Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7951 OF 2021

Janata Sahakari Bank Ltd., Pune ...Petitioner

V/s.

M/s. Gada Enterprises ...Respondent
A Partnership Firm,
Through its partner
Mr. Surendra Damji Shah

WITH
WRIT PETITION NO.9002 OF 2021

M/s. Gada Enterprises ...Petitioner
A Partnership Firm,
Through its partner
Mr. Surendra Damji Shah

V/s.

Janata Sahakari Bank Ltd., Pune ...Respondent

Mr. Girish Godbole, Senior Advocate a/w Mr. Aseem Naphade i/b Mr. Yogesh Adhia, for the Petitioner in WP/9002/2021 and for the Respondent in WP/7951/2021.

Mr. Karl Tamboly a/w Sheetal Shah & Dimple Bitra i/b M/s. Mehta and Girdharlal, for the Petitioner in WP/7951/2021 and for the Respondent in WP/9002/2021.

CORAM : MADHAV J. JAMDAR, J.
DATE : MARCH 17, 2023

P.C.:

1. Writ Petition No.9002 of 2021 is filed by the Original Plaintiff. Writ Petition No.7951 of 2021 is filed by the Original

Defendant. Both the Plaintiff and the Defendant are challenging the same impugned order. In the present order, the parties will be described as per their original status i. e. Plaintiff and Defendant.

2. In both the Writ Petitions, the challenge is to the legality and validity of the Order dated 20th November 2019 passed by the learned Judge, Court of Small Causes at Mumbai below Exh.-14 in L. E. & C. Suit No.102 of 2018 as well as the Judgment and Order dated 28th October 2021 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.32 of 2020 [filed by the Defendant] and Revision Application No.51 of 2020 [filed by the Plaintiff], by which, the order of the learned Trial Court was confirmed. The Petitioner/Defendant – Janata Sahakari Bank Ltd. is challenging the impugned order by which the Bank has been directed to pay the arrears of rent and per day liquidated damages under the registered Leave and License Agreement and permitting the same to be withdrawn by M/s. Gada Enterprises. The Petitioner/Plaintiff - M/s. Gada Enterprises is challenging the impugned order so far rejection of relief regarding amount payable by the Janata Sahakari Bank Ltd. under the Amenities and Fixture Agreement.

3. Before considering the rival submissions, it is necessary to set out certain factual aspects. At the outset, it is required to be noted that most of the factual aspects are admitted.

(a) The Plaintiff is the owner of the suit premises. The suit premises i.e. Shop Nos.1 and 2 admeasures about 1700 sq. ft. built up area in Aadeshwar Co-operative Housing Society Limited, Borivali, Mumbai.

(b) The Defendant - Janata Sahakari Bank Ltd., Pune [licensee] has entered into a registered leave and license agreement with the Plaintiff [licensor] on 23rd April 2013. The agreed period under said leave and license agreement was 60 months commencing from 23rd April 2013 to 22nd April 2018 and agreed license fees was Rs.2,00,000/-(Rupees Two Lakhs Only) per month and, there shall be an increase in monthly compensation by 15% after every 36 months. The interest free security deposit was Rs.34,50,000/- (Rupees Thirty Four Lakhs Fifty Thousand Only). Apart from license fees, the Defendant was to pay municipal taxes, service tax, increases in society maintenance and all other outgoings.

(c) On the same day i.e. on 23rd April 2013, a separate agreement titled as “Amenities and Fixture Agreement” was executed by the present parties. By said agreement, the Defendant agreed to pay Rs.3,75,000/- (Rupees Three Lakhs Seventy Five Thousand Only) per month for use of furniture, fixture and amenities with an increase after every 36 months. The said amenities agreement has not been registered. However, in the amenities agreement, specific reference is made to the leave and license agreement.

(d) It is admitted position that, for the entire period of leave and license agreement i.e. from 23rd April 2013 to 22nd April 2018 or at least till 31st March 2018, the Defendant has paid the leave and license fees as well as the charges agreed under the amenities agreement.

(e) By letter dated 1st January 2018, the Defendant informed the Plaintiff that the Defendant would vacate the suit premises on 31st March 2018 as the lock in period of 36 months had expired. It is significant to note that, in fact, period of license was to come to an end on 22nd April 2018 i.e. after 22 days after 31st March 2018.

(f) The Defendant by letter dated 20th March 2018 and 22nd March 2018 again informed the Plaintiff that it would be vacating the suit premises on 31st March 2018 and that simultaneously security deposit of Rs.34,50,000/- be refunded to the Defendant.

