

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

**CIVIL APPLICATION NO.243 OF 2016
IN
CIVIL REVISION APPLICATION NO.96 OF 2015**

Store One Retail India Limited : Applicant/org.Respondent

In the matter between

Satyendra Nath Thakar : Applicant/Org.Plaintiff

versus

Store One Retail India Limited : Respondent/Org.Defendant

Mr. Tushar Gujjar i/by Solicis Lex for the Applicant/org. Respondent.

Ms. Kavita A Shah for the Respondent - Original Applicant.

CORAM : R. M. SAVANT, J.

DATE : 26th APRIL 2017

P.C.

1 The above Civil Application has been filed for the following relief:-

(a) The Applicant be ordered and directed to deposit with the Registrar of this Hon'ble Court a sum of Rs.21,09,897/- along with interest @ 18% p.a. being the refund granted pursuant to the judgment dated 9th January 2015 passed by the Appellate Bench of the Small Causes Court."

2 The above Civil Revision Application has been filed by the Respondent to the above Civil Application i.e. the original Plaintiff to the suit in question being L.E. Suit No.79/118/2008. The said suit came to be decreed by the judgment and order dated 30/11/2010 and the Applicant herein i.e. the

original Respondent to the Civil Revision Application was directed to pay Rs.21,09,897 to the Civil Revision Applicant which was towards the mesne profits towards the usage and unpaid electricity bill dated 08/09/2009 within 3 months from the date of the said judgment.

3 It seems that the decree passed in the said suit was put in execution and one of the properties of the Applicant herein i.e. the original Respondent to the Civil Revision Application was attached. The Applicant/original Respondent therefore deposited the decretal amount of Rs.21,09,897 in the Executing Court on 07/10/2008. The Executing Court permitted the Respondent herein i.e. the Civil Revision Applicant to withdraw the said amount on 23/12/2011. It seems that upon deposit, the attachment of the property of the Applicant herein was lifted.

4 In so far as the leave and license agreement is concerned, it is an undisputed position that the Applicant herein had given a security deposit of Rs.34,43,040/-. It seems that an interim order passed in the said suit was challenged by way of Writ Petition no.7767 of 2009. The said Writ Petition came to be disposed of by a learned Single Judge of this Court dated 16/02/2010 as the learned counsel for the parties were agreeable to the said Writ Petition being disposed of without reasons. The learned Single Judge of this Court therefore recorded the statements made by the learned counsel for

the parties which is reflected in paragraph 2(i) of the said order which is reproduced hereunder for the sake of ready reference :-

“2(i) The Respondent has handed over possession of the suit premises to the Petitioner this morning. The Petitioner has in turn handed over a banker's cheque dated 15.2.2010 in the sum of Rs.13,33,103/- to the Respondent's advocate, who shall in turn hand over the same to the Respondent. The banker's cheque is in the new name of the Respondent namely Storeone Retail (India) Ltd.”

Hence a reading of the said order dated 16/02/2010 indicates that the possession of the suit premises was handed over to the Respondent herein i.e. Satyaendra Nath Thakar and in turn the Respondent herein had handed over a banker's cheque in the sum of Rs.13,33,103/- to the learned counsel appearing for the Applicant herein to be handed over to the Applicant herein. Hence after carrying out the exercise of appropriation, the amount of Rs.13,33,103/- was returned to the Applicant herein. The fact remains that out of the amount of Rs.34,43,040/-, the amount of Rs.13,33,103/- was refunded to the Applicant herein whilst the Respondent herein retained the amount which is to the tune of Rs.21,09,937/- which is almost commensurate with the decretal amount.

5 The Applicant herein, against the decree passed in the said L.E. Suit No.79/118 of 2008 filed an Appeal before the Appellate Bench of the Small Causes Court. Suffice it would be to state that the Appellate Bench of

the Small Causes Court has allowed the said Appeal thereby the decree passed by the Trial Court in the said L.E.Suit No.79/118 of 2008 came to be set aside and further directions came to be issued that the Respondent herein i.e. the original Plaintiff to repay the amount of Rs.21,09,897 to the Applicant herein i.e. the original Defendant along with interest @ 18% per annum from the date of receiving the amount by the Plaintiff till repayment of the same to the Defendant who was the Appellant in the said Appeal.

