



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.840 OF 2022

Wework India Management Private Limited]
 a company incorporated under the provisions]
 of the Companies Act, 2013,]
 having its registered office at 1st Floor,]
 Embassy Point, 150 Infantry Road,]
 Bengaluru- 560001 and also having,]
 its office address at Raheja Plantinum,]
 Sag Baug Road, Off. Andheri-Kurla Road,]
 Andheri (East), Mumbai – 400059.] **...Petitioner.**

Versus

M/s. KGA Investments]
 a partnership firm,]
 having its registered office at 601,]
 Commerce House, 140, Nagindas]
 Master Road, Fort, Mumbai – 400001.] **... Respondents.**

WITH
INTERIM APPLICATION NO.824 OF 2023
IN
WRIT PETITION NO.840 OF 2022

M/s. KGA Investments ... Applicant.
 In the matter between :
 WeWork India Management Private Limited. ... Petitioner.
V/s.
 M/s. KGA Investments. ... Respondent.

Mr. Rohaan Cama and Ms. S. Laskari i/b Phoenix Legal for the Petitioner in Writ Petition No.840/2022 and for Respondent in IA No.824/2023.

Mr. Vineet Naik, Senior Advocate and Mr. Prateek Seksaria, Senior Advocate along with Mr. Siddharth Mehta, Mr. A. S. Pal, Ms. Emram Quraishi, Ms. Vaidehi Bhatt i/b Mehta and Padamsey for Respondent in WP No.840/2022

and for Applicant in IA No.824/2023.

Coram : Sharmila U. Deshmukh, J.

Reserved On : November 8, 2023.

Pronounced On : December 22, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of the parties.

2. By this petition filed under Article 227 of Constitution of India, the challenge is to the order dated 3rd January 2022 passed by the Appellate Bench of the Small Causes Court, Mumbai in Revision Application No. 40 of 2021 setting aside the order of the Trial Court rejecting the application for interim relief. For the sake of convenience, parties are referred to by their status before the trial Court.

Facts :

3. L. E. & Suit No.29/2020 was instituted seeking the following substantial reliefs:

"a) this Hon'ble Court be pleased to declare that the Leave and License Agreement dated 17 May 2019 and Deed of Rectification dated 30 September 2019 are valid and subsisting;

b) this Hon'ble Court be pleased to declare that the proposed surrender of 8th and 7th floors of Chomium Building being 56,030

sq. feet. by the Defendant No.1 in its e-mail dated 22 July 2020 is bad in law;

c) this Hon'ble Court be pleased to pass suitable order and decree directing the Defendant No.1 to specifically perform the Leave and License Agreement dated 17 May 2019 read with Deed of Rectification dated 30 September 2019;

d) this Hon'ble Court be pleased to pass suitable order and decree directing the Defendant No.1 to pay to the Plaintiff the arrears of License Fees and other charges for the months of April 2020, May 2020, 1 June 2020 to 7 June 2020, July 2020 and residue license fee for the month of August 2020 as per Exhibits "G-1", "N-2", "R-2", "V-2" , "Z-2" annexed hereto along with interest at the rate of 18% per annum from the due date of the respective month till actual payment and/or realisation, as per Particulars of claim being Exhibit "AA', annexed hereto;

e) this Hon'ble Court be pleased to pass suitable order and decree directing the Defendant No.1 to pay to the Plaintiff the arrears of License Fees and other charges for the succeeding months from August 2020 under the Leave and License Agreement dated 17 May 2019;

f) this Hon'ble Court be pleased to pass suitable order and decree directing the Defendant No.1 to pay to the Plaintiff contractual rate of interest of 18% p.a. on the arrears of License Fees and other charges for the succeeding months from August 2020, from due date of payment of license fee of each month till payment and/or realization;"

4. Vide leave and license agreement dated 17th May 2019 read with Deed of Rectification dated 30th September 2019, license was granted by the plaintiffs for use and occupation by Defendant No.1 of the building known as "Chromium Building" from ground floor to

8th floor for a period of 10 years with lock-in-period of 60 months. As regards the 9th floor of the building, the agreement was that license in respect of the 9th floor will be granted upon receipt of full occupation certificate. The license free period was 10 months and thereafter monthly compensation was agreed to be paid @ Rs.105/- per square feet from 11th month to 36th month with escalation @ 12% p.a. after expiry of every three years. In the month of February-March 2020 there was an outbreak of Covid 2019 pandemic. *Vide* order dated 20th March 2020, MCGM directed the commercial establishments such as Defendant No 1's establishment to close their facility.

5. On 21st March 2020, notice was issued by Defendant No 1 to the plaintiff in terms of Clause 22.1 and 22.4 of the leave and license agreement (for short "the agreement") invoking the *force majeure* clause seeking recusal from the performance of obligations including obligation to make payment of the rent and other charges payable under the agreement w.e.f 21st March 2020. On 23rd March 2020, lockdown was declared in the State whereby except essential services in the State, all private establishments were ordered to remain shut. On 28th March 2020, the plaintiff responded to the

communication dated 21st March 2020 stating that no situation has occurred which interferes with the Defendant's obligation to make payment to the plaintiff as electronic banking services remained available. By the said communication, Defendant No.1 was put to notice that any non performance in payment of the license fees and other charges under the agreement will trigger provision of breach and indemnity under the agreement if resorted to, apart from non payment being in breach of the agreement. On 2nd April 2020, further correspondence ensued seeking to enforce the *force majeure* clause to seek waiver of the license fees and other charges. On 8th April 2020, the Plaintiff wrote to Defendant No 1 stating that Clause 22.4 of the agreement provides for abatement of license fees obligation of Defendant No. 1 only with respect to the affected portion and there has been no damage to the premises as is required to make such a claim. On 7th May 2020, Defendant No.1 sent a proposal recommending settlement payout of the arrears of license fees in view of the lockdown which was rejected by the Plaintiff vide communication dated 14th May 2020.

6. On 2nd June 2020, the second settlement proposal was sent by Defendant No.1 proposing for deferment of April and May

compensation to be paid in equal installments from September, 2020 onwards over 18 months and reducing the escalation due in April, 2022. The proposal was rejected by the Plaintiff vide communication dated 3rd June, 2020 putting Defendant No 1 to notice that they will be forced to terminate the agreement if payment is not made. On 22nd July 2020 Defendant No.1 communicated to the plaintiff that they need their support in working together on the surrender of the 7th and 8th floor from August 2020. On 22nd July 2020, the plaintiff called upon the Defendant to release the payment of the invoice for the month of July 2020 along with interest. In the said communication there is no reference as regards surrender of 7th and 8th floors.

7. On 12th August 2020, suit was filed by the plaintiff before the Small Causes Court *inter alia* seeking the arrears of license fees and other charges for the months from April 2020 to 7th June, 2020, July 2020 and residue license fees for the month of August 2020 as per the particulars of claim annexed thereto. Interim Applications below Exhibit-“10” was filed by the plaintiff seeking a direction to Defendant No.1 to pay arrears of license fees from 1st April 2020 along with interest and to continue to pay the license fees under

Clause 5 of the leave and license agreement dated 17th May 2019, which was opposed by Defendant No.1 by its affidavit-in-reply dated 28th October 2020. By order dated 5th February 2021, the trial Court rejected the application as against which the plaintiff filed Revision Application No. 40 of 2021. The Appellate Court by the impugned order allowed the Revision and invoking provisions of Order 39 Rule 10 read with section 151 of CPC ordered Defendant No.1 to deposit the arrears due as per agreement dated 17th May 2019 till the date of the order and to regularly deposit the said amount from month to month. The Revisional Court further permitted the plaintiff to withdraw the amount deposited in the Court.

