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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10183 OF 2023

Chandrakant R. Shah ...Petitioner
V/s.
Lemon Entertainment Ltd. ...Respondent

Mr.Yashodhan V. Divekar with Mr.Pawan Rajpal and Adv.Pratiksha Mane i/b M/s.Divekar & Co. for the Petitioner.

Mr.Jaydeep Deo with Mr.Mukesh R. Mishra for the Respondent.

CORAM : RAJESH S. PATIL, J.
DATE : 5TH OCTOBER, 2023.

P.C. :-

1. This Writ Petition filed under Article 227 of the Constitution of India, challenges the Judgment and Order passed on 20 March 2023 passed by the Appellate Bench of the Court of Small Causes at Mumbai, in Miscellaneous Appeal No.158 of 2022.

F A C T S :

2. It is an undisputed fact that the Petitioner herein is the owner of a premises being Unit No.502, situated on the 5 floor, “B “ Wing, building known as Duro Lite House, Andheri, Mumbai, admeasuring around 2300 sq.ft carpet area (for short “the said

premises”).

3. It is also an admitted fact that the Petitioner, as a owner has executed a leave and license agreement dated 17 January 2017 in favour of the Respondent / M/s. Lemon Entertainment Limited. The duration of the said leave and license agreement was for a period of 59 months and compensation amount of Rs.2,40,000/- per month was payable, which was subject to an increase after every 11 months at 5%.

4. As there was default on the part of the Respondent / licensee, the Petitioner issued an email dated 29 June 2019 at 4.16 p.m. to the Respondent. The said email referred to an earlier email dated 26 June 2019, wherein the statement of the outstanding amount of Rs.31,72,024/- was been referred. The said email dated 29 June 2019 further refers to the promise being made by the Respondent that they will pay a sum of Rs.5,00,000/- on 27 June 2019 and further Rs.5,00,000/- on 29 June 2019. It further states that the said amount as promised was not paid. It also refers to promise being made that a sum of Rs.5,00,000/- would be paid by 1 July 2019.

5. The said email dated 29 June 2019, the Respondent replied by their email on the same day i.e. 29 June 2019 at 4.25 p.m. and they thanked for the support given to them and also referred that

due to unavoidable circumstances and due to financial difficulties, they were not able to pay and that they are giving 100% assurance that they will remit the previous dues once they come to normal course of business, as they always did in the past. They further promised that they will try to make 50% amount of the outstanding payment by 15 July 2019 and balance outstanding would be paid on or before 31 July 2019.

6. It appears that as no, further payments were received by the Petitioner. Hence, the Petitioner soon thereafter, through their Advocate's Notice dated 31 January 2020 addressed to the Respondent, at their all three addresses informed them that as per clause 26 of the leave and license agreement to clear all outstanding dues as mentioned in the notice and further called upon to make good the breaches of the conditions of the leave and license agreement, by making payment of the amount as mentioned, within 30 days of receipt of the notice, or else they will be compelled to terminate the leave and license agreement dated 17 January 2017 and claim all dues, including compensation, damages as permitted under the said leave and license agreement.

7. Shortly thereafter on 13 February 2020, the Respondent / licensee addressed an email to the Petitioner and raised certain issues about parking problem and about lift. In the said email after

mentioning about the various difficulties faced by the Respondent, they mentioned that they are suffering as their clients are totally disappointed.

8. The Respondent's advocate by their notice dated 29 February 2020, replied to the Petitioner's advocate and raised certain preliminary objections mainly with the issues relating to parking and about the lift.

9. The Petitioner's advocate thereafter by their notice dated 17 June 2020, on instructions of their client, terminated the leave and license agreement dated 17 January 2017 and also called upon the Respondent to pay the outstanding amount of Rs.85,38,400/- upto June 2020 and to pay further amount from June 2020 with interest.

