

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1132 OF 2022

Sanjay Mahadeorao Kotkar and ors --Vs.-- Chandrapur Multipurpose Education
Society and ors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.A.Jibhkate, Advocate for petitioner
Mr. A.A.Dhawas, Advocate for Respondent Nos. 1 and 2
Mr. A. Anirudh Advocate for Respondent Nos. 3, 5 & 9
Mr. A.D.Ramteke, Advocate for Respondent Nos. 6, 8, 10 & 11

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/08/2022

1] Heard Mr. Jibhkate, learned counsel for the petitioner, Mr. Dhawas, learned counsel for Respondent Nos. 1 and 2 and Mr.A. Anirudh, learned counsel for Respondent Nos. 3, 5 and 9 and Mr. Ramteke, learned counsel for respondent Nos. 6, 8, 10 and 11.

2] Nobody appears for other respondents, though served.

3] The petition challenges the order dated 23.11.2021, passed below Exh. 6, whereby the application under Section 15A of the CPC filed by the petitioner/plaintiff in RCS No. 98/2020 for directing the Respondent No.1, who is the licensee of the premises in question, to deposit the license fee of ₹.46,585 per month till 31.3.2021 and thereafter at an increased rate of 10% according to the terms of the agreement of leave

and license till the decision of the suit, has been rejected by the learned trial Court.

4] It is not in dispute that the Respondent No.1/trust is in possession of the premises in question even today under the agreement of leave and license dated 6.7.2017, which was for a period of 1.4.2017 to 31.3.2022. The suit has been filed on 5.12.2020 for eviction and recovery of license fee, as the Respondent No.1 violated the terms of the agreement of leave and license and also did not deliver the possession. The agreement of leave and license contemplates license fee of ₹.35,000, which has been increased from time to time as per the terms of the agreement and on the date of application below Exh. 6 was Rs. 46,585/- per month.

5] The application below Exh.6 has been rejected by the learned trial Court by the impugned order on the ground that some of the defendants have admitted the agreement and some of them have denied it. That in my considered opinion cannot be a ground to reject the application under Section 15A of the CPC, more so when there is no dispute that the Respondent No.1/trust is in occupation of the premises in question and is running a school therefrom. Whatever internal dispute between the members of the managing committee of Respondent No.1/trust, that cannot come in the way of the plaintiff/petitioner seeking the license

fee or the illegal occupation charges equivalent from Respondent No.1 for the occupation of the premises in question.

6] That being the position, the impugned order dated 23.11.2021 passed by the learned trial Court below Exh.6 is quashed and set aside and the application below Exh.6 is allowed.

7] The Respondent No.1 shall clear off all the arrears as per the prayer clause made in Exh. 6 within a period two month from today. It is made clear that no further extension shall be granted.

JUDGE