Order of Trial Court :

8. The trial Court held that the licensed premises were used for business purpose and there was nationwide lockdown imposed by the Government and MCGM Authorities from 23rd March 2020 to 7th June 2020. Considering the relevant clauses pertaining to *force majeure*, the trial court held that definition of "*Force Majeure Event*" in Clause 1.1(1) of the agreement included government action and that the only condition under the agreement was to give prompt notice to the other party of happening of *force majeure* event

which Defendant No.1 has complied. The trial Court held that due to suspension of business during lockdown period as per MCGM order, as per the agreement Defendant No.1 is not liable to pay the license fees. The Trial court held that provisions of Order XV-A of the C.P.C. are inapplicable as the suit was not for eviction. As regards the provisions of Order 39 Rule 10 of C.P.C, the trial Court held that the provisions cannot be invoked as the amount claimed by the plaintiff is not admitted by Defendant No.1. It held that the plaintiff failed to show *prima facie* that Defendant No.1 wrongly invoked *force majeure* clause and wrongly withheld the license fees of the locked down premises. That, the plaintiff failed to show *prima facie* that Defendant No.1 can be directed to deposit arrears of license fees under Order XV-A of CPC or under Order 39 Rule 10 of CPC and that granting of main relief by way of interim relief is impermissible.

Order of Revisional Court:

9. The Revisional Court held that the plaintiff is not entitled to invoke Order XV-A of CPC (Bombay amendment) and Order 39 Rule 10 can be invoked by relying on the decisions on this Court in *Suresh Haribhau Admane* and *Sangeeta Prints*. The Revisional Court

observed that the contract is still in lock-in-period and of such a nature that it cannot be separated floor-wise as the entire building with parking facility, security facility, common amenities, lifts etc are given in possession of the Defendant. The Revisional Court held that Defendant No.1 had two options either to terminate the contract partially or wholly and pay the entire liability for 60 months lock-in-period as debt, which was not done and the second option is that the Defendant No 1 is liable to make payment of the license fees for whole of the building till he terminates the contract. That as far as payment of license fees is concerned, the Defendant No 1 is under contractual obligation to pay the license fees for the entire building including the 7th and 8th floors for period of 60 months lock-in-period and shall continue till the contract is lawfully terminated. Interpreting Order 39 Rule 10 of CPC it held that the admission appearing in first part of Order 39 of CPC is applicable to the holding of money or other things as trustee for another party and later part is not depending on admission.

10. As regards the liability to pay license fees for the period between 1st April 2020 and 7th June 2020 on account of *force majeure*, the Revisional Court considered the Defendant's nature of

business and held that the business of the Defendant No 1 was creating work places and sub licensee was not prohibited due to Covid-19 restrictions and therefore Covid-19 restrictions is not *force majeure* for Defendant. The Revisional Court held that it is the Defendant No 1 who has chosen his business model and the Plaintiff is entitled to only license fees, irrespective of business runs into losses or profit.

11. In the context of Order 39 Rule 10 of the CPC, the Revisional Court held that the e-mail to the defendant dated 3rd June 2020 (wrongly mentioned as 3rd June 2020 instead of 2nd June 2020) admitted the liability. The Revisional Court further held that Clause 22.4 cannot be invoked to avoid liability for top two floors. The Revisional Court held that though recovery of arrears is one of the reliefs in the prayer clause where statute provides a remedy it cannot be denied merely because it would satisfy one of the main reliefs in the suit. The Revisional Court held that the only issue is as regards the interpretation of the contract and the core issue could be decided even at the stage of Order XV Rule 3 of CPC. The revision application was held maintainable as substantive right of the Plaintiff was affected.

12. Heard Mr. Rohan Cama, learned counsel for the Petitioner and Mr. Vineet Naik, learned Senior Advocate for the Respondents.

Submissions:

13. Mr. Cama, learned counsel for the Petitioner has taken this Court minutely through the relevant clauses of the leave and license agreement dated 17th May 2019. Pointing out to Clause 22 of the agreement, he would contend that restricting the applicability of *force majeure* clause only in the case of physical damage to the premises would render clause 22.1 of the agreement redundant. He would contend that vide e-mail 22nd July 2020, Defendant No 1 effectively surrendered 7th and 8th floors of the building and continued to pay the license fees for ground plus 6th floors in respect of which there is no default. Drawing attention of this Court to the findings of the Trial Court, he submits that as regards the provisions of Order 39 Rule 10 of CPC, the trial Court has rightly observed that there was no admission which was a *sine qua non* for applicability of Order 39 Rule 10 of CPC as the liability towards payment of license fees towards 7th and 8th floors is disputed. He would further submit that the order of trial Court does not reveal

that any arguments were advanced as regards the surrender of 7th and 8th floors and thus the Revisional Court could not have adjudicated the issue, and the proper course for the Plaintiff would be to seek review of the order of Trial Court. He would contend that the interpretation placed on the provisions of Order 39 Rule 10 of CPC by the Revisional Court would render the provision an absurdity.

14. Drawing attention to the Bombay amendment of Order XV-A of CPC, he would contend that the provision is applicable to a suit between the lessor or licensor against the lessee or licensee for eviction and only in respect of this class of suits, deposit can be directed. He would contend that after the amendment to Order XV-A in the year 1990, there has been a conscious restriction on the right of licensor/lessor to seek benefit of deposit where the suit is not for eviction. He submits that a specific provision being available and inapplicable to the instant case, recourse could not be had to Order 39 Rule 10 of CPC. He would contend that the principles of revision under section 115 of CPC are clear and the revision application was not maintainable.

15. By pointing out the prayers in the plaint, he submits that

final relief has been granted at the interim stage and nothing more remains to be adjudicated on merits. He has taken this Court minutely through the findings of the Revisional Court and would submit that despite the known position that all establishments were closed, the Revisional Court has held that the notification was not applicable to the business of Defendant. He would submit that as the compensation was payable on per square feet area, the contract was severable and the surrender of 7th and 8th floors was valid. He would further submit that non payment of the license fees which is the core issue in the case pleaded by the Plaintiff is in effect a breach of the leave and license agreement for which remedy was one only for damages, which could be determined only at the stage of final hearing after evidence has been led. He submits that the Revisional Court has substituted its own view in place of view taken by the Trial Court. Reliance is placed on the following decisions :

- [a] World Crest Advisors LLP vs. Catalyst Trusteeship Limited and Ors., [2022 SCC Online Bom 1409];*
- [b] Gangotri Enterprises Limited vs. Union of India [(2016) 11 SCC 720];*
- [c] B.P.C.L. v. Thakorbhai [2003(3) Mh. L. J. 617];*
- [d] Union of India vs. Raman Iron Foundry, [(1974) 2 Supreme Court Cases 231];*

- [e] *Union of India v. D. N. Reveri and Co.*, [(1976) 4 SCC 147];
- [f] *Iron and Hardware (India) Co. vs. Shamlal and Brothers* [(1954) *Indian Law Reporters*, 739];
- [g] *H. M. Kamaluddin Ansari & Co., v. Union of India* [(1983) 4 SCC 417];
- [h] *Daman Singh v. State of Punjab* [(1985) 2 SCC 670];
- [i] *Wander Ltd v. Antox India P. Ltd* [1990 (Supp) SCC 727];
- [j] *Purshottam Vishandas Raheja v. Shrichand Vishandas Raheja* [(2011) 6 SCC 73];
- [k] *Mohd. Mehtab Khan & Ors vs Khushnuma Ibrahim Khan* [(2013) 9 SCC 221];
- [l] *Navodaya Vidyalay Samiti v. Afshan Khan* [(2019) 11 SCC 548];
and
- [m] *State of U.P. v. Ram Rukhi Devi* [(2005) 9 SCC 733].

