

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

CIVIL REVISION APPLICATION NO.354 OF 2018

Shree Rama Multi Tech Limited	...Applicant
v/s.	
Khandawala Securities Limited	...Respondents

Mr. P.S.Dani, Sr. advocate i/b. Surel S. Shah for the applicant.

Mr. Vivek Kantawala a/w. Amey Patil & Shanay Bafna i/b Vivek Kantawala & co. for respondents.

CORAM : DAMA SESHADRI NAIDU, J.

14th October 2019.

ORAL ORDER

The applicant and the respondent are limited companies. The applicant is the licensee and the respondent a licensor. After terminating the license, the licensor Khandwala Securities Ltd., (“Khandwala”) filed L.E. Suit No.48/63/2010; it wanted to evict the licensee—Shree Rama MultiTech Limited (“MultiTech”). The trial Court decreed the suit on 21st January 2017.

2. Aggrieved, MultiTech appealed to the Appellate Bench of the Small Causes Court but could not succeed. On 16th December 2017, the Appellate Bench dismissed the appeal. In fact, pending the appeal,

MultiTech handed over possession of the licensed property to Khandwala. Thus, by the time the appeal was dismissed, the only contention remained was about the license fee. After losing the appeal, MultiTech filed this Civil Revision Application. It wants this Court to set aside the impugned appellate judgment and decree. Besides, it also wants the Court to interfere with the judgment to the extent it orders recovery of “the *mesne* profit/license fee @ Rs.1 lac per month from the petitioner company from 26.07.2009 till 27.09.2016”.

Submissions:

Applicant Company:

3. In the above factual background, Shri Dani, the learned Senior Counsel for the licensee, has fairly submitted that as the possession has been delivered, it serves no purpose for the Court to re-visit the judgment on the question of eviction. Instead, he wants the Court to focus on the “license fee/*mesne* profits”. According to him, there is no prayer in the suit for any *mesne* profits or even for the recovery of the rent. In other words, the licensee only sought a direction, in the nature of an interim one, that the licensee should pay the agreed license fee of Rs.1,00,000/- pending the disposal of the suit.

4. In this context, Shri Dani contends that once the trial Court has not granted any interim direction, the issue of interim compensation perishes with the disposal of the suit. So the interim-relief which has not been granted cannot be enforced as if it were the

main prayer and as if it were a part of the decree.

5. To elaborate, the learned Senior Counsel has submitted that the licensee advanced Rs.One Crore to the licensor with an oral understanding that it should carry 24% per annum as interest. Despite that the Courts below have erroneously observed that the license fee should be adjusted from that corpus. And if at all any further amount remains, the Courts have further held, it is open for the licensee to take out independent proceedings to recover that amount. In the end the learned Senior Counsel has submitted that as the suit never concerned *mesne* profit, the licensor's application before the trial Court under Order 20 Rule 12 of CPC cannot be sustained. In the alternative, he has submitted that if this Court does not desire to rule on that count, it may leave open for the licensee the defence available in the pending proceedings under Order 20 Rule 12 of CPC.

Respondent:

6. On the other hand, Shri Vivek Kantawala, the learned counsel for the licensor, has taken me to the pleadings. According to him, the licensor has specifically pleaded about the admitted license fee and the legal obligation on the licensee's part to pay that amount. At any rate, he has submitted that only after notifying the licensee has the licensor began adjusting the license fee from the security deposit available with the licensor.

7. In this context, Shri Kantawala has stressed that the licensor

has taken a plea, but only after a fashion, that the deposit is unconnected with the license and that it carried 24% interest. And it was said to be a matter of oral understanding, at that. Though licensee is a public limited company, it has never examined any witness, nor has it placed any material before the Court to drive home that point. Shri Kantawala has also stressed that a bald assertion in the written statement without any evidence, either oral or documentary, to support that assertion carries the licensee nowhere. To stress that the licensee has not led any evidence, Shri Kantawala has taken me to the observation of the Courts below in the judgments impugned.

8. After presenting the chronological picture of the default, the decree, and the delivery of possession; Shri Kantawala has submitted that initially for 100 months, the licensor adjusted the license fee from the deposit of Rs.One Crore lying with it. For the balance amount and also for *mesne* profits, the licensor has invoked Order 20 Rule 12 of CPC. And such a course of action, he stresses, cannot be found fault with. So he urges this Court to dismiss the Civil Revision Application.

9. Heard Shri Dani, the learned Senior Counsel, instructed by Shri Suresh Shah for the applicant; and Shri Vivek Kantawala with Shri Amey Patil and Shanay Bafna, instructed by Vivek Kantawala & Co. for the respondents.

