

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

WRIT PETITION NO.6810 OF 2022

Debonair Publications Ltd.

..Petitioner

Versus

M/s. Eat India Pvt. Ltd. & Ors

..Respondents

Mr. Pradeep J. Thorat a/w Aniesh Jadhav i/by Aditi S. Naikare, for the Petitioner.

Mr. Darshit Jain i/by Divya Jain & Dileep Satale, for Respondent Nos. 1 & 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st JULY, 2022

P.C.

1. In a pending suit for eviction before the Small Causes Court, application Exh.91 for inspection of premises was taken out, which was allowed by the Small Causes Court vide its order dated 6th January, 2020.

2. It appears that the said order was not complied with by the petitioner/defendant. Application Exh.96 pursuant to the provisions of Order XXXIX Rule 11 of the CPC was taken out for striking out defence of the petitioner, which came to be allowed vide order dated 20th September, 2021, confirmed in revision by the Revisional Court on 5th April, 2022. As such, this petition.

3. I have heard respective counsels for some time.

4. It appears that the order impugned whereby the defence of the petitioner/defendant was ordered to be struck off, was as a sequel of non-compliance of the order dated 6th January, 2020 wherein inspection was granted by the order of the Small Causes Court.

5. It appears that during pendency of the present petition, the Respondent was granted inspection on 24th June, 2022. Counsel for the Respondents/plaintiffs admits the aforesaid fact.

6. In the aforesaid background, contentions of counsel for the petitioner/defendant Mr. Pradeep Thorat are, Court may show indulgence as order impugned is penal in nature and takes away the valuable right of defending a case. According to him, the events leading to passing of the impugned order are due to communication gap.

7. Counsel for the respondents/plaintiffs has opposed the claim on the ground that the Petitioner has not shown respect to the orders of the Court below.

8. Be that as it may, the order dated 6th January 2020 passed below Exh.91 granting inspection is complied with. Even though it can be inferred from the conduct of the petitioner that he lacks bonafide though claimed herein

above, this Court needs to be sensitive to the effect of order impugned on the legal rights of the petitioner. On joint request made by both the parties, in my opinion, case for showing indulgence is made out, subject to deposit of cost of Rs.1,00,000/- before the Small Causes Court within the period of four weeks from today. If the Petitioner not permitted to defend the case, then substantial prejudice would cause to him.

9. However, this Court needs to be sensitive to the fact that the Petitioner has shown intentional disregard to the order of this Court passed on 6th January, 2020, which was passed below Exh.91.

10. Plaintiffs are entitled to withdraw an amount of Rs.50,000/- towards expenses incurred by them in prosecuting present proceeding. However, balance amount of Rs.50,000/- shall be paid to the legal aid services authority of the Small Causes Court.

11. If the cost as ordered is not deposited, the order impugned shall govern the proceedings.

12. The petition as such stands allowed and disposed of accordingly.

[NITIN W. SAMBRE, J.]