16. *Per contra*, Mr. Naik, learned Senior Advocate appearing for the Respondents submits that the leave and license agreement was a structured commercial contract and the entire building was taken on license. Pointing out the clauses in the agreement, he submits that the licensed premises is defined in two parts as in respect of 9th floor occupation certificate has not been obtained. Countering the submissions of Mr. Cama as regards the severability of contract, he would submit that the agreement will have to be looked into as a

whole and the same would demonstrate that what was licensed was the entire premises and there was lock-in-period for 5 years even in respect of 7th and 8th floors. He pointed out that the principle obligation of the Petitioner was payment of the license fees and *force majeure* clause related to obligation to pay and not right to use. He submits that the obligation to pay was not affected as the banking services were not frozen. According to him, the contract is clear inasmuch the Petitioner had the right to terminate the contract for a period if the entire premises were not used for the period in excess of 45 days due to *force majeure* event and having chosen not to do so, the liability for payment of license fees for the entire period rests upon Defendant No.1.

17. He would submit that the communication dated 2nd June 2020 does not mention that the same is without prejudice and in fact the letter sets out the proposal for payment and as such the right if any under the *force majeure* event was given up. He would submit that there cannot be unilateral surrender of 7th and 8th floors. Pointing out to the order of trial Court, he would submit that the suit was filed for arrears of the license fees for the entire building and as such issue as regards the 7th and 8th floors was also under consideration of trial Court and as such there was no discussion

about surrender of tenancy of 7th and 8th floors in the order of trial Court.

18. On the issue of applicability of Order 39 Rule 10 of CPC, relying on judicial pronouncements, he would submit that the Courts are within their right to direct the deposit of the amount. On the issue of final relief being granted at interim stage, he submits that the said proposition will not apply to the suits filed between the landlord and tenant/licensor and licensee. Considering the provisions of Order XV-A of CPC, he would submit that the legislative mandate is not to deprive the landlord of his right to recover the money. Pointing out to the decisions in the case of *Colaba Central Co-op. Consumer Wholesale and Retails Stores Ltd vs. Kusumben Kantilal Shah* [2003 SCC Online Bom 875] which has been subsequently followed in various decisions, he submits that the justice is not on the side of Petitioner. He would submit that apart from the claim for unilateral surrender of the 7th and 8th floors, the Petitioner now refuses to pay the license fees for the 9th floor also despite the occupation certificate being received and the Petitioner being duly notified about the same.

19. As regards the maintainability of revision application, he

relies upon the decision in the case of *Bhartiben Shah vs. Gracy Thomas* [2013 (1) CTC 833] and submits that Full Bench of this Court has held that the revision lies if substantive rights and interest of the parties are affected. He submits that the decision in the case of *Gangotri Enterprises Limited vs. Union of India* [(2016) 11 SCC 720] has been held to be *per incuriam* in *State of Gujarat Vs Amber Builders* [(2020) 2 SCC 540]. He relies upon the following decisions :

- [a] *State of Gujarat Vs Amber Builders* [(2020) 2 SCC 540];
- [b] *Cipla Ltd v. Competent Authority and the Dist. Dy. Registrar* [2021 SCC OnLine Bom 622];
- [c] *Bhartiben Shah vs. Gracy Thomas* [2013 (1) CTC 833];
- [d] *The State of Bombay v. Morarji Cooverji* [1958 SCC OnLine Bom 188];
- [e] *Yespal v. Union of India* [2016(2) Mh.L.J. 827];
- [f] *P. K. Palanisamy v. N. Arumugham* [(2009) 9 SCC 173];
- [g] *Ramanand v. Dr. Girish Soni* [2020 SCC OnLine Del 635];
- [h] *Uma Sharma v. Miniso Life Style Pvt. Ltd* [2020 SCC OnLine Del 979];
- [i] *Sangeeta Prints Vs. Hemal Prints* [AIR 1986 Bom 423];
- [j] *Chandrakant Shankarrao Deshmukh v. Haribhau Tukaramji Kathane* [1983 Mah. L. J. 88];
- [k] *Shantaram Janu Raut vs. Claradas Lourds* [1998 (1) ALL MR 672];

- [l] *Rambhau Bapurao Deshmukh vs. Narayan Sitaramji Ukande* [1995 (4) Bom C.R. 611];
- [m] *Bhimrao Laxmanrao Nihare vs. Natwarlal Ratansi Thakkar*, [2004 Vol. 106 (2) Bom. L. R. 816];
- [n] *Jamnadas Motimal Vs. Ishwarbai Tejandas Alwani* [AIR 1981 Bombay 314];
- [o] *B.P.C.L. v. Thakorbbhai* [2003(3) Mh. L. J. 617];
- [p] *Suneesh K. S. vs. Travancore Devaswom Board* [2022 SCC OnLine 611];
- [q] *Har Shankar v. Dy. Excise and Taxation Commr* [(1975) 1 SCC 737];
- [r] *State Bank of Haryana v. Jage Ram* [(1980) 3 SCC 599];
- [s] *Colaba Central Co-op. Consumer Wholesale and Retails Stores Ltd vs. Kusumben Kantilal Shah* [2003 SCC Online Bom 875];
- [t] *Anantbhushan v. Vikas s/o Kashinath* [2005(4) Mh.L.J. 583];
- [u] *TCI Telenet Solutions Pvt. Ltd v. Milliennium Motors Pvt. Ltd* [2013 SCC OnLine Bom 1757];
- [v] *Jaihind Vidyalaya, Nagpur v. Ghanshyam Girharilal Khinchi* [1987 SCC OnLine Bom 85]; and
- [w] *Indo Nippon Chemical Company Ltd v. Indu Nissan OXO Chemical Industries Ltd* [Order dtd. 11th Jan. 2005 in Bom. H.C. Civil W.P. 7434 of 2004].
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Analysis and Conclusions:

20. The issues to be considered by this Court can be broadly summarised as under :

- (a) Whether by reason of the the legislative amendment of the year 1990 to the provisions of Order XV-A of CPC there has been conscious restriction on the rights of lessor or licensor to seek benefit of deposit only where the lessor or licensor sues for eviction as a consequence whereof in suits between lessor or licensor against lessee or licensee seeking reliefs other than eviction, Order XV-A being inapplicable, recourse could not be had to provisions of Order 39 Rule 10 to seek deposit.
- (b) Whether in the facts of present case, on *prima facie* consideration of clauses of the agreement, the *force majeure* clause could be invoked and as such there was waiver of monthly license fees during the subsistence of the *force majeure* event.
- (c) Whether the contract was severable and upon the surrender of 7th and 8th floors, the liability to pay license fees ceased.
- (d) Whether there is an admission of liability by the Petitioner so as to direct deposit under Order 39 Rule 10 of CPC in respect of arrears of licence fees for 7th and 8th floors.
- (e) Whether the demand for the license fees in respect of the 7th and 8th floors amounts to damages and as such could not have been directed to be deposited.

- (f) Whether in the facts of the present case, direction of deposit amounts to grant of final relief.
- (g) Whether the revision application was maintainable.
- (h) Whether by the impugned order, the Revisional Court substituted its own view for that of the Trial Court and is thus unsustainable.

