

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2378 OF 2018

SKIL Infrastructure Limited] Petitioner

Vs.

Anil Chotumal Jatia and others] Respondents

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Mr. R.S. Apte, Sr. Advocate a/w Mr. Mandar Limaye a/w Mr. Saurabh Oka, for Petitioner.

Mr. P.S. Dani a/w Mr. Vikram Sathaye, Mr. Chakrapani Misra, Ms. Arora i/b Khaitan & Co., for Respondents.

Mr. Nilesh Mehta, Company Secretary,

.....

CORAM : R.G. KETKAR, J.

DATE : 13TH MARCH, 2018.

P.C.

Heard Mr. Apte, learned Senior Counsel for the petitioner and Mr. P.S. Dani learned Senior Counsel for the respondents at length.

2. Leave to amend so as to challenge the order dated 14th July, 2017 passed by the Competent Authority, Kokan Division Mumbai on application made by the petitioner for leave to defend is granted. Amendment shall be carried out forthwith.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged;

- (1) the order dated 14th July, 2017 passed by the Competent Authority Kokan Division, Mumbai (for short 'Competent Authority') in an application made by the petitioner for leave to defend Case No.5 of 2017.
- (2) the judgment and order dated 14th July, 2017 passed by the Competent Authority in Case No. 5 of 2017 filed by the respondent u/s 24 of the Maharashtra Rent Control Act, 1999 (for short 'Act').
- (3) the judgment and order dated 21st February, 2018 passed by the Additional Commissioner, Kokan Division, Mumbai (for short 'Commissioner') in Revision No.747 of 2017 u/s 44 of the Act.

By first order dated 14th July, 2017, the Competent Authority rejected the application for leave to defend Case No.5 of 2017. By the order dated 14th July, 2017, the Competent Authority allowed Case No.5 of 2017.

4. In support of this Petition, Mr. Apte submitted that first leave and licence agreement was entered into between the parties on 21st December, 2013. By that agreement, the respondent gave residential premises being duplex Flat No.4 on the West side on the third and fourth floor in the aggregate admeasuring 6500 square feet along with 3 enclosed parking spaces and one open car parking space in the compound of the building known as "Damodar Bhuvan" situate at Bhulabhai Desai Road, Mumbai – 400 026 and standing on land bearing Cadastral Survey No.791 of Malabar and Cumballa Hill Division of Mumbai (for short 'suit premises') for a period of 24 months commencing from 21st July, 2013 and expiring on 27th July,

2015. The petitioner/licensee agreed to pay licence fee of Rs. 4,00,000/- per month for use and occupation of the suit premises. On 26th July, 2016, another leave and licence agreement was executed between the parties. He invited my attention to recitals (d) (e) and clause (2) of that agreement to contend that conjoint reading of these agreements would clearly establish that the licence fees do not exceed Rs. 10,00,000/-.

5. Mr. Apte submitted that leave and licence agreement was not executed after 27th July, 2015 and the petitioner continued to reside in the suit premises. The petitioner sent a letter dated 20th April, 2016 and gave unconditional commitment to vacate the suit premises on 15th June, 2016. He forwarded compensation of Rs. 15,00,000/- for the period 1st May, 2016 to 15th June, 2016. He submitted that clause (2) of the leave and licence agreement dated 26th July, 2016 recites that licensee agreed to pay lumpsum Rs. 45,00,000/- for the period commencing from the date hereof up to 31st October, 2016. As fresh leave and licence agreement was executed on 26th July, 2016, it has to be interpreted that licensee agreed to pay lumpsum of Rs. 45,00,000/- covering the period 16th June, 2016 to 31st October, 2016. He, therefore, submitted that the licence fee does not exceed Rs. 10,00,000/- per month.

6. The Authorities below came to the conclusion that licence fee was Rs. 15,00,000/- per month. He invited my attention to paragraph 5 of the order dated 13th June, 2017 passed by this Court in Writ Petition No.6280 of 2017 which recorded that there is some dispute as to what is the rate of compensation/licence fees payable by the petitioner to the licensor. He also invited my attention to

paragraph 6 of written notes of arguments filed in Revision Application before the Commissioner.

7. Mr. Apte states that in pursuance of the order dated 26th February, 2018, the petitioner has deposited Rs. 80,00,000/- for the period from 1st November, 2016 till 28th February, 2018 @ Rs. 5,00,000/- per month. This amount was deposited without prejudice to the rights and contentions of the petitioner. It is the case of the petitioner that he has deposited licence fee/compensation @ Rs.10,00,000/- per month up to February, 2018.

8. Mr. Nilesh Mehta, Company Secretary of the petitioner is present in the Court. He has tendered photo copy of his PAN Card which is taken on record and marked 'A' for identification. Upon taking instructions from him, he submitted that the petitioner may be given time up to 30th April, 2018 for handing over possession of the suit premises to the respondent. He submitted that Mr. Nikhil Mehta, director of the petitioner along with his wife and two daughters is residing in the suit premises and nobody else is residing. He assures that within two weeks from today all the adult family members of Mr. Nikhil Mehta will file undertaking incorporating therein;

- [a] they are in possession and nobody else is in possession of the suit premises;
- [b] they have neither created third party interests nor parted with possession of the suit premises;
- [c] they will hereafter neither create third party interests nor part with possession of the suit premises;

9. On the other hand, Mr. Dani submitted that clause (2) of the agreement dated 26th July, 2016 shows that agreed compensation was Rs. 45,00,000/- for a period three years and five days. He has taken me through the application for leave to amend as also memo of revision application filed before the Commissioner. He submitted that in the application for leave to defend no dispute as regards monthly compensation was raised. He, therefore, submitted that no case is made out for interfering with orders as also quantum fixed by the Competent Authority in the order dated 14th July, 2017. He also invited my attention to clause (2) of the operative part of the order dated 14th July, 2017 of the Competent Authority in an application under Section 24 of the Act. By clause (2), the petitioner was directed to pay to the respondent Rs. 30,00,00/- per month from 1st November, 2016 till handing over vacant possession of the suit premises. This direction was on the basis of Section 24(2) of the Act.

10. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As noted earlier, the petitioner is ready and willing to hand over possession of the suit premises to the respondent on or before 30th April, 2018. Limited controversy raised in this Petition is whether licence fee is Rs. 10,00,000/- per month or Rs. 15,00,000/- per month. On one hand, the petitioner claims that licence fee is Rs. 10,00,000/- per month, on the other, respondent claims it as Rs. 15,00,000/- per month. In order to resolve controversy, it is necessary to refer to clause (2) of the leave and licence agreement dated 21st December, 2013 which reads thus;

“2) The Licensee agreed to pay and has this day paid to the Licensors, (in equal 1/4th shares) the agreed lumpsum of Rs.45,00,000/- (Rupees Forty-five lac) as License fee for the period commencing from the date hereof upto 31st October, 2016, (the receipt of the same, less TDS, the Licensors do hereby admit and acknowledge)”.

[emphasis supplied]

11. A perusal of clause (2) extracted hereinabove clearly shows that the petitioner agreed to pay lumpsum Rs. 45,00,000/- as licence fee from the date hereof, meaning thereby, 26th July, 2016 up to 31st October, 2016 i.e for a period of three months and five days. A perusal of the order passed by the Competent Authority in an application for leave to defend as also an application under Section 24 does not indicate that the petitioner disputed quantum of monthly license fee. Even in the application for leave to defend, no dispute was raised as regards monthly licence fee. Section 43(4) (a) reads thus:

43.Special procedure for disposal of applications._

(1).....

(2).....

(3)....

(4)(a)The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, **he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the Statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or the licensee, as the case may be, and the applicant shall**

**be entitled to an order for eviction on the ground
aforesaid;**

[emphasis supplied]

12. A perusal of the extracted provision shows that licensee on whom summons is duly served is precluded from contesting the prayer for eviction from the premises, unless within 30 days of the service of summons on him he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the licensee and the licensee shall be entitled to an order for eviction on the said ground.

13. A perusal of paragraph 5(e) of the application under Section 24 shows that reference was made to clause (2) of leave and licence agreement dated 26th July, 2016 where the petitioners agreed to pay a lumpsum licence fee of Rs.45,000,00/- for the period 26th July, 2016 up to 31st October, 2016 i.e three months and five days to the applicants which comes to Rs.15,00,000/- per month. As noted earlier, though the petitioner filed application for leave to defend, it did not dispute monthly compensation claimed by the respondent. Even in the memo of revision application no dispute was raised as regards monthly compensation.

14. In paragraph 5 of the order dated 13th June, 2017 of this Court, there is no doubt an observation as regards some dispute appearing in between the parties as to what is the rate of

compensation/licence fees. However, orders passed by the Competent Authority on 14th July, 2017 do not indicate raising of such dispute before the Competent Authority. Even, in the Revision Application no dispute is raised. Dispute is sought to be raised for the first time in paragraph 6 of the written notes of arguments. In view of section 43(a) of the Act, as the petitioner did not raise this ground in the application for leave to defend as also in view of clause (2) of the leave and licence agreement dated 26th July, 2016, I do not find any merit in the submission of Mr. Apte that the licence fee was not Rs. 15,00,000/- per month. In fact, the petitioner is precluded from raising this contention. Hence, no case is made out for interfering with the impugned orders. Hence, Petition fails and the same is dismissed.

15. The petitioner shall deposit licence fee @ Rs. 15,00,000/- per month. Payment of Rs. 20,00,00/- (Rs. 5,00,000/- being difference of March, 2018 and Rs. 15,00,000/- for the month of April, 2018) and withdrawal of the amount deposited by the petitioner shall be subject to the further orders passed by the Apex Court. It is made clear that earlier deposits made by the petitioner and further deposits to be made are without prejudice to the rights and contentions of the petitioner. Respondent is permitted to withdraw the amount deposited by the petitioner in this Court which shall be subject to the further orders of the Apex Court.

16. Notwithstanding dismissal of the Petition, order shall not be executed up to 30th April, 2018 subject to the petitioner and all adult family members residing with him filing usual undertaking within two weeks incorporating therein;

(a) they are in possession and nobody else is in

- possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;

Subject to the petitioners' filing the undertaking in the aforesaid terms within two weeks from today, interim arrangement shall remain in force till 30th April, 2018. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within two weeks from today, interim arrangement shall stand vacated. The petitioner does not hand over vacant and peaceful possession of the suit premises to the respondents on or before 30th April, 2018, the respondents will be at liberty to proceed with the matter in accordance with law. Order accordingly.

17. All the parties to act upon authenticated copy of this order.

[R.G. KETKAR, J.]