

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6280 OF 2017**

SKIL Infrastructure Ltd.

... Petitioner

v/s

State of Maharashtra and others

... Respondents

Mr Naushad Engineer with Mr Hasmit Trivedi and Ms Aditi Mittal i/b M/s Krishnamurthy and Co. for Petitioner.

Ms Jyoti Jadhav, AGP for Respondent No.1 – State.

Mr P.S. Dani, Sr. Counsel with Mr Chakrapani Misra with Ms Aastua Arora i/b M/s Khaitan and Co. for Respondent Nos.3 to 6.

**CORAM : B.P. COLABAWALLA, J.**

**DATE : JUNE 13, 2017**

**P.C.:**

1. Rule. Respondents waive service. Rule made returnable forthwith and heard finally.

2. This Writ Petition has been filed under Article 227 of the Constitution of India seeking to quash and set aside the order dated 5<sup>th</sup> June 2017 passed by the Competent Authority, Konkan Division, Mumbai in Case No.5 of 2017. In the Roznama of 5<sup>th</sup> June 2017, it is recorded that the Advocate for the Original Applicants i.e. Respondent

Nos.3 to 6 herein was present whereas the Advocate for Petitioners herein (Opponents before the Competent Authority) was absent and hence Case No.5 of 2017 was kept for orders.

3. To decide the present controversy, very few facts need to be noted. Mr Engineer, learned counsel appearing on behalf of the Petitioner brought to the attention of this Court that Case No.5 of 2017 was filed by Respondent Nos.3 to 6 (the landlords) on 15<sup>th</sup> December 2016 before the Competent Authority. Thereafter, summons were issued to the Petitioner on 3<sup>rd</sup> January 2017 which was served on the Petitioner approximately a week later. Thereafter, on 6<sup>th</sup> February 2017 the Petitioner appeared before the Competent Authority and they were directed to file their application for leave to defend under section 43 of the Maharashtra Rent Control Act 1999. Accordingly, on 14<sup>th</sup> February 2017, the Petitioner filed their application for leave to defend. Respondent Nos.3 to 6 contested this Application by filing their reply on 15<sup>th</sup> March 2017. Thereafter, the matter was posted on 26<sup>th</sup> April 2017. On that day, the learned counsel appearing on behalf of the Petitioner was unable to appear before the Competent Authority and therefore sought time. However,

the Competent Authority decided to hear the arguments on behalf of the landlords (Respondent Nos.3 to 6 herein) and thereafter, adjourned the matter to 5<sup>th</sup> June 2017 for the arguments on behalf of the Petitioner. On 5<sup>th</sup> June 2017, the learned counsel for the Petitioner was late before the Competent Authority and therefore, when the matter was called out, the Roznama records that the Petitioners were absent and therefore, the matter was kept down for orders. Mr Engineer, learned counsel for the Petitioners, on instructions, states that in fact the Clerk of the Petitioners' Advocate was present in Court when the matter was called out and requested the matter to be kept back but the said request was not granted. This position, of course, is disputed by Mr Dani. After this, on the very next day, the Petitioners made an application before the Competent Authority that before any orders are passed, they be heard in the matter. No orders have been passed on this Application.

4. Looking to these facts, Mr Dani, learned Senior Counsel appearing on behalf of Respondent Nos.3 to 6 did not seriously oppose this Petition and in fact took instructions of Respondent No.4, who is present in Court, that the matter can be sent back and the

Competent Authority may be directed to hear the Petitioner before passing any orders on their Application for leave to defend. He, however, brought to my notice that the Petitioners have been residing in the suit property as licensees, which license expired on 31<sup>st</sup> October 2016. From November 2016 till date, no license fees have been paid by the Petitioners and they have been enjoying and using the said accommodation free of cost. They therefore be directed to at least pay the license fees for the aforesaid period without prejudice to the rights and contentions of Respondent Nos.3 to 6 that they would be entitled for compensation as set out in section 24(2) of the Maharashtra Rent Control Act 1999.

5. There appears to be some dispute as to what is the rate of compensation / license fees payable by the Petitioners to the Respondent Nos.3 to 6. According to Mr Engineer, the compensation payable is Rs.10,00,000/- p.m. whereas according to Mr Dani, the compensation payable is approximately Rs.15,00,000/-. Considering all these facts and after hearing the parties at length and to ensure that the Petitioners be given a fair opportunity of hearing before the Competent Authority, the interest of justice would be served if the

order dated 5<sup>th</sup> June 2017 passed by the Competent Authority in Case No.5 of 2017 is quashed and set aside. However, this will be subject to certain terms and conditions. Since according to Mr Engineer, the license fees payable is Rs.10,00,000/- per month, the Petitioners shall pay to Respondent Nos.3 to 6 the arrears of license fees from November 2016 till 31<sup>st</sup> July 2017 which comes to approximately nine months. The license fees for this period would come to Rs.90,00,000/-, according to Mr Engineer. It is directed that this amount of Rs.90,00,000/- shall be paid in three installments. The first installment of Rs.20,00,000/- shall be paid on or before 23<sup>rd</sup> June 2017. The second installment of Rs.60,00,000/- shall be paid on or before 15<sup>th</sup> July 2017 and the third installment of Rs.10,00,000/- shall be paid on or before 31<sup>st</sup> July 2017.

6. Mr Engineer very fairly stated that he has instructions to make a statement that the amount of Rs.90,00,000/- shall be paid by his clients under any circumstances by 31<sup>st</sup> July 2017. He only does not have instructions on the installments fixed by me. Be that as it may, the Petitioners shall abide by the directions given by the Court as far as payments of installments are concerned. I also record the

statement of Mr Engineer made on instructions of his clients that the entire amount of Rs.90,00,000/- shall be paid by 31<sup>st</sup> July 2017 as an undertaking given to this Court. Subject to this, Writ Petition is allowed in terms of prayer clause (a). The Competent Authority is directed to hear the Petitioners and if need be, Respondent Nos.3 to 6 as well, before passing any final order on the Application for leave to defend filed by the Petitioners. Both the parties shall appear before the Competent Authority on 21<sup>st</sup> June 2017 and subject to the exigencies of work of the Competent Authority, it shall endeavour to hear both the parties on the said date and thereafter pass appropriate orders.

7. It is clarified that the compensation fixed under this order is strictly an ad-hoc arrangement and made on the basis of the statements made by the learned counsel for the Petitioners and without prejudice to all rights and contentions of Respondent Nos.3 to 6 not only under section 24(2) of the Maharashtra Rent Control Act 1999 but even on the actual quantum of the license fees payable.

8. Rule is made absolute in the aforesaid terms and with the

above observations and clarifications. Writ Petition is disposed of in the aforesaid terms. No order as to costs.

**(B.P. COLABAWALLA, J.)**