21. Determination of the above issues will involve consideration of the relevant clauses of the agreement and for ease of reference, the relevant clauses are reproduced hereinafter:

Clause 1 Definitions and Interpretations :

1.1 (l) Force Majeure means any event such as acts of God or such other events including Government action, orders, terrorist activities, lightening, earthquake, tempest, cyclone, flood, volcanic eruption, fire, landslide, war, trade embargo which prevents the affected party from performing its obligations under this Agreement which act or event is beyond the reasonable control and not arising out of the fault or negligence of the affected party and which affected party has been unable to overcome by the exercise of due diligence and reasonable efforts, skill and / or care, including through expenditure of reasonable sums of money.

“(n) “Gross Licensable Area” shall mean the total area of the Premises in respect of which License Fee has been calculated as set out in Schedule B”;

“(p) “Licensed Area 1 “ shall mean the area comprised of ground to the 8th floor of the Building admeasuring 2,66,846 (Two Lakh Sixty-six Thousand Eight Hundred And Forty-six) square feet of Gross Licensable Area, more fully described in Schedule B:”

“(q) “Licensed Area 2” shall mean area comprised of 9th floor of the Building along with the terrace of the Building admeasuring 18,467 (Eighteen Thousand Four Hundred and Sixty Seven) square feet of Gross Licensable Area, more fully described in Schedule B.”

“5.1. The monthly consideration payable by Licensee to the Licensor with respect to the Premises shall be Rs.105/- (Rupees One Hundred and Five) per square feet of Gross Licensable Area (per month) of the Premises (“License Fee”) as specified in Annexure 3 hereto”

“8.1. (i) Subject to the Licensee paying the License Fee on the due dates in the manner herein provided and observing and performing the covenants, conditions and stipulations herein contained, the Licensee shall, at all time during the License Period, be permitted unimpeded use and

peaceful and quiet occupation of the Premises during the License Period, without any let, obstructions, eviction, interruption and/or disturbance, claim and demand whatsoever by the licensor or any person or persons lawfully or equitably claiming by, from, under or in trust for the Licensor and the Licensor will take all necessary action to ensure the same.

(j) The Licensee shall have unlimited access and right to use and operate the premises 24 (twenty four) hours a day, all days of the week with infrastructure and facilities as specified in this Agreement and as permitted by Applicable Law.”

“20. Lock in and Termination:

20.1 The Licensee shall not be entitled to terminate the license for a period of 60 (sixty) months commencing from the License Commencement Date (“Licensee Lock-in Period”).

20.2 Except as otherwise provided in this Agreement, the Licensor shall not have any right to terminate this Agreement during the License period (Licensor Lock-in Period)

20.3 After the expiry of the Licensee Lock-in Period, the license of the premises may be terminated by the Licensee

by providing the Licensor with 6 (six) months written advance notice.

20.4 There being no default attributable to the Licensor, the Licensor shall have the right to terminate this Agreement during the license Period, including the Licensee lock in period, in any of the following circumstances ("Event of Default")

(a)

(b)

(c)

(d)

(e)

(f)

(g) Without prejudice to Clause 20.4 (i), any default, breach of or non-compliance by the licensee of any of the terms, conditions, covenants of this Agreement which default is not cured within 15 (fifteen) days from the date of delivery of notice of such default.

20.5. Upon the occurrence of an Event of Default, the provisions in relation to the licensor's lock-in period shall stand forthwith terminated and the licensor shall be entitled to terminate this Agreement with immediate effect. If any Event of Default occurs during the Licensee Lock -in Period, the Licensor will be entitled to terminate the license and to collect the license fee for the remaining

portion of the licensee Lock- in period.”

22.1 If the performance by the affected party of any of its obligations under this Agreement is prevented, restricted or interfered with by reason of a Force Majeure event, then the affected party shall be excused from such performance to the extent of such prevention, restriction or interference; provided however, that the affected party shall give prompt notice to the other party of occurrence of the Force Majeure event, including a description, in reasonable specificity, of the cause of the Force Majeure and the reasons for the event preventing the affected Party from, or delaying that party in performing its obligations under this Agreement. Provided further that such affected Party shall use reasonable efforts to mitigate, avoid or remove the effects of the event of Force Majeure upon its or their performance hereunder and to fulfill its obligations under this Agreement.

22.2 The licensor/licensee shall not hold the other responsible for any structural damage to the Building due to a Force Majeure event provided such event is not attributable to any act, neglect or default on the part of the other party. In the event such damage occurs, the licensor shall be obligated to repair such damages in accordance with its obligations as provided under Clause 14.

22.3 Notwithstanding anything to the contrary herein, if a Force Majeure event renders the Licensee unable to conduct its Business from any part of the premises ("Affected Portion") in substantially the same manner as prior to such Force Majeure event the licensor shall, upon expiry of such Force Majeure, make reasonable efforts, to carry out repairs in order to restore the Affected Portion as it was then existing prior to the occurrence of the event of Force Majeure, reasonable wear and tear excepted.

22.4. The Licensee's payment obligations under this Agreement shall abate only with respect to the affected portion during the continuance of any Force Majeure and shall resume once the licensor completes its obligations to carry out structural repairs in respect of such Affected portion. The licensee may thereafter carry out such fit outs and other repairs at its sole cost and expense before it begin to conduct its business from the Affected portion; however, the licensee's obligation to make payment of the license Fees and other amounts in respect of such affected portion shall only abate from the date of occurring of the Force Majeure event until the date of the licensor completing the structural changes as necessary.

22.5 In the event a Force Majeure renders the licensee unable to use the entire premises for a period in excess of 45 (forty five) days, either party shall be entitled to terminate this Agreement upon written notice to the other

party without liability on the licensee to pay license fee for the balance of the licensee lock in period.

22.6 An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.”

Issue (a):

22. The instant suit has been filed under Section 41 of Presidency Small Causes Court Act, 1882 (for short “the PSCC Act”) which was enacted to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns. Section 9 of the PSCC Act provides that the High Court may from time to time by Rules having the force of law prescribe the procedure to be followed and practice to be observed by the Small Causes Court. Section 41 of the PSCC Act falls under Chapter VII dealing with recovery of possession of certain immovable property and certain license fees and rent and gives jurisdiction to Small Causes Court to entertain the suit filed by landlord or licensor relating to recovery of possession of any immovable property or relating to recovery of license fee or charges or rent therefor.

23. Pertinently, Section 43 of the PSCC Act which falls in Chapter VII provides that in all Suits, Appeals and Proceedings under this Chapter the Small Causes Court shall as far as possible and except as herein otherwise provided follow the procedure prescribed by the Code of Civil Procedure, 1908. The provisions of CPC are therefore made applicable by Section 43 of PSCC Act to the suits filed under Section 41 of PSCC Act.

24. The provisions of Order XV-A of CPC as applicable to the State of Maharashtra was introduced on the statute book with effect from 1st October, 1983. Prior to the introduction of Order XV-A, Division Bench of this Court in the case of ***Chandrakant Deshmukh (supra)*** had the occasion to deal with the issue as to whether at the interim stage in a suit by landlord against the tenant for recovery of possession, arrears of rent and mesne profits, the tenant can be called upon to deposit or pay the rent due or becoming due to him by the landlord. The Division Bench held that in a suit by landlord against the tenant the subject matter of the suit where he sues for delivery of possession and there are claims relating to use and occupation of the property the subject matter

would be money as also the property itself. That, it cannot be disputed that where the Defendant admits he is a tenant, he impliedly admits that the property belongs to the plaintiff and money for the use and occupation thereof is due to him and he may dispute the quantum but not the principle of liability and the Court has the power to decide and direct the extent of quantum which may be ordered to be deposited. Applying the principles underlying the provisions of Order 12 Rule 6 of CPC and the provisions made for passing interlocutory orders under Order 39 Rule 10 of CPC, the Division Bench held that the Court can pass orders for deposit of money pending decision of a suit.