10. Eventually, the Petitioner filed a suit in the Court of Small Causes at Bandra, Mumbai being L.E. & C. Suit No.34 of 2021, under Section 41 of the Presidency Small Causes Court's Act. The said suit sought three prayers. The said three prayers read as under :-

> a) That the Defendant be ordered and decreed to quit, vacate, handover and deliver quiet, vacant and peaceful possession of the Suit premises to the Plaintiff,
>
> b) That the Defendant be ordered and decreed to pay to the Plaintiff an amount of Rs. 88,54,649.00 (Rupees Eighty Eight Lacs Fifty Four Thousand Six Hundred Forty Nine only) as per Exhibit B hereto with further interest thereon @18% p.a. from the date of suit till payment ;

> c) That the Defendant be ordered and decreed to pay to the Plaintiff mesne profits / liquidated damages of Rs. 27000/- per day from 18.06.2020 till the date Defendant vacates the suit premises and hands over the same to the Plaintiff."

11. The Petitioner also preferred Interim Application (Exhibit – 12). In the said Interim Application, the Petitioner/ Plaintiff sought three prayers. Those three prayers read as under :-

> a) Pending the hearing and final disposal of this suit the Respondent be directed by a mandatory injunction to vacate the suit premises;
>
> b) Pending the hearing and final disposal of the Suit, the Respondent be directed to furnish security to the extent of the amount claimed in the suit by depositing all the outstanding amounts due as stated in Exhibit B of the Plaint in this Hon'ble Court or in any other manner as this Hon'ble Court may deem fit and proper;
>
> c) In the event the Respondent fails to furnish security as prayed for in prayer (b) above the properties of the Respondent be attached; "

12. The Respondent thereafter filed their written statement. Further the Respondent did not file any reply to the Interim Application and they relied upon the written statement filed by them.

13. The Court of Small Causes subsequently heard the parties on the Interim Application (Exhibit – 12). The Learned Judge of the Court of Small Causes thereafter allowed the Interim Application (Exhibit – 12) only to the extent of prayer clause (a). The Prayer clause (a) of the Interim Application reads as under :-

> “a) Pending the hearing and final disposal of this suit the Respondent be directed by a mandatory injunction to vacate the suit premises; “

14. The Respondent / licensee being dis-satisfied with the Judgment and Order dated 19 July 2022 passed by the Single Judge of the Court of Small Causes on Exhibit – 12, preferred Miscellaneous Appeal No.158 of 2022, before the Appellate Bench of the Court of Small Causes at Bandra, Mumbai.

15. Consequently, the Appellate Bench of the Court of Small Causes heard the parties on Miscellaneous Appeal and by its Judgment and Order dated 20 March 2023, allowed the Miscellaneous Appeal No.158 of 2022, of the Respondent / licensee and set aside the order dated 19 July 2022 passed by the Single Judge of the Court of Small Causes, thereby rejecting Exhibit – 12 of the Petitioner / licensor.

16. Being aggrieved by the Judgment and Order dated 20 March 2023, passed by the learned Single Judge of the Court of Small Causes, the Petitioner / licensor filed the present Writ Petition, challenging the said order of the Appellate Bench of the Court of Small Causes.

<u>Submissions of the Parties :</u>

17. Mr.Divekar made submissions on behalf of the Petitioner / licensor :

i). Mr.Divekar submitted that the licensor is the senior citizen, aged 89 years. Mr.Divekar submitted that the Appellate Bench of the Court of Small Causes did not consider in true sense the Judgment and Order passed by the Single Judge of the Court of Small Causes, and the provisions of law in its true spirit. He submitted that the clauses as mentioned in the leave and license agreement were clear and there was no ambiguity. He submitted that under no condition, once there is termination of the leave and license agreement by a notice issued in that regard, then as per clause 26 of the leave and license agreement, the licensee could not hold the subject premises. He further submitted that after the leave and license agreement was over, there can't be any reason for the licensee to continue in the said premises.

