of the premises that were earlier licensed to the Petitioners, represented by Mr Apte. The dispute is actually only in regard to the amount that the Respondent claims is recoverable from the Petitioner as license fee for the unexpired period of the license, one that had a lock-in provision.

2. The appellate order under challenge, of 5th January 2017, allowed the revision application filed by the present Respondent reversing the order of the Trial Court. The revisional Bench directed the Respondent-Defendant to deposit Rs 10 lakhs per month from 22nd December 2013 until delivery of possession and to further deposit Rs 1,94,92,500/- as license fee for the remaining two years, this within 30 days. The amount deposited was to be invested. The prayer for damages was rejected.

3. Since the time of that order, possession has admittedly been received by the Respondent to the petition. This means that there is no question of the Petitioner occupying the premises or, more accurately, having to pay compensation on an on-going basis for continued possession and use. The only dispute, as I have noted, is about the Petitioner's liability to make payment for the lock-in period. Mr Apte says that the lock-in period in clause 22 of the leave license agreement dated 25th May 2012 is inoperative because it is subject to a later clause 45 that, correctly read, required the licensed premises to be in a condition and state where they were usable by the Petitioner. This controversy does not fall for decision today in view of the limited ambit of the impugned order.

4. Mr Apte has tendered a statement of the amount that is according to the Petitioner due. It comes to Rs. 1,37,37,300/- excluding service tax. Mr Dani does not accept the correctness of this statement. According to him a much higher amount is due. The two rival statements are taken on record and marked "X1" and "X2" for identification with today's date.

5. Nonetheless, Mr Apte's statement will be accepted as this will meet the ends of justice. Since there is also no question of continued possession, I see no difficulty in giving the Petitioners sufficient time to make that deposit or to furnish an unconditional bank guarantee for that amount.

6. Mr Apte states that the Petitioners have resumed their commercial activities. He seeks some additional latitude and says that the bank guarantee will be furnished within a period of one year from today. This is of course opposed by Mr Dani and quite correctly so. I do not think that it is possible to allow this length of time. At the same time, I must be mindful of the fact that the Petitioners agreed to take the premises for commercial use. Whether or not they are correct in their contention, the fact is that they did not use the premises for the full term of that license. This is not intended as a reflection or as a pronouncement on whether the Petitioners are correct in their submission that they were prevented from using the premises. Those questions will be decided in an appropriate proceedings. It is material only for this limited purpose that in granting latitude some additional time is undoubtedly required.

7. I will grant the Petitioners time till the end of August 2018 to provide the necessary bank guarantee and reserve liberty to the parties to apply. The bank guarantee will undoubtedly be kept alive during the pendency of the proceedings before the Trial Court as also before proceedings, if any, in appeal.

8. Mr Dani states that service tax is due. I see no reason to demand this amount be deposited by the Petitioners. It is sufficient if they file an undertaking within two weeks from today that the service tax, if any, will be paid by them on demand and when due. Mr Dani will provide the Petitioners' Service Tax Number.

9. All rival contentions are left open.

10. The writ petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)