6 Aggrieved by the said judgment and order dated 09/01/2015 passed by the Appellate Bench of the Small Causes Court, the Respondent herein i.e. the original Civil Revision Applicant has filed the above Civil Revision Application No.96 of 2015. The above Civil Revision Application has been admitted by a learned Single Judge of this Court by the order dated 21/04/2015 and ad-interim relief which was granted earlier vide order dated 26/02/2015 was continued by the said order dated 21/04/2015. The learned Single Judge has specifically observed to the following effect :-

“It is clarified that the withdrawal of this amount by the applicant will be subject to the further orders of this Court. It is open to the respondent to take out an appropriate application to secure its interest as regard the amount is concerned, which application will be considered on its own merits.”

It is in view of the said liberty granted by the learned Single Judge whilst

admitting the Civil Revision Application, that the above Civil Application has been filed for the relief which is claimed vide prayer clause (a) of the Civil Application which has been adverted to herein above.

7 The learned counsel appearing on behalf of the Applicant herein i.e. the Respondent to the Civil Revision Applicant Shri Tushar Gujar draws this Court's attention to the fact that the Respondent herein i.e. the Civil Revision Applicant has retained both the amounts i.e. the amount minus the amount directed to be refunded out of the security deposit as also the decretal amount Rs.21,09,897/- which the Applicant herein had deposited in the Executing Court. The learned counsel for the Applicant herein Shri Tushar Gujar therefore submitted that the interest of the Applicant herein would have to be secured as in the event the Applicant herein succeeds in the Civil Revision Application, it should not be that the Applicant herein is left high and dry.

8 Per contra, the learned counsel appearing for the Respondent herein i.e. the Civil Revision Applicant Ms. Kavita Shah would seek to oppose the relief sought vide the above Civil Application. It is the submission of the learned counsel Ms. Shah that the amount being deposited in the execution proceedings, the Respondent herein i.e. the Civil Revision Applicant cannot be directed to bring back the amount to this Court and deposit the same in this Court. However, the learned counsel Ms. Shah accepted the fact that in the

event the Respondent herein i.e. the Civil Revision Applicant fails in the Civil Revision Application, then the amount would have to be refunded back to the Applicant herein.

9 I have heard the learned counsel for the parties. As indicated above, the amount of Rs.21,09,897 was deposited by the Applicant herein in the execution proceedings that were filed for execution of the decree passed in the said L.E. Suit. It is an undisputed position that the said amount is lying with the Respondent herein i.e. the Civil Revision Applicant. As indicated above, the Applicant herein after depositing the amount in the Executing Court, had filed the Appeal before the Appellate Bench of the Small Causes Court challenging the decree passed by the Trial Court in which Appeal the decree has been set aside. Though the above Civil Revision Application filed by the Respondent herein against the judgment and order of the Appellate Bench of the Small Causes Court has been admitted and the interim relief has been granted, the entitlement of the Respondent herein to retain the said amount of Rs.21,09,897 would therefore be contingent upon the decision that would be rendered in the above Civil Revision Application. Having regard to the said fact, the said amount would have to be secured in so far as the Applicant herein is concerned so that in the event the Applicant herein succeeds in the above Civil Revision Application meaning thereby the Civil Revision Application is dismissed, the Applicant herein should not be prejudiced in the

matter of recovery of the said amount.

10 In my view, therefore, the interest of justice would be served by directing the Respondent herein i.e. the Civil Revision Applicant to furnish a solvent security to the satisfaction of the Registrar Judicial (I) of this Court for the said amount of Rs.21,09,897/- or to deposit the said amount itself in this Court. The said solvent security to be furnished or amount deposited within ten (10) weeks from date. If the said solvent security is not furnished or amount not deposited, then this Court would be constrained to pass appropriate orders including one of re-deposit of the said amount. Needless to state that the aforesaid order would not come in the way of the contentions of the parties on merits. With the aforesaid directions, the above Civil Application is disposed of.

[R.M.SAVANT, J]