

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8520 OF 2023**

Mr. Harendra Damji Bhalla

..... Petitioner

**V/s.**

Mrs. Neha Vinayak Nagwekar

..... Respondent

**WITH****WRIT PETITION NO.8947 OF 2023**

Neha Vinayak Nagwekar

..... Petitioner

**V/s.**

Harendra Damji Bhalla

..... Respondent

Mr. Pradeep J. Thorat a/w. Ms. Nazia Shaikh i/b Ms. Aditi Naikare for Petitioner in WP No.8520/2023 and for Respondent in WP No.8947/2023.

Mr. Prashant Nayak for Respondent in WP No.8520/2023 and for Petitioner in WP No.8947/2023.

**CORAM : SHARMILA U. DESHMUKH, J.****DATE : 31<sup>st</sup> OCTOBER, 2023.****P. C.:**

1. The challenge in the Petition is to the order dated 28/4/2022 passed by the trial Court in an Application filed under Order 15A of C.P.C. By the impugned order, the Petitioner who was the original Defendant is directed to pay arrears of license fees for the period from 1/4/2019 to 31/3/2020 at monthly rate of Rs.14,500/- and clause (ii) of the said order

Corrected pursuant to speaking to the minutes order dated 1/12/2023.

directs the Petitioner to pay monthly compensation of Rs.90,000/- for the period from 1/4/2020 onwards.

2. The facts of the case are that L.E. Suit No.25/2020 was instituted by the Respondent seeking decree of eviction against the Defendant. In the plaint it is pleaded that the husband of the Respondent had given the premises on leave and license basis to the Petitioner for conducting the business of Restaurant and Bar on 1/9/1999 for the period from 1/9/1999 to 31/8/2004. It is further her case that the Petitioner showed his willingness to continue as a licensee for further period after 31/8/2004 and the said leave and license was orally renewed for successive periods which continued till 31/3/2007. That, thereafter the deceased husband of the Respondent executed a leave and license agreement in writing dated 1/4/2007 for the period from 1/4/2007 to 31/3/2010 which was also orally renewed after 31/3/2010. The case of the Respondent is that oral leave and license agreement was terminated due to efflux of time on 31/3/2019. As regards the license/compensation in respect of the subject premises, it is pleaded in paragraph No.18 that for the period from 1/4/2018 till 31/3/2019, the Petitioner used to pay the actual license compensation at the rate of Rs.10,625/- *vide* banking channel for use and

occupation of the licensed suit premises. It is further pleaded that for the period from 1/4/2018 to 31/3/2019 the Petitioner used to pay compensation for usage of statutory licenses at the rate of Rs.34,375/-. The plaint further pleads that despite termination of leave and license agreement, the premises were not handed over and as such the Suit for eviction came to be filed. As regards the claim for the purpose of the court fees, the plaint pleads that the claim amount is based at the monthly license compensation at Rs.10,625/- and requisite court fees have been paid by calculating the claim at the monthly license fees of Rs.10,625/- multiplied by 150 .

3. In these proceedings, an Application came to be filed by the Respondent under Order 15A of the C.P.C. seeking direction to the Petitioner to pay interim compensation and interim mesne profits amounting to Rs.1 Lakh as arrears for the period from 1/4/2019 till 31/3/2020 as arrears of license compensation for illegal possession, occupation and usage of the premises aggregating to Rs.12 lakhs. Further prayers sought an enhancement at 10% on the amount which was sought in the prayer clause (a) of the Application.

4. Affidavit-in-reply came to be filed by the Petitioner in which the

case put up by the Petitioner that the Petitioner paid the monthly compensation of Rs.14,500/- to the husband of Respondent and continued to do so even after his death by making the payment to the Respondent up to March 2016. It is the case of the Petitioner in the reply that thereafter there was an oral arrangement by virtue of which the brother of Respondent's husband Sanket Nagwekar was paid 7/8<sup>th</sup> of the monthly compensation and the Respondent was paid 1/8<sup>th</sup> of the monthly compensation which by virtue of enhancement come to Rs.90,000/- as in the year 2019.

5. The trial Court after taking into consideration the pleadings placed on record held that there existed licensor-licensee relationship between the parties and no amount towards license fees appears to have been paid since 1/4/2019. The trial Court did not accept the case of the Petitioner as regards the arrangement with Sanket Nagwekar. Upon consideration of the facts of the case the Court passed the impugned order directing the Petitioner to pay arrears of license fees from 1/4/2019 to 31/3/2020 at the monthly rate of Rs.14,500/- which this Court is informed that, has been paid. The dispute is in respect of clause (ii) of the order which directs the Petitioner to pay compensation for the period from 1/4/2020 onwards at a monthly rate of

Rs.90,000/-.