25. The decision in ***Chandrakant Deshmukh (supra)*** was delivered on 1st July, 1982. Subsequently, in exercise of the rule making power conferred by the provisions of Section 122 of the CPC, Bombay amendment came into effect from 1st October, 1983 by which Order XV-A of CPC was introduced which read thus:

“(1) In any suit by a lessor for eviction of a lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the Order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant

shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

(2)

26. Provisions of Sections 9 and 43 of the PSCC Act were noted by the learned Single Judge of this Court in the case of ***Sangeeta Prints (supra)*** and it will be necessary to consider the said judgment in some detail. In that case, suit was filed under Section 41 of the PSCC Act for recovery of possession and arrears of royalty and mesne profits wherein directions were sought for deposit of arrears of royalty as interim measure. The Small Causes Court held that since the suit is filed under Section 41 of the PSCC Act, there is no specific provision under the PSCC Act to pass order of deposit which came up in challenge to this Court. Learned Single Judge of this Court observed that under Chapter VII, separate provisions are made relating to suit and proceedings filed under Section 41 of the PSCC Act and the procedure prescribed for trial of such suits is also separately provided for in Section 43 of the PSCC Act which applies the procedure prescribed by CPC except as provided in the said Act. The learned Single Judge noted that the provisions of Section 43 of PSCC Act are in contradistinction to the provisions of Section 9 of PSCC Act as regards the procedure to be followed by Small Causes

Court in respect of various matters over which Presidency Small Causes Court exercises jurisdiction specified in Chapter IV. Learned Single Judge considered that the unamended provisions of Order XV-A of CPC did not cover the suit filed by licensor against the licensee. Noting the observations of the Division Bench in ***Chandrakant Deshmukh (supra)***, the learned Single Judge held that by parity of reasoning in cases between licensor and licensee also similar order can be passed. The learned Single Judge held that licensee can be directed to deposit certain amounts in respect of license fees or mesne profits under Order 39 Rule 10 of CPC in view of decision in the case of ***Chandrakant Deshmukh (supra)***.

27. The decision in ***Sangeeta Prints (supra)*** was delivered when the unamended Order XV-A of CPC was on the statute book. It is clear from the enunciation of law in the case of ***Sangeeta Prints (supra)*** that as Section 43 of the PSCC Act applied the provisions of CPC to suits filed under Section 41 of PSCC Act, the provisions of Order 39 Rule 10 were held applicable to direct the licensee to deposit certain amounts in respect of license fees or mesne profits and support was drawn from the decision in the case of ***Chandrakant Deshmukh (supra)***. Despite the existence of Order

XV-A of CPC, which restricted the applicability of Order XV-A only to suit by lessor for eviction or recovery of arrears of rent and future mesne profits, in ***Sangeeta Prints (supra)*** recourse was taken to Order 39 Rule 10 of CPC.

28. The decision in ***Sangeeta Prints (supra)*** was delivered on 3rd May, 1985. In 1990 there was amendment to Order XV-A of CPC in its application to the State of Maharashtra, which reads thus:

*“STRIKING OFF DEFENCE IN A SUIT BY A LESSOR
(1) In any suit by a lessor or a licensor against a lessee or a licence, as the case may be, for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the Order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit. In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.*

(2) Before passing an Order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in Order to decide as to whether the defendant should be relieved from an Order striking off the defence.

(3) *The amount deposited under this rule shall be paid to the plaintiff lessor or licensor or his Advocate and the receipt of such amount shall not have the effect or prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.*

29. According to Mr. Cama, upon a comparative analysis of the unamended and amended provisions of Order XV-A of CPC, the legislature by subsequent amendment in the year 1990 consciously restricted the application of Order XV-A of CPC only to suits for eviction filed by lessor or licensor against lessee or licensee and, as such, recourse could not be had to Order 39 Rule 10 of CPC. For proper appreciation of the submission advanced by Mr. Cama, it will be relevant to consider the pre and post amendment position *qua* Order XV-A of CPC and the decisions prevailing at the relevant time. After the decision in ***Chandrakant Deshmukh (supra)***, was delivered on 1st July, 1982, with effect from 5th September, 1983, Order XV-A of CPC was introduced which was applicable to suit by lessor for eviction of a lessee *or* for recovery of rent and future mesne profits. The provisions of Order XV-A was thus restricted in its applicability only to the suits filed by lessor either for eviction or for recovery of rent and future mesne profits. Subsequently on 3rd May, 1985 by

decision in ***Sangeeta Prints (supra)***, this Court applied the analogy of Order XV-A of CPC to the suits filed by licensor against the licensee. In that case, the suit was filed by the licensor for eviction as well as arrears of royalty. Thereafter, the amendment to Order XV-A of CPC was brought into effect from 1st November, 1990 which applied Order XV-A of CPC to suits by lessor or licensor for eviction of the lessee or licensee with or without arrears of rent or license fees and mesne profits.

30. The decision in ***Chandrakant Deshmukh (supra)*** highlighted the situation that usually cases take inordinately long time to come up for trial and during all these times the landlord has to keep on paying taxes and other outgoings on the property, maintain it in good condition and repair it so that its life does not shorten. The Division Bench considered the plight of the landlord that in many cases the landlord depend for their livelihood upon the income from the properties and it would be a hardship in the circumstances if the landlord has the misfortune of having to file suits against his tenants who cannot be ordered to pay any amount on account of their use and occupation of their premises while the landlord is required to meet his responsibilities and liabilities. The

salutary object behind the introduction of Order XV-A in the year 1983 after the decision in ***Chandrakant Deshmukh (supra)***, was to obviate the financial sufferings of the landlord during the pendency of trial. The decision in ***Sangeeta Prints (supra)*** extended the same reasoning to the suits between licensor and licensee. Subsequent to the decision in ***Sangeeta Prints (supra)***, the amendment of the year 1990 was brought in with effect from 1st November, 1990.

31. The object behind the introduction of Order XV-A was to mitigate, to some extent, the hardship faced by landlord by reason of delay in the adjudication of the proceedings between landlord and tenant. The amendment of 1990 to Order XV-A was brought in after the decision in ***Sangeeta Prints (supra)***. The unamended provision applied to the suits by lessor for eviction of lessee *or* for recovery of rent and future mesne profits from him. By the 1990 amendment, Order XV-A of CPC was amended in its applicability to any suit by a lessor or licensor against a lessee or licensee, for his eviction with or without arrears of rent or license fee and future mesne profits. The purpose of the amendment was to bring Order XV-A of CPC in tune with the decision in the case of ***Sangeeta Prints (supra)*** and to extend the applicability thereof

even to the suits filed by licensor against licensee so as to bring parity between the lessor and licensor. By the amendment of 1990, the object was to broaden the applicability of Order XV-A and not to restrict the same.

32. In my view, the approach has to be object oriented and the amended Order XV-A of CPC cannot be construed in narrow and pedantic manner as suggested by Mr. Cama to denude the lessor or licensor of the benefit of deposit by taking recourse to Order 39 Rule 10 of CPC, where he chooses to sue only for the recovery of arrears of license fees. There is no rationale to exclude the category of suits seeking only recovery of arrears of rent or license fees from the benefit of provisions of Order 39 Rule 10. The intention of the legislature while amending Order XV-A in the year 1990 was to bring within its fold the suits filed by the licensor against the licensee. Although the amendment Order XV-A of CPC restricted the applicability to the suits filed for eviction, the benefit of deposit was extended irrespective of whether relief of arrears of rent or license fees was sought or not, which is indicative that the legislature was conscious of the necessity of requiring the tenant or licensee to deposit amount towards arrears payable for his occupation and to

protect the interest of landlord. In my opinion, the amendment of 1990 cannot be construed as conscious legislative intent to place an embargo on the power of the Court to resort to Order 39 Rule 10 of CPC in suits filed by lessor or licensor for reliefs other than eviction or that by doing so, the 1990 amendment would be rendered otiose.

