

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
(IN ITS COMMERCIAL DIVISION)
COMMERCIAL APPEAL FROM ORDER NO.1 OF 2023
WITH
INTERIM APPLICATION NO.184 OF 2023
IN
COMMERCIAL APPEAL FROM ORDER NO.1 OF 2023**

IRK Entertainment Pvt Ltd.

....Appellant

V/s.

Seven Star Multiplex & Anr

...Respondents

Mr. Kunal Mehta, Mr.Gautam Sahni a/w Mr. Aviral Jain and Mr. Adrianna Thangkhiew i/b Vesta Legal for Appellant / Applicant.

Mr. Girish Godbole, Senior Advocate, Mr. Nikhil Wadikar a/w Ms Sejal Jain and Mr. Parth for Respondents.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL JJ**

DATED : 10th APRIL 2023

P.C. :

1 At the outset, Mr. Godbole raises the issue of maintainability of this appeal. Since on merits we did not find this appeal should be entertained, we decided to consider that issue in another appropriate matter.

2 Appellant is impugning an order dated 21st November 2022 rejecting appellant's interim application for a temporary injunction restraining respondent no.1 from creating third party interest in the suit premises, restraining respondent no.1 from entering in the suit premises and handing back possession of the suit premises to appellant and appointing receiver for the suit premises.

3 The suit premises is five cinema screens multiplex in Seven Star Mall at Satara (suit premises). The land of the suit premises is owned by Maharashtra State Road Transport Corporation (MSRTC), which, on 19th March 2009 was allotted for construction work to respondent no.2. Thereafter, lease deed was executed in favour of respondents. Appellant claims to be in possession of the suit premises since 15th October 2016 based on certain MOU / Agreement. Those are not relevant for the purpose of this matter because it is appellant's case that on 17th January 2020 appellant and respondent no.1 entered into leave and license agreement for a period of 36 months. The said leave and license agreement has in any event come to an end on 31st December 2022. Mr. Mehta states it is inadvertently stated in the plaint that it was expiring only on 31st December 2023.

4 It is alleged that somewhere between 10th February 2022 and 23rd February 2022 respondent no.1 wrongfully dispossessed appellant and took over the suit premises. Therefore, appellant filed a suit under Section 6 of the Specific Relief Act 1963. Pending disposal of the suit, interim application in which the impugned order came to be passed, was taken out for the reliefs mentioned earlier.

5 It is appellant's case that though it was in possession of the suit premises pursuant to the leave and licence agreement with respondent no.1, the suit has been filed not to exercise its right as a licensee but appellant is merely seeking restoration of the possession of the suit premises which it has been illegally deprived of by respondents. It is the case of respondent

no.1 that since January 2020 from the time the agreement was entered into, not a penny was paid by appellant towards license fees. Of course, Mr. Mehta states that for January 2020 and February 2020 license fees was paid but subsequently, he admitted, not a penny has been paid. It is the case of respondent no.1 that appellant had to pay per month, apart from license fees, average of Rs.75,000/- towards electricity charges, which also has not been paid. Respondent no.1 also alleges that even interest free security deposit of Rs.33,00,000/- that was to be paid under the leave and license agreement, has not been paid by appellant. Nothing has been shown to us that interest free deposit has been paid.

6 According to respondent no.1, it was appellant who was to maintain security of the suit premises and they did not even provide for any security when respondent no.1 took possession of the suit premises. No administrative staff of appellant was also present and it is the case of respondent no.1 that appellant had abandoned / vacated the suit premises. There was not a soul present in the suit premises, except rats and insects, when respondent no.1 took possession.

7 The suit is for possession under Section 6 of the Specific Relief Act 1963. Whether appellant was in possession and was wrongfully dispossessed or appellant had abandoned or vacated the suit premises before respondent no.1 took possession, are triable issues. It is also not clear for how long appellant was screening films. Therefore, Trial Court was correct in refusing to grant interim reliefs as prayed for.

8 Appeal therefore, dismissed.

9 Consequently, interim application also stands disposed.

10 Mr. Godbole is pressing for cost. Appellant to pay cost of Rs.2,00,000/- by cheque drawn in favour of the advocate for respondent no.1, within four weeks from today.

(RAJESH S PATIL, J.)

(K.R. SHRIRAM, J.)