

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5774 OF 2021

Eduspark International Pvt. Ltd.] ... Petitioner

Versus

Maya Entertainment Studios Pvt. Ltd.] ... Respondent

Mr. Chetan Kapadia a/w Mr. Rohan Kadam, Mr. Vikram Trivedi, Mr. Sunil Tilokchandani & Ms. Nipa Ghosh i/b Manilal Kher Ambalal & Co. for Petitioner.

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. Hamed Kadiani, Ms. Sonia Redkar, Ms. Kanan Sohil Rajpal i/b Singh & Singh Malhotra & Hegde for Respondent.

CORAM :- A. S. GADKARI, J.

DATE :- 28 SEPTEMBER, 2021

P. C. :-

1. By the present Petition under Article 227 of Constitution of India, the Petitioner / original Defendant has impugned the Judgment and Order dated 09/09/2021 passed by the Appellate Bench of the Court of Small Causes at Mumbai (Bandra Division) in M. Appeal No.93 of 2021 in Order passed below Exh.8 in L.E.Suit No.69 of 2021.

2. The present Petition was heard at length on earlier occasion. There are disputed questions of facts pertaining to adjudication of compensation to be paid by the licensee to the licensor and vice-versa. It

is the settled position of law that, while exercising its jurisdiction under Article 227 of Constitution of India, this Court is not supposed to determine the disputed questions of fact and more particularly when the said dispute is *sub judice* before the trial Court.

3. During the course of arguments, the learned Advocates, on instructions reached to a consensus that, the Respondent – landlord will secure the interest of the Petitioner by way of furnishing a continuous bank guarantee of Rs.60 Lakhs drawn on a nationalized bank, in the Registry of the trial Court. Upon furnishing of the said bank guarantee by the Respondent in the trial Court, the Petitioner / original Defendant will hand over vacant and peaceful possession of the suit property in favour of the Respondent / original Plaintiff within a period of 7 days therefrom.

It is made clear that, the Petitioner / original Defendant will not file an application for withdrawal of the amount already deposited by the Respondent in the Registry of the trial Court, in furtherance of Orders dated 08/07/2021 passed by the trial Court and 09/09/2021 passed by the Appellant Bench of the Small Causes Court.

It is further made clear that, the issue of decision of quantum of payment by either party is kept open for adjudication before the trial Court and this Court has not expressed any view or opinion in that behalf in the present Writ Petition. All the rights and contentions of both the parties are also kept open, to be agitated before the trial Court.

It is to be noted here that, the present arrangement is a *pro tem* arrangement, made to balance equities in the matter. At the time of final decision of the aforesaid suit, the trial Court will pass necessary directions for release of payment of the amount deposited and secured by Bank Guarantee in favour of appropriate party.

4. In view of the above, nothing further survives in the present Writ Petition.

Writ Petition is accordingly disposed off in the aforesaid terms.

(A. S. GADKARI, J.)