33. In ***Selvel Publicity Consultants (supra)***, learned Single Judge of this Court was considering the issue as to the applicability of Order XV-A of CPC in suit filed for declaration and permanent injunction in the context of hoardings. In that case, the Plaintiff sought arrears of hoarding charges which was directed to be deposited. The learned Single Judge held that the provisions of Order XV-A of CPC were inapplicable as the suit was not filed by the lessor for eviction and held that the direction for deposit could be maintained in view of the powers available under Order 39 Rule 10 of CPC by relying upon decision in the case of ***Chandrakant Deshmukh (supra)***.

Issue (b):

34. The invocation of *force majeure* clause by which the

liability of Defendant No.1 to pay the license fees for the period from 1st April, 2020 until 7th June, 2020 stood waived is disputed by the licensor by contending that the *force majeure* clause covers only the eventuality of structural damage to the licensed premises.

35. The literal meaning of *force majeure* is "*vis major* i.e. Act of God" or "*superior force*". In the case of ***Dhanrajamal Gobindram v. Shamji Kalidas & Company [(1961) 3 SCR 1020]***, the Apex Court noted the account given by McCardie, J. in the case of ***Lebeaupin v. Crispin*** on the principle of *force majeure* as under :

"The expression "force majeure" is not a mere French version of the Latin expression "vis major". It is undoubtedly a term of wider import. Difficulties have arisen in the past as to what could legitimately be included in "force majeure". Judges have agreed that strikes, breakdown of machinery, which, though normally not included in "vis major" are included in "force majeure". An analysis of rulings on the subject into which it is not necessary in this case to go, shows that where reference is made to "force majeure", the intention is to save the performing party from the consequences of anything over which he has no control. This is the widest meaning that can be given to "force majeure", and even if this be the meaning, it is obvious that the condition about "force majeure" in the agreement was not vague. The use of the word "usual" makes all the difference, and the meaning of the condition may be made certain by evidence about a force majeure clause, which was in contemplation of parties."

36. The contention of Mr. Cama is that due to the lockdown imposed by the government during Covid-19 pandemic, the defendant was excused from its obligation for payment of license fees during the subsistence of restriction. On the other hand, the contention of Mr. Naik was that the clause of *force majeure* could not have been invoked as the Defendant No.1 was not prevented from making payment of the license fees as electronic banking transfer were operational. Clauses 22.2 to 22.4 of the agreement deals with situation where there is any structural damage to the building caused due to *force majeure* event. Clause 22.1 applies where by reason of *force majeure* event the performance by the affected party of any of its obligations is prevented in which case it shall be excused from such performance, the caveat being prompt notice being given.

37. Plain reading of Clause 22.1 of the agreement *prima facie* indicates that the clause is general in nature with the intention to cover all situations rendering the performing party incapable of performing its obligations. As noted by Apex Court in ***Dhanrajamal Gobindram (supra)***, where there is reference to *force majeure* clause, the intention is to protect the performing party from the

consequences of anything over which he has no control. By virtue of the *force majeure* event rendering the licensed premises inaccessible for business, the consequences which arose is inability to pay the license fees during the restriction. The obligation to pay is linked with the right to use the licensed premises. Although the use was not impeded by any act on the part of licensor, by reason of government action, the licensee was prevented from using the premises which constitutes *force majeure* event. Mr. Cama is right in his submission that Clause 22.1 which refers to both parties as potentially affected parties indicates that it is a general overarching clause. The intention of the parties can be made certain after evidence has been led, however, considering that the deposit has been directed by invoking Order 39 Rule 10, *prima facie* it appears that the licensee was excused from its obligations to pay the license fees during the period April, 2020 to 7th June, 2020. The Plaintiff has failed to *prima facie* establish that the force majeure clause was wrongly invoked by the Defendant No 1.

Issues (c), (d) And (e):

38. The issues (c), (d) and (e) are linked to the surrender of the 7th and 8th floors and, as such, are considered together. As the

relief of deposit is sought as an interim measure, it will be profitable to have a look at the relevant statutory provisions. Section 94(e) of CPC empowers the Court to make such interlocutory orders as may appear to the Court to be just and convenient to prevent the ends of justice from being defeated. The sections of CPC have been elaborated by Orders and Rules made in the First Schedule. As far as interlocutory orders are concerned, Order 39 of CPC govern the issuance of temporary injunctions and interlocutory orders. Rule 10 of Order 39 of CPC provides that where the subject matter of suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party with or without security, subject to further direction of the Court. In the present case, the suit is for recovery of arrears of license fees and, as such, the subject matter of suit is money.

39. Order 39 Rule 10 of CPC refers to admission of the party that the money belongs or is due to another party. In ***Chandrakant Deshmukh (supra)***, the Division Bench of this Court

clearly held that where a defendant admits that he is a tenant he impliedly admits that the property belongs to the plaintiff and money for the use and occupation thereof is due to him. The contention of Mr. Cama is that the decision of ***Chandrakant Deshmukh (supra)*** is inapplicable as it notes that right to claim is on account of continued occupation and use of the premises and in the instant case, the 7th and 8th floors have been surrendered.

40. On 22nd July 2020, a communication was issued by the Defendant No.1 to the Plaintiff that they need their support in working together the surrender of 7th and 8th floors. Admittedly, there was no response to this proposal and vide further communication, Defendant No.1 was put to notice that they will be forced to terminate the contract if payment is not made. As such, it will have to be considered as to whether *prima facie* Defendant No. 1 was entitled to unilaterally surrender 7th and 8th floors.

41. The term of the license was for the period of 10 years and the licensed area comprised of licensed area one and licensed area two. Licensed area one meant the area comprising of ground to eighth floor admeasuring 2,66,846 sq. ft. of gross licensable area

and the licensed area two comprised of the ninth floor of the building along with terrace of the building admeasuring 18,467 square feet of gross licensable area. The reason for bifurcation of the licensed area was that occupation certificate for 9th floor was not received at the time of execution of the agreement. The monthly compensation agreed upon between the parties was at the rate of Rs.105/- per square feet of gross licensable area. The argument is that the agreement is severable inasmuch as the compensation was payable per square feet and, as such, in respect of 7th and 8th floors, defendant No.1 was entitled to handover the possession.

42. The parties to the agreement are legal entities and it can be presumed that after exercise of due diligence, parties have entered into the agreement. By the agreement, license was given to occupy the premises which has been defined in clause 1.1.(dd) as a collective reference to two stilt floors, parking spaces and licensed area 1 and 2. Licensed area 1 and 2 collectively refers to the area from the ground to 8th floor and 9th floor and the terrace of the building. The compensation was agreed on the basis of per square feet of area which is a common method of computation of

monthly compensation where huge premises are given on leave and license basis. Admittedly, in the present case there is no other licensee in the entire building except Defendant No.1. The photograph tendered across the bar for the perusal of this Court would indicate that the entire building was made available to the Defendant No.1 for the purpose of carrying on his business. Conjoint reading of the agreement would *prima facie* indicate that the parties were *ad-idem* that the license was being granted in respect of the entire building and not in respect of any particular portion thereof. The definition of building in Clause 1.1.(e) would justify this interpretation that what was agreed to be handed over was the entire building.

