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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.448 OF 2022

Bsmart Private Limited & Anr. Applicants.

V/s

Trade Centre Developers and
Builders Private Limited Respondent.

Mr. Surel S. Shah i/b Sumit Kothari for the Applicants.
Mr. Drupad S. Patil for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 11, 2022

P.C.:-

1] Parties hereto entered into leave and license agreement dated 2/11/2019. Alleging that Revision Appliant/licensee has defaulted in depositing license fees for a period from June 2020 till September, 2021, Application-Exhibit-5 was taken out in Civil Suit No.293 of 2021 initiated by non-applicant/Plaintiff for eviction and for direction to deposit rent. Said Application came to be allowed with following directions vide order impugned dated 17/6/2022, operative part of which reads as under:-

“O R D E R

1] The application is partly allowed.

2] The defendants are hereby directed to deposit the arrears of license fee from June, 2020 to September 2021 at the rate of 4,00,000/- per month with interest of 12% p.a., which would be without prejudice to the rights of the plaintiff in regard to the arrears of the license fee, which would be finally adjudicated in the judgment in the case.

3] In view of the delivery of possession of the suit premises by the defendants to the plaintiff, the prayer in respect of injunction become infructuous.

4] Costs in cause”

Prayer of the Applicant for setting aside the said order was also turned down by Ad-hoc District Judge-4, Pune vide impugned order dated 7/9/2022 passed in MCA No.250 of 2022. As such, this Revision.

2] Both the orders are assailed by the Applicant on the ground that rigour of Order 15 of the Civil Procedure Code (Bombay Amendment) is not taken into account. It is claimed that provision does not

contemplate interest to be recovered on the pending rent. In addition, Mr. Shah, learned Counsel for the Applicant would urge that there exists a serious dispute *inter se* between the licensor and licensee as the Applicant/licensee has preferred counter-claim as there was material breach in giving effect to the terms of the Agreement. He would further urge that deposit of an amount of Rs 60 lakhs is already in the custody of the non-applicant/Plaintiff. As such, he would urge that both the Courts below committed an error in ignoring aforesaid factual matrix.

3] While countering, Mr. Patil, learned Counsel for non-applicant would support the order impugned. He would draw support from very terms of the leave and license agreement dated 2/11/2019 to justify the claim of recovery of interest on arrears of license fees. In addition, according to him, not only the arrears of license fees were not cleared but terms of the leave and license agreement provided for lock-in period and said lock-in period was also not adhered to. As such, he would urge that against the concurrent findings, Revision is liable to be dismissed.

4] I have appreciated the submissions.

5] Fact that Applicant has failed to pay arrears of license fees from June 2020 till September 2021 is borne out from the record. The amount of deposit which is made by the Applicant was to be adjusted in terms of the Agreement. It is difficult to accept contention of Mr. Shah, learned Counsel for the Applicant that amount of Rs 60 lakhs towards deposit is lying with the licensor.

6] In the aforesaid backdrop, considering the covenants of the leave and license agreement dated 2/11/2019, directions issued to the present Applicant to deposit arrears of license fees at the rate of Rs 4 lakhs per month (and not at the rate of Rs 6 lakhs) as was agreed to, appears to be quite justified and borne out from the recitals of the aforesaid agreement.

7] As such, only modification, in my opinion, which requires is amount of interest can be looked into at the relevant time when the

suit will be finally adjudicated. Keeping the said issue open to be looked into and adjudicated by the Court below at the time of deciding the suit finally i.e. about levying of interest on the arrears of license fees, in my opinion, present Revision Application lacks merit. As such, same stands dismissed.

8] However, it is clarified that Applicant shall not be liable to deposit the amount of interest as was directed by the order impugned dated 17/6/2020 till final adjudication by the Trial Court.

9] In response to court's query, Counsel for the Applicant submits that amount of arrears of rent shall be deposited in the court below within a period of nine weeks from today. Statement is accepted as an undertaking. Till then hearing on the Application for striking out defence i.e. Exhibit 32, and also on the Application for issuing distress warrant and for attachment of the amount lying in the bank accounts i.e. Exhibit-34 is directed to be deferred till 15/12/2022.

(NITIN W. SAMBRE, J.)