ii). Mr.Divekar submitted that the defence of the licensee that he is holding the premises only because according to the licensee, there is huge claim pending against the licensor does not make any sense because (a) there is no counter claim filed by the licensee, (b) even for the sake of argument, it is considered that there was counter claim, even then the possession of the suit premises can't be held back by the licensee for any reason whatsoever. Mr.Divekar further pointed out that after August 2018, the Respondent / licensee is enjoying the premises without paying even a rupee to the licensor. He further stated that there is no clause in the leave and license agreement which allows the licensee to hold on the premises until payment of any alleged dues as mentioned by the licensee.

iii). Mr.Divekar further pointed out that therefore, the licensor, who is the senior citizen of 89 years of age has no option but to approach Court under the jurisdiction of Section 41 of the Presidency of Small Causes Act claiming various reliefs.

iv). Mr.Divekar further submitted that in the Interim Application, the Petitioner had rightly sought for an interim injunction of handing over possession, as there is no dispute as far as relationship between the parties was concerned and also on the issue that the term of the leave and license agreement has been over. He further submitted that specific claim of both the parties is concerned regarding the amount being payable adjusting the set off, if any, the same can be decided as and when the main application filed before the Court of Small Causes. He therefore, submitted that even if Exhibit – 12, prayer clause (a) is allowed the main prayer clause (b) for recovery of arrears and prayer clause (c) for damages would still subsist and the same would be decided by the Court of Small Causes after hearing both the parties. He further submitted that there can’t be a case that the licensee would hold the premises even after expiry of the period of leave and license agreement and say that they will not pay any money during that period.

v). Mr.Divekar to buttress his submission relied upon the judgment in the case of ***Hammad Ahmed vs. Abdul Majeed & Others,*** reported in ***(2020) 1 SCC (Civil) 475***. Mr.Divekar also submitted that the impugned Order passed by the Appellate Bench of the Court of Small Causes, Mumbai should be quashed and set aside and it may be directed that Exhibit 12 be allowed and possession of the suit premises be handed over to the Petitioner immediately and hearing of the main application be expedited.

18. On the other hand Mr.Jaydeep Deo, made his submission on behalf of the Respondent / licensee :

i). In the beginning of his submission, on query raised by this Court, Mr.Deo pointed out that the Directors of the Company are not two but there are three persons. The name of two persons were already handed over by him to the Court and the third person, who is present in the Court i.e. by name Sameer Ahmed Khan. He further replied on the query raised by the Court that there are few criminal cases pending against the Respondent company and also a case of Enforcement Directorate in Delhi. He further submitted that Central Bureau of Investigation has already given clean chit to his client.

ii). Mr.Deo submitted that even if one looks to the prayers as raised in the Interim Application allowing the same shall be as good as allowing the main application. He pressed that such a relief can't be granted by any Court of Law. Mr.Deo further submitted that the argument of equity and argument of procedure, if that is to be considered, the Rule is that the law of procedure will prevail over equity. Mr.Deo submitted that it is an unheard procedure where decree of possession is passed, when the main application is pending. He further fairly submitted that in the clauses as mentioned in the leave and license agreement, there are no specific clauses which allows possession to be handed over at interim stage.

Further he referred to the judgment of the Supreme Court in ***Metro Marins vs. Bonus Watch Co. Pvt. Ltd.*** reported in ***(2004) 7 SCC 478.***

iii). Mr.Deo submitted that in the judgment of Supreme Court in case of ***Metro Marins*** (supra) the facts are identical to the present proceedings. He further submitted that in ***Metro Marins*** case it was leave and license agreement, the possession was sought. He submitted that the Supreme Court dealt with the issue and specifically came to the conclusion that without going to the trial, a decree of handing over possession, cannot be granted by interim order. He further submitted that the Supreme Court very clearly stated in the said judgment it is fact that the litigation is a luxury litigation or even though the licensee has to pay huge amount by way of damages, the question is whether the possession can be given at the interim stage. He further pointed out that even the order of Court Receiver can't be passed in such a case.

