

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 26 OF 2018**

Mr. Vikas Madan,
70 years of age,
Resident of 2/501,
Beverly Park,
Plot No.2, Sec.22,
Dwarka, New Delhi-110077,
India.

.... Petitioner

V e r s u s

1. Ms. Pallavi S. Kavlekar,
Daughter of late Shrikant Kavlekar,
30 years of age,
r/o Flat No.06, 1st floor,
Kolvalkar Plaza,
St. Paula, Taleigao Ilhas, Goa and 5 others.

..... Respondents

Adv. Joaquim Godinho for the Petitioner.

None for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 19th June 2018.

Oral Order:

On 15/1/2018 notice was issued to the respondents. The respondents failed to remain present though served. Looking to the limited issue involved, a notice for final disposal was issued to the respondents on 5/6/2018 and again in spite of service the respondents have chosen not to remain present. I have heard Shri Godinho, the learned counsel for the petitioner and the

petition is being disposed of finally.

2. The petitioner who is the original plaintiff is challenging the order dated 1/11/2017 below (Exhibit 48) passed by the learned trial court. That was an application filed by the petitioner for a direction to the respondents/defendants to pay a sum of Rs.7000/- per month as licence fee. The case made out by the petitioner in the plaint is that the suit premises were given to the respondents on a Leave and Licence basis under an agreement dated 30/9/2009 for a period of eleven months on payment of Rs.7000/- per month as the licence fee. The Leave and Licence agreement has expired. However, the respondents have failed to vacate the suit premises. It is in these circumstances that the petitioner had filed a suit for eviction in which application (Exhibit 48) is filed.

3. The application was opposed on the ground that the trial in the suit has already commenced and is at the stage of cross examination of the petitioner. It was contended that the relief sought in the application is also a relief sought in the suit.

4. The learned trial court has come to the conclusion that granting the relief would be 'as good as deciding the suit'. In that view of the matter the

application has been dismissed.

5. On hearing the learned counsel for petitioner, I do not find that the impugned order can be sustained. Order XV-A of C.P.C provides that in a suit by a lessor or a licensor against a lessee or a licensee for eviction with/without the arrears of rent or licence fee and future mesne profits, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order and shall thereafter continue to deposit in each succeeding month the rent/licence fee as claimed in the suit, as the Court may direct.

6. This Court in the case of **Philomena D'Souza Vs. John Janus Barreto [2013 (5) MH.L.J]** in similar circumstances has held that in dismissing such an application filed by the petitioners the trial court acted with material irregularity affecting its jurisdiction. Apart from Order XV-A , such an order can also be passed in exercise of the inherent powers of the Court. In such circumstances the petition is allowed. The impugned order is hereby set aside. The application Exhibit 48 is allowed as prayed. The respondent shall deposit the arrears of licence fee up to 30/6/2018 before the trial court on or before 31/8/2018. The respondent shall continue to deposit the licence fee on and from 1/7/2018 on or before 10th of each English

Calendar month. The petition is disposed of in the aforesaid terms.

ap/-

C. V. BHADANG, J.