2023:BHC-AS:38506

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12029 OF 2022

M/s. KHK Hospitality Services and Ors. ... Petitioners.
Versus
S.A. Developers ... Respondent.

Mr. Arif Bhati a/w Mr.Anuj Shukla, Advocate for the Petitioners.
Mr.Ranjit Thorat, Senior Advocate a/w Mr.Ketan Parekh i/by K.R.Parekh & Co., for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 19, 2023.

P. C.:

1. Heard.

2. The challenge in the Petition is to the order dated 28th July, 2022 passed by the Appellate Court upholding the order of Trial Court dated 28th October, 2021, which allowed the Application filed under Order XV-A of the Code of Civil Procedure, 1908 and directed the defendant to pay Rs.5,62,100/-per month alongwith GST payable on that sum from March, 2021 towards compensation for use of the premises and a further direction to pay a sum of Rs.25,000/- per day from 17th February, 2022 in accordance with Clause 29 of the Agreement dated 5th May, 2017.

3. At the outset, learned Senior Advocate appearing for the Respondent fairly conceded that in exercise of the power under Order XV-A of the CPC, the sum of Rs.25,000/- which is in the nature of liquidated damages cannot be directed to be paid.

4. The application was moved for direction to pay the agreed sum of Rs.5,62,100/- + GST which was compensation for the use of the suit premises on monthly basis. As there were arrears of the monthly compensation, the amount has been directed to be deposited as and by way of interim measure.

5. The trial Court has considered the documents such as leave and license agreement which was registered on 5th May, 2017 which indicates that the relationship between the Plaintiff and the Defendant is of licensor and licensee and that they had agreed to the monthly compensation of Rs.5,62,100/-. The trial Court has also considered the admission of the defendant that they are liable to pay the sum of Rs.5,62,100/- as also GST amount. Considering the admission on record, the trial Court has directed the payment of the monthly license fees. The Appellate Court has not interfered with the findings of the trial Court.

6. Today, learned counsel appearing for the Petitioner does not

dispute that the sum of Rs.5,62,100/- alongwith GST was the agreed compensation. He would further submit that according to him, the arrears are not Rs.1,32,45,220/- as put forth by the learned Senior Advocate for the respondent but the same are in the sum of Rs.66,00,000/- on account of certain adjustments which are required to be made. He would further submit that the Petitioner has expended about a sum of Rs.4 Crores on the suit premises.

7. The provisions of Order XV-A are clear and as by way of interim measure empowers the Court to direct the payment of arrears of license fees and to further continue the payment of license fees till the possession has been handed over. In the present case, it is an admitted position that monthly compensation has been agreed at Rs.5,62,100/- alongwith GST and that the amount is not paid from March, 2021. In that view of the matter, the orders of the trial Court as well as the Appellate Court does not suffer any infirmity.

8. The submission of the learned counsel for the Petitioner that there are certain amounts which are required to be adjusted is a matter of trial and will be duly considered after the evidence has been led. The power of the Court under Order XV-A to direct the payment on account of arrears of the license fees is not circumscribed

by the submission that there are certain adjustments which are required to be made.

9. In view that of the matter, there is no merit in the petition. Petition stands dismissed.

(Sharmila U. Deshmukh, J.)