43. There is no provision in the agreement which provides for surrender of a part of premises. The only provision as regards the termination is found in Clause 20 of the agreement which provides for the termination of license by the licensee after the expiry of licensed lock-in-period. Even in the said clause there is no right given to the licensee to terminate the license in respect of part of the licensed premises. Upon *prima facie* consideration of the clauses of the agreement, in my view, the Plaintiff has made out

prima facie case that the Defendant No 1 was not entitled to surrender 7th and 8th floor. I am, thus, not inclined to accept the submission of Mr. Cama that the contract was severable and upon surrender there was no liability to pay the license fees for the 7th and 8th floors.

44. The contract provided for the rights and obligations of the respective parties and the obligation of the licensor was to permit uninterrupted use and occupation of the premises during the licensed period subject to the licensee paying the license fees and the licensee's obligation was to make the payment to the licensor as contemplated in the agreement in regular and timely manner. By this clause, the licensee accepted the liability to pay the license fees as contemplated. As indicated above, upon *prima facie* reading of clauses of agreement, it appears that Defendant No.1 had no right to unilaterally surrender part of the premises. It can be inferred that in the absence of any right given to Defendant no.1 under the agreement to surrender part of the premises, the license subsists and there is an implied admission that the license fees is due to the Plaintiff and, as such, the provisions of Order 39 Rule 10 could be invoked for directing deposit of the license fees in respect of 7th and

8th floors.

45. Mr. Cama relies upon **B.P.C.L. (supra)** to buttress his submission that if there is specific provision in the CPC, recourse could not be had to other provision to direct deposit. In case of **B.P.C.L. (supra)**, the learned Single Judge was considering the issue whether the direction to deposit damages could be sustained and in that context considered the provisions of Order XV-A and Order 39 Rule 10 of CPC. In that case, the suit was for recovery of possession along with recovery of damages. Learned Single Judge observed that in suits between lessor and lessee or licensor and licensee specific provision is made under Order XV-A of CPC to ensure recovery of amount of arrears as well as amount arising during the pendency of the proceedings and, as such, the Courts are expected to take resort of those provisions of law and not to exercise their jurisdiction under some other provision of law. In the instant case, as the suit is money suit and not suit for recovery of possession, the provisions of Order XV-A of CPC are inapplicable and, as such, recourse could be taken of Order 39 Rule 10 of CPC to direct deposit of arrears of license fees. Pertinently, in **Sangeeta Prints (supra)**, learned Single Judge of this Court applied the reasoning

given in the case of ***Chandrakant Deshmukh (supra)*** to the suit between licensor and licensee and directed deposit under Order 39 Rule 10 of CPC.

46. The next submission of Mr. Cama is that non payment of the license fees for 7th and 8th floors amounts to breach of contract for which the remedy was for damages and the claim for damages is not debt due and payable and could not be directed to be deposited under Order 39 Rule 10. The agreement provides for lock-in-period of 60 months during which the licensee was not entitled to terminate the license. The contract does not provide for partial termination of agreement. Upon *prima facie* reading of the clauses of agreement, in the absence of any right to unilaterally surrender the 7th and 8th floors, the license is deemed to be subsisting. In the instant case, the claim of Plaintiff is for deposit of arrears of license fees in respect of 7th and 8th floors. There is no pleading that the claim is for damages for breach of contract for non payment of the license fees. The case of the Plaintiff is specific that there cannot be unilateral surrender of 7th and 8th floors and as the contract is not terminated, the Defendant No 1 is liable to deposit the arrears of license fees. The stand of Defendant No.1 is that there is partial

termination vis-a-vis 7th and 8th floors. In that event, as the termination is during the lock-in-period, the Plaintiff becomes entitled to the remainder of license fees for the lock-in-period. Defendant No.1 incurs an immediate liability to pay for the remainder of the lock-in-period and is a debt payable instantly and cannot be construed as damages requiring evidence to be led. Defendant No.1 claims that it is entitled to surrender 7th and 8th floors as the contract is severable and has denied in its written statement that the surrender of 7th and 8th floors is in breach of the contract. On the contrary, the case of Defendant No.1 is that the agreement permits it to surrender 7th and 8th floors.

47. In support of his submission that the damages cannot be granted at the interim stage, Mr. Cama relies upon the decisions in the case ***Union of India v. Raman Iron Foundary (supra)***, ***Iron and Hardware (India) Co., v. Shamlal and Brothers (supra)***, ***Gangotri Enterprises Ltd (supra)*** and ***B.P.C.L. (supra)***.

48. In the case of ***Uoi v. Raman Iron Foundary (supra)*** the issue before the Apex Court was relating to the interpretation of clause 18 of the general conditions of contract and in that case a dispute

had arisen between the parties whereby each party claimed that the other party has committed a breach of contract and therefore was liable to pay the respondent damages. In that case the claim was for damages and in that context the provisions of section 74 of the Indian Contract Act, 1872 were considered.

49. In the case of ***Iron and Hardware (India) Company (supra)***, the applications were made by the creditors for damages for breach of contract. The Court held that the breach of contract does not give rise to any debt and does not result in any existing obligation on the part of the person who commits the breach.

50. In the case of ***Gangotri Enterprises Ltd (supra)*** the Apex Court noted the decisions in ***Raman Iron Foundary (supra)*** and ***Iron and Hardware (India) Co., (supra)*** which held that the Court must decide that the defendant is liable and then proceed to assess what that liability is and that a claim for damages for breach of contract is not a claim for a sum presently due and payable.

51. There is no quarrel with the proposition of law that has been laid down that in case of claim for damages for breach of contract is not a claim for sum presently due and payable and it

becomes debt by fiat of the Court. However, as noted above, the claim of the plaintiff is for arrears of the licence fees and not for damages. Pertinently, the submission that the non payment of license fees amounts to breach of contract for which damages are payable is raised for the first time before this Court.

52. As regards the decision in the case of ***Union of India v. D. N. Reveri and Co., [(1976) 4 SCC 147]***, the Apex Court had held that the contract in a commercial document and it must be interpreted in such a manner so as to give efficacy to the contract rather than to invalidate it. In the present case, upon prima facie reading of the clauses of the agreement, by way of interim measure the deposit is ordered by the Court, which clauses will be made certain only after evidence is led.

Issue (f) :

53. By pointing out the reliefs in the plaint, it is submitted that by the interim relief what has been granted is the specific performance which was sought in the plaint and as such there is no need for any further adjudication. In my view, suit between the landlord and tenant falls on a different footing and the same has been recognized by the legislative mandate of Order XV-A and

Order 39 Rule 10 of CPC. The provisions of Order 39 Rule 10 of CPC are an extension of the provisions of Order 12 Rule 6 of CPC dealing with the judgments on admission. In view of the specific statutory provision providing for a direction of deposit, it cannot be said that the direction of deposit amounts to grant of final relief. It needs to be noted that the issue as to whether leave and licence agreement is valid and subsisting is required to be adjudicated and by the interim relief what has been directed is the deposit of arrears of licence fees and other charges as regards the use and occupation of the premises by the tenant.

Issue (g):

54. As regards the maintainability of revision application, Full Bench of this Court in the case of ***Bharatiben Shah vs Gracy Thomas (supra)*** in answer to the reference to determine the scope of the power of revision under Section 34(4) of the Maharashtra Rent Control Act, 1999 (for short "the Rent Act") and whether the procedural order under CPC would be amenable to the revision under Section 34(4) of the Rent Act in suit arising out of the Rent Act held that the revision under Section 34 (4) the Rent Act is not maintainable in respect of procedural order passed under Code of

Civil Procedure in a suit arising out of Maharashtra Rent Control Act, 1999, if such order does not affect the substantive rights and liabilities of the parties under the Rent Act or any other substantive law. In the present case, the trial Court has rejected the application for deposit of arrears of license fees. The relief of deposit sought by the landlord amounts to securing the arrears of rent or license, which according to him, had become due and payable due to continuous use and occupation of the licensee of the licensed premises. By refusing the relief, substantive right of the landlord has been affected and the same cannot be termed as a procedural order. In my view, the rejection of application seeking deposit of arrears affected the substantive rights and, as such, revision is maintainable against the said order.