Discussion:

10. Indeed, the issue lies in a narrow compass; the facts are not

disputed. To begin with, the licensor terminated the license and sued the licensee for eviction, in 2009. Admittedly, the licensee paid the license fees till March 2002. In the plaint, the licensor asserted that as the licensee continued with its default, the licensor deducted the monthly license fee from the security deposit—the corpus. In this context the licensor has also placed on record the justification as to why in the plaint it has not explicitly prayed for the license fee recovery. Paragraph 12 of the plaint reads:

“12. The plaintiff further states that the suit premises is being used and occupied by the Defendant for the purposes of carrying on its business without paying any license fees/rentals from March 2002 onwards in respect of the same thereby unlawfully gaining/ profiting from the use of the suit premises to the detriment of the plaintiff, but as the rentals/license fee is being deducted from the Security Deposit, the question of raising a claim in the present suit does not and cannot arise.”

11. In the light of this assertion, we may examine the reliefs the licensor sought in the suit:

“(a) the Defendant Company be ordered and decreed to quit, vacate and hand over quiet, vacant and peaceful possession of the suit premises . . . to the Plaintiff.

(b) *Pending the hearing and final disposal of the suit*, the Defendant company be ordered and decreed to pay the license fee of Rs.1,00,000/- p.m. from the date of filing of the instant suit till the Defendant company hands over quiet, vacant and peaceful possession of the suit premises to the Plaintiff . . . without prejudice to their rights and contentions in the suit;

(c) pending the hearing and final disposal of the suit the Defendant company, their agents, servants be restrained by order and injunction of this Hon'ble Court from parting with possession or occupation of the suit premises . . . in any manner whatsoever to any third party.

(d) Interim and ad interim reliefs in terms of prayer clause (b) and (c) above be granted;"

(italics supplied)

12. As has been rightly contended by the learned Senior Counsel for the licensee, there is no explicit prayer for *mesne* profits, nor has the licensor sought the rental arrears for the pre-suit period. And, in fact, both the trial Court and the appellate Bench have employed the expressions 'license fee' and '*mesne* profits' interchangeably. I reckon *mesne* profits are akin to damages. They are always over and above the license fee. Though the Courts below have used those expressions without distinction, they have, however, correctly confined the relief to the license fee but not the *mesne* profits. They have observed that the licensor had every right to adjust the license fee from the deposit lying with it. For the lack of evidence, they have also rightly rejected the licensee's claim that the deposit is unconnected with the license and that it carried interest at 24% p.a.

13. Even otherwise, despite the termination of the license, the licensee continued to be in possession till recently, that is 27.09.2017. If we exclude the period which has had the advantage of set-off, for the remaining months, the licensee ought to pay license fee or rent,

whatever the name it has been called with. It is, after all, a matter of equity. If we examine the Appellate Bench's judgment, it orders thus:

“The appeal is dismissed with cost.

The plaintiff Company is entitled to retain possession of the suit premises delivered to it on 27.09.2017 and it is further entitled to recover *mesne* profits/license fee @ Rs.1 lac p.m. from the defendant Company from 26.07.2009 to 27.09.2017.

Decree be drawn accordingly.”

14. The appellate Bench has quantified or specified the amount the licensor could recover—Rs.one lac per month from 26.7.2009 to 27.9.2017. As to this direction, the licensor has no grievance. Once the amount has been specified, it needs no further adjudication. To put it plainly, I may note that the appellate Bench has allowed the licensor to recover the license fee, *lis pendens*, for the months that remained after the security deposit was adjusted—until the licensee handed over the vacant possession of the property.

15. First, what has been quantified by the appellate Bench cannot be called *mesne* profits or damages. And the licensor does not complain about it. It is only a direction to the licensee to pay the accumulated arrears of the license fee. Nothing more. Once, we conclude that what has been ordered to be recovered are the arrears of rent, that direction by the appellate Bench is capable of being executed. Second, *mesne* profits or damages require enquiry, say, under Order 20, Rule 12 of CPC. That said, the plaint contained no prayer for that.

Conclusion:

16. Under these circumstances, I hold that after adjusting the defaulted license fee from the security deposit, the licensor, in terms of the appellate Bench's direction, may recover the balance licence fee. And to that extent, the decree is executable. Then, I hold that the licensor's application under Order 20, Rule 12 of CPC cannot be sustained, for it remains beyond the relief sought in the suit.

I accordingly dispose of the civil revision application.

(DAMA SESHADRI NAIDU, J)

L.S. Panjwani, P.S.