6. Heard Mr. Pradeep J. Thorat for the Petitioner and Mr. Prashant Nayak for Respondent

7. Learned counsel appearing for the Petitioner has taken this Court through the averments in the plaint as well as in the application filed under Order 15A of C.P.C. and the reply thereto. He would submit that a specific case has been put forth by the Petitioner as regards the oral arrangement between the Petitioner, Respondent and the said Sanket Nagwekar. He would urge that having accepted the oral arrangement of payment of Rs.90,000/-, the trial Court could not have negated the assertion as regards the oral arrangement whereby 7/8<sup>th</sup> of the amount was to be paid to Sanket Nagwekar. According to him, the amount was duly paid to Sanket Nagwekar and he could not now be directed to pay the compensation at the rate of Rs.90,000/- from 1/4/2020 onwards. He has taken this Court to the application for appointment of Court Receiver and the orders passed thereon to press into service the position that the possession of the premises had been handed over on 11/8/2020. According to him, the same has been admitted position in the pleadings and as such the direction to the Petitioner

Corrected pursuant to speaking to the minutes order dated 1/12/2023.

to continue to pay from 1/4/2020 is unsustainable.

8. *Per contra*, learned counsel appearing for Respondent submits that the oral arrangement between Petitioner and Respondent and Sanket Nagwekar is a concocted story which has been put forth to deny the rightful compensation which is payable to the Respondent. He would submit that once leave and license agreement has been entered into between the Respondent's late husband and Petitioner, the possession is required to be handed back to the Respondent. He would submit that the case of the Petitioner is that the forcible possession has been taken. However, there is no police complaint lodged in that respect. According to him, the figure of Rs.90,000/- has been rightly directed to be paid as monthly compensation from 1/4/2020 onwards till the final disposal inasmuch as the possession of the premises has not been handed over to the Respondent. He would submit that if the forcible possession has been taken the same cannot be to the detriment of the Respondent, who is entitled to receive possession of the premises. According to him, till the possession is handed over to the Respondent the monthly compensation of Rs.90,000/- have to be paid.

9. Considered the submissions and perused the record.

Corrected pursuant to speaking to the minutes order dated 1/12/2023.

10. If the pleadings in the plaint are considered, the case of the Plaintiff-Respondent is that after the term of the written leave and license agreement expired by efflux of time, there was oral renewal of the agreement, pursuant to which amount of Rs.10,625/- was agreed as the monthly compensation. It is for the period from 1/4/2018 to 31/3/2019 that the compensation for usage of the various statutory licenses at Rs.34375/- is stated to be agreed to be paid in cash. What can be inferred is that the license/compensation for use of the premises was fixed at Rs.10,625/- per month. At this stage, it will be necessary to refer to the provisions of Order 15A of the C.P.C. which provides as under:

*“(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.”*

11. Plain reading of the provision would show that the Court can direct on account of arrears upto the date of order the deposit of the amount which is in arrears of the license fees and nothing further. In the present case, pleadings would indicate that the actual license compensation as per the Respondent's own case is Rs.10,625/- per month. The contention of

learned counsel for Respondent is that the amount which was being paid towards usage of statutory license which takes the figure to Rs.45,000/- aggregate is also to be included, is liable to be rejected for the reason that what is shown as the claim for the purpose of valuation and payment of court fees is the monthly license compensation of Rs.10,625/-. The trial Court while passing the impugned order has taken into consideration the assertion in the reply to the application by the Petitioner that an amount of Rs.14,500/- was being paid as the monthly license fees despite there being no such case being put forward by the Petitioner. Considering that the Petitioner has admitted that amount of Rs.14,500/- was being paid, there is no requirement to disturb clause (i) of the orders and in any event learned counsel for Petitioner has informed this Court that the same has been complied with.

12. Serious dispute has been raised as regards the payment of compensation from 1/4/2020 onwards at monthly rate of Rs.90,000/-. Such a direction would envisage a situation where the possession of the premises is continuing with the Petitioner and has not been handed over. If we look at the pleadings in the application filed by the Respondent for seeking and for appointment of Court Receiver in paragraph No.4 the Respondent has

pleaded that the suit premises is not in the possession of the plaintiff licensor or defendant-licensee. Respondent-plaintiff does not deny her relationship with Sanket Nagwekar. It is further pleaded in the said application that Sanket Nagwekar has already created third party rights as well as illegal rights and interest in the suit premises by misusing the impugned order dated 16/12/2016 as well as has illegally and forcibly took possession of the suit premises and also executed illegal leave and license dated 20/6/2022 and obtained various illegal licenses at the said suit premises. The pleadings in fact would demonstrate a position where Respondent herself has admitted that possession of the premises legally or illegally has been forcibly taken over by the said Sanket Nagwekar. The remedy in that event will be as against Sanket Nagwekar in an appropriate proceedings. To my mind once possession has been taken over from the Petitioner whether by Respondent or any other third party, to the knowledge of the Respondent, who has chosen not to take any steps against Sanket Nagwekar for taking back the possession of the subject premises, the Petitioner who was a licensee cannot be directed to pay the monthly compensation at the rate of Rs.90,000/- for the period from 1/4/2020 onwards in exercise of powers under Order 15A of the C.P.C. which is specific in that regard. As it has been admitted that the premises were in possession of the Petitioner till 11/8/2020 clause (ii) of

the impugned order is modified to read as under:

*ii. Defendant is hereby directed to deposit compensation for the period from 1/4/2020 to 11/8/2020 at the rate of Rs.90,000/- per month. Amount be deposited within a period of two weeks from today in the trial Court. The disbursement of the amount will be subject to orders passed by the trial Court at the time of final adjudication.”*

14. Writ petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)