iv). Mr.Deo further submitted that the Appellate Bench of the Court of Small Causes has considered each and every aspect of law, has rightly set aside the order of the Trail Judge. He further submitted that the option has been given in paragraph 14 of the impugned judgment and order by the Appellate Court to the Petitioner to claim the relief under Order 15-A of the Code of Civil Procedure. He submitted that even though the suit is expedited and such an application at the interim stage under Order 15-A of Code of Civil Procedure is preferred, will cover the case of equity as far as the Petitioner is concerned. He further states that this Court should not entertain Writ Petition under Article 227 of the Constitution of India and dismiss the same.

A n a l y s i s :

19. The Respondent has filed two affidavits dated 30 September 2023 and 3 October 2023, both these affidavits are affirmed by Mr.Deepak Kumar Ram, authorized signatory of the Respondent, paragraph 2 of the affidavit dated 3rd October, 2023 reads as under :-

> "2. I say that however the amount outstanding as per leave and license agreement was not

> mentioned. I say that as per leave and license agreement an amount of Rs.1,85,93,039/- from August 2018 till September 2023 is outstanding. I say that the said amount is liable to be set off from the amount of Rs.4,78,00,000/-."

20. Therefore in the affidavit the Respondent company admitted that a sum of Rs. 1,85,93,039/- (Rupees One Crore Eighty Five Lacs Ninety Three Thousand and Thirty Nine only) is outstanding as on September 2023. No doubt the Petitioner has not admitted the said outstanding figure. According to the Petitioner, the Petitioner has not admitted to this outstanding figure. According to the Petitioner the outstanding figure is much more than what has been stated in paragraph 2 of the said affidavit.

21. One has also to consider that the Petitioner is the senior citizen of 89 years old and he will be depending on the income derived by him as license fees from the said premises. It is an admitted fact that the license period has been over on 3 July 2021. Today even after the period of two years have passed, leave aside to pay compensation amount, the Respondent company has not even handed over possession back to the Petitioner, so that they could have given the premises to some third party, who could have at least paid the license fees to the Petitioner.

22. This coupled with the fact that the submissions made by the Director of the Respondent company that there are various

criminal cases pending against the Directors of the Respondent company as also the complaint pending with Enforcement Directorate authorities, it makes sense of Trial Court passing an order of handing over possession back to the Petitioner in the interim period. There is no dispute that the relationship between the parties are that of licensor and licensee and that the license period was over at least more than two years back.

23. In ***Metro Marins*** (supra) the relationship of parties is disputed as mentioned in paragraph 7 of the said judgment. So also in the whole of the judgment of Metro Marins what has been mentioned is the suit for possession by a licensor against the licensee. So also in Metro Marins case in paragraph 8, the statement of the Respondent / licensor is recorded that " Appellant has not paid any rent for last so many years which is also a good ground for rejection of the appeal i.e. assuming he is a tenant, he could not continue to be in possession of the property without paying any rent". Therefore, the relationship between the parties as far as Metro Marins case is concerned is at dispute, whether it is relationship between licensor or licensee or it is relationship between the landlord or tenant.

24. I am of the considered view that whenever the claim is not that of licensor or licensee, and it is of tenancy as far as the

tenant is concerned, he always is protected by Rent Control Act. But as far as licensor and licensee is concerned, since the license period is over , all that licensee has to do is pay compensation and hand over possession to the licensor and as far as any other dues like deposit amount or any other amount is concerned, licensee always has a right to recover from licensor by following due process of law.

25. For the reasons stated above, the Writ Petition is allowed. The impugned order dated 20 March 2023, passed by the Appellate Bench of the Court of Small Causes at Mumbai, in Miscellaneous Appeal No.158 of 2022 is quashed and set aside. The Respondent is directed by a temporary mandatory injunction to vacate the suit premises within a period of eight weeks from the date of this order.

(RAJESH S. PATIL, J.)