Issue (h) :

55. Mr. Cama contends that the Revisional Court has substituted its own view for that of the Trial Court. He relies upon the decisions in the case of ***Wander Ltd vs Antox India P Ltd (supra)***, ***Purshottam Vishandas Raheja vs Shrichand Vishandas Raheja (supra)***, ***Mohd. Mehtab Khan vs Khushnuma Ibrahim Khan (supra)***, ***World Crest Advisors LLP vs. Catalyst Trusteeship***

Limited (supra). There can be no quarrel with the proposition of law laid down in these judgments.

56. The decision in **Wander Ltd v. Antox India P. Ltd (supra)** which is a landmark decision, enunciates the scope of interference by the Revisional Court in the exercise of discretion by the Court of first instance that the Revisional Court will not substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, where the Court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunction. The Apex Court has held that if the view taken by the Court below was reasonably possible on the material, the Revisional Court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below. The decision in **Purshottam Vishandas Raheja (supra)**, **Mohd. Mehtab Khan (supra)** and **World Crest Advisors LLP (supra)** follow this enunciation of law laid down by the Apex Court in the case of **Wander Ltd (supra)**.

57. The trial Court interpreted the provisions of contract regarding *force majeure* event, which finding was reversed by the

Revisional Court. The Trial Court ignored various decisions of this Court on the provisions of Order 39 Rule 10 of CPC and held that as defendant no.1 has not admitted the liability, the provisions of Order 39 Rule 10 of CPC will not be applicable. The Revisional Court observed that findings of the Trial Court on facts as well as on law was palpably perverse. It cannot be said that the view taken by the trial Court was a possible view on the interpretation of Order 39 Rule 10 of CPC. On the contrary, trial Court did not appreciate various decisions of this Court and declined to apply the provisions of Order 39 Rule 10 of CPC warranting interference by the Revisional Court.

58. While on this issue, it will be necessary to consider the interpretation placed by the Revisional Court on the provisions of Order 39 Rule 10 of CPC. Order 39 Rule 10 of CPC reads thus:

"Where the subject matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last named party, with or without security, subject to the further directions of the Court."

59. The Revisional Court interpreted the provision and held that the provision consists of two parts which are separated by use

of “comma” and the admission is required only for the first part and in the later part where the money belongs to other party is due to other party no admission is required. The interpretation of Order 39 Rule 10 by the Revisional Court, if accepted, will restrict the admission only to the case where the money is held as trustee for another party. Plain reading of the provision will indicate that the provision applies where the party admits that the money is held as a trustee as well as in case where the party admits that it belongs to or is due to another party. The interpretation of the Revisional Court on the provision of Order 39 Rule 10 is unsustainable. Even though I have held that the interpretation placed on order 39 Rule 10 by the Revisional Court is unsustainable, it cannot be said that by doing so, the Revisional Court has interfered with the discretion exercised by the trial Court.

60. In the facts of the present case, the grant of interim relief necessitated interpretation of the relevant provisions of CPC. The Revisional Court has interpreted the provisions, which according to the Revisional Court was the correct interpretation of the same, and the same cannot be said to be an interference in the exercise of discretion by the trial Court.

61. As regards the contention that the issue as regards 7th and 8th floors was not raised before the trial Court and as such the Revisional Court could not have considered the same, it needs to be noted that the application of plaintiff sought the relief of payment of arrears and other charges from 1st April 2020 and, as such, the entire issue as regards the *force majeure* event as well as the surrender of 7th and 8th floors was under consideration of the trial Court. Perusal of the order of trial Court would indicate that the trial Court had noted the submissions of petitioner and the respondent as regards 7th and 8th floors and had thereafter rejected the application apart from the ground of *force majeure* by taking into consideration the provisions of Order 39 Rule 10 of CPC which as per the Trial Court in the facts of the case was not admitted.

62. Before summarizing the findings on the issues enumerated above, it needs to be noted that Defendant No.1, who is a corporate entity, had executed the agreement being fully aware of its rights and obligations subject to which license to occupy has been granted. The agreement permits Defendant No.1 to terminate the contract in event the *force majeure* event renders the licensee unable to use

the entire premises for a period in excess of 45 days without any liability on the licensee to pay the license fees for the remainder of the licensee lock-in-period. The Defendant No.1 could have easily opted for termination in which case there was no liability to pay for the remainder of lock-in-period. Here is a licensee who does not elect to terminate the contract and discharge its liability but continues with the contract and enforces its right to use the premises while disputing the corresponding liability to pay the arrears of license fees. Having opted to continue with the agreement, Defendant No.1 is liable to pay the license fees for 7th and 8th floors as per the agreement and the Appellate Court has rightly ordered the deposit.

63. In the light of above discussion, the issues raised for consideration are answered as under :

(a) By the legislative amendment of the year 1990 to Order XV-A of CPC in its application to the State of Maharashtra the legislature did not intend to restrict the right of lessor or licensor to seek benefit of deposit by resorting to Order-39 Rule-10 of CPC in suits filed other than for eviction.

(b) *Prima facie*, the *force majeure* clause in Clause No. 22.1 of the agreement excused the Petitioner from its obligation to pay the license fees during the subsistence of the *force majeure* event for the period from April, 2020 to 7th June, 2020.

(c) The contract was not severable and there could not be unilateral surrender of 7th and 8th floor.

(d) The subsistence of the license implies an admission of liability of payment of license fees in respect of the 7th and 8th floors excluding the period from April 2020 to 7th June 2020 for the purpose of Order 39 Rule 10 of CPC.

(e) The demand for the arrears of license fees for the 7th and 8th floors cannot be construed as damages.

(f) The statutory provisions of Order XV-A and Order 39 Rule 10 of CPC permit order of deposit and it cannot be said that final relief has been granted at interim stage.

(g) Revision is maintainable as substantive rights of the parties are affected.

(h) It was permissible for the Revisional Court to interfere with the order of the Trial Court as the findings of the Trial Court were palpably perverse.

64. Having regard to the above, the impugned order remains

undisturbed except Clause 3 of the impugned order of Revisional Court, which is modified to read as under :

“3. The Defendant No.1 is hereby ordered in exercise of CPC to deposit the arrears of license fees in respect of the 7th and 8th floors from July, 2020 till date as per the Leave and License Agreement dated 17th May, 2019 read with Deed of Rectification dated 30th September, 2019 within a period of three months from today and to continue to regularly deposit the license fees in respect of 7th and 8th floors every month as and when it falls due. ”

65. Resultantly, Petition is partly allowed in above terms. Rule is made absolute accordingly. Interim application does not survive and is disposed of.

66. In view of the disposal of writ petition, nothing survives for consideration in Interim Application No. 824 of 2023 and the same is accordingly disposed of.

[Sharmila U. Deshmukh, J.]

67. At this stage, a request is made for continuing the interim order, which is in operation since 27th January 2022, for a

period of six weeks. Interim order to continue for a period of six weeks from the date of uploading of the present judgment.

[Sharmila U. Deshmukh, J.]

[Corrected Judgment as per speaking to the minutes order dated 27th Feb 2024.]