

Chaitali

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

WRIT PETITION NO. 10355 OF 2022

Roche Products (India Private Limited)

...Petitioner

Versus

Thatai Consultancy Services LLP.

...Respondent

Mr. V.A. Thorat, Senior Advocate and Ms. Manasi Marathe i/b. Adv.
Mandar Soman, for the Petitioner.

Mr. Janak Dwarkadas, Senior Advocate, Mr. Girish Godbole a/w Mr. Sumit Shukla and Ms. Saloni Shah i/b DSK Legal, for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 7TH DECEMBER, 2022

ORDER :

1. Heard Mr. Thorat, learned Senior Counsel appearing for the Petitioner and Mr. Dwarkadas, learned Senior Counsel appearing for the Respondent.
2. By this Writ Petition, the Petitioner is challenging the impugned order dated 16th September 2021 passed by the Trial Judge of Small Causes Court, Mumbai and impugned order dated 5th August 2022 passed by the Appellate Bench in Revision Application No. 84 of

2021.

3. By the impugned order dated 5th August 2022, the Appellate Bench of the Small Causes Court had directed the Petitioner (Original Defendant) to pay arrears of monthly license fee to the Respondent (Original Plaintiff) from January, 2021 till July, 2022 as per the leave and license agreement within a period of one month from the date of the said impugned judgment and order. Further, the Petitioner (Original Defendant) was directed to pay monthly license fee in respect of suit premises to the Respondent (Original Plaintiff) as per the leave and license agreement from August, 2022 onwards till 31st December 2022 or till handing over the possession of the suit premises, whichever is earlier.

4. The dispute between the parties concerns, the notice of termination which had been issued by the Petitioner as the licensee and which notice of termination is dated 30th December 2020. The contention of the Respondent as a licensor is that there was no valid termination of the leave and license agreement under clause 13 read with clause 14.1 which refers to clause 11.2 of the leave and license agreement.

5. The Respondent had filed the suit being L.D. Suit No. 21 of 2021, wherein the Respondent had sought declaration that the leave and license agreement dated 7th December 2017 is valid, subsisting and binding on the Defendant till 31st December 2022 (the Lock-in period). Further, relief was sought for declaration that the Petitioner's notice of termination dated 30th December 2020 of leave and license agreement is unlawful and bad in law.

6. There was consequential prayer with regard to payment of license fee from the notice of termination as admittedly, the Respondent herein had not paid the license fee after issuance of the notice of termination.

7. The Appellate Bench by order dated 12th January 2022 in Revision Application No. 84 of 2021 had prima facie considered that the final relief has been granted as interim relief by the Trial Judge. It was observed by the Appellate Bench that the Trial Judge had assessed the leave and license agreement on merit, without considering whether tenancy is legally terminated or not and whether the applicant is liable to pay the amount as prayed for in the prayer clause of the plaint or not will amount to decreeing the suit

without giving parties opportunity to lead the evidence. Further, there is an order passed by the court dated 11th July 2022, wherein this court has considered the submissions with regard to the intention of the Petitioner herein to surrender possession and which can be kept open to the parties to make a similar request in the Revision on the said issue which the Revisional Court shall deal with.

8. The Appellate Bench of Small Causes Court by order dated 7th September 2022, had considered that by application, filed by the Petitioner at Exhibit 19, it was prayed that pending the hearing and final disposal of the suit, the Respondent / Plaintiff be directed to take charge of possession of the suit premises. Direction was sought against the Respondent / Plaintiff not to cause obstruction in the removal of material, equipment and belonging to the Petitioner / Defendant from the suit premises. Further, direction was sought against the Respondent / Plaintiff to deposit the security deposit of Rs. 4,57,56,793/- (Rs. Four Crores Fifty Seven Lakhs Fifty Six Thousand Seven Hundred and Ninety Three only) in the court. The Respondent / Original Plaintiff had filed pursis Exhibit 16 and submitted to the orders of this Court with reference to the prayer clauses (a), (b) and (c) of the application-Exhibit 19 filed by the

Petitioner herein. The Appellate Bench had accordingly passed the order of handing over possession of the suit premises by the Petitioner herein on or before 30th September 2022 to the Respondent with prior intimation being given to the Respondent. The Respondent was not to cause any obstruction to the Petitioner herein whilst removing the material equipments and belongings of the Petitioner herein from the suit premises. The Respondent herein was further directed to deposit the amount of security deposit of Rs. 4,57,56,793/- before the Trial Court on or before 30th September 2022 and to inform the Petitioner herein. The amount deposited by the Respondent was directed to be kept in a fixed deposit in any Nationalized Bank till the final decision of the Trial Court in L.D. Suit No. 21 of 2021 and disbursement shall be subject to the final decision of the suit as per directions of the Trial Court. The directions were given without prejudice to the rights and contentions raised by the parties in L.D. Suit No. 21 of 2021.

9. In my view the issue as to whether there was valid termination of the leave and license agreement is an issue to be determined by the Trial Court at the final hearing of the L.D. Suit No. 21 of 2021. I have taken note of the order dated 7th September 2022 passed by the

Appellate Bench pursuant to which the Petitioner herein has handed over possession of the suit premises on 30th September 2022 to the Respondent. Further, the Respondent in compliance with the said order has deposited the amount of security deposit of Rs. 4,57,56,793/- with the Trial Court. Leaving the rights and contentions of the parties open, in L.D. Suit No. 21 of 2021, the impugned judgment of the Appellate Bench of the Small Causes Court dated 5th August 2022 is accordingly modified as under:-

- i) The Petitioner herein instead of paying the arrears of monthly license fee to the Respondent as directed by the Appellate Bench shall deposit the arrears of monthly license fee from January 2021 till handing over the possession of the suit premises i.e. 30th September 2022, with the Trial Court.
- ii) The amount so deposited by the Petitioner shall be kept in a fixed deposit with any Nationalized Bank till the final decision of the Trial Court in L.D. Suit No. 21 of 2021 and disbursement shall be subject to final decision as per the directions of the Trial Court.
- iii) Remainder of the impugned judgment and order dated

5th August 2022 shall stand.

iv) The Writ Petition is accordingly disposed of.

v) The Lower court is requested to hear and dispose of the L.D. Suit No. 21 of 2021 within a period of one year from the date of this order.

[R.I. CHAGLA J.]