(g) The Plaintiff had replied to these letters on 24th March 2018. By the said letter, the Plaintiff informed the Defendant that they would deduct total amount of Rs.13,34,369/- (Rupees Thirteen Lakhs Thirty Four Thousand Three Hundred and Sixty Nine Only) from the said security deposit of Rs.34,50,000/- (Rupees Thirty Four Lakhs Fifty Thousand Only). The relevant portion of the said letter is reproduced herein below for ready reference :

> "We confirm that the security deposit shall be returned to you without interest, subject however to the following deductions:-

Sr.	Amount (Rs.)	Remarks
1.	9,32,422=00	Deducted for maintenance charges of the premises. (See para 5)
2.	40,000=00	Retained for electricity bill for the period up to 31st March 2018 (see para 12)
3.	3,61,947=00	Water Charges bill for the period up to 31st March 2018 (see para) 12
4.		Retained for repairing charges for damages, if any.
Total	13,34,369=00	Rupees Thirteen Lacs Thirty Four Thousand Three Hundred Sixty Nine Only."

(h) By letter dated 31st March 2018, the Defendant disputed the deductions proposed by the Plaintiff.

(i) It appears that, meeting was held between the Plaintiff and officials of the Defendant on 4th April 2018 and the Defendant showed readiness to pay the amount of Rs.8,94,940/- (Rupees Eight Lakhs Ninety Four Thousand Nine Hundred and Forty Only) towards society maintenance charges for the period of April 2013 to March 2018. It is further stated in the said letter that, the said maintenance charges would be paid to the society on behalf of the Plaintiff and if, society refused to accept the maintenance amount from the Defendant-Bank, then in that event, the Defendant would reimburse the said charges to the Plaintiff after submission of stamped receipt issued by society. With the said letter dated 4th April 2018, Pay Order for an amount of Rs.3,61,947/- (Rupees Three Lakhs Sixty One Thousand Nine Hundred and Forty Seven Only) was forwarded towards water supply charges and, therefore, the request was made to refund the security deposit.

(j) Thereafter, the correspondence took place between the parties. On 23rd August 2018, the Defendant addressed letter to the Plaintiff requesting them to deduct said amount of Rs.8,94,940/- (Rupees Eight Lakhs Ninety Four Thousand Nine Hundred and Forty Only) towards society maintenance charges from the said security deposit of Rs.34,50,000/- (Rupees Thirty Four Lakhs Fifty Thousand Only) and demanded that balance security deposit of Rs.25,55,060/- be paid by RTGS. By the said letter, the Defendant has informed the Plaintiff that, simultaneously with the payment of said amount of Rs.25,55,060/-, the bank shall handover the possession of the suit premises to the Plaintiff.

4. In spite of the readiness shown by the Defendant to handover possession of the said premises and in spite of the letter dated 23rd August 2018 stating to deduct the maintenance amount from the deposit amount, the Plaintiff filed L. E. & C. Suit No.102 of 2018 for eviction and compensation for using suit premises beyond the license period. In the said suit, the Interim Application bearing Exh.14 was filed seeking direction that the Defendant be directed to deposit sum of Rs.1,52,44,594/- in the Court as per the particulars of claim annexed with liberty to the Plaintiff to withdraw the same as and when deposited. In the said Application, it has been further prayed that, contractual amount of Rs.7,91,766/- be directed to be paid from 1st January 2019 towards monthly compensation under the leave and license agreement, amenities and fixture agreement and society maintenance charges. It has been further prayed that, the Defendant be directed to deposit a sum of Rs.38,500/- per day towards penalty from 1st January 2018 with liberty to the Plaintiff to withdraw the same as and when deposited. Particulars of claim annexed to the said Interim Application are as follow :-

PARTICULARS OF CLAIM

Sr	Particulars	Amount (Rs.)
1.	Amount payable as per Exhibit P to the Plaint (upto 31st August 2018)	73,80,530.00

2.	Amounts payable from 1st September 2018		
A i.	Monthly compensation under the Leave and License Agreement (inclusive of service taxe/GST)	2,71,400.00	
ii.	Monthly compensation under the Amenities & Fixtures Agreement (inclusive of service taxe/GST)	5,08,874.00	
iii.	Monthly society maintenance for basement and ground floor	11,492.00	
	Total monthly amount payable (under A i+ii+iii)	7,91,766.00	
	Total amount payable from 1st September 2018 till 31st December 2018 (Rs.7,91,766/- x 4 months)	31,67,064.00	
B	Penalty at the rate of Rs.38,500/- per day from 1st September 2018 till 31st December 2018 (i.e. 122 days)	46,97,000.00	78,64,064.00
	Total amount payable as on 31st December 2018		**1,52,44,594.00**

5. The learned Trial Court directed that payment of liquidated damages of Rs.38,500/- per day from 1st April 2018 till the disposal of the suit shall be deposited in the Court. It has been further directed that monthly license fees of Rs.2,71,400/- from 1st April 2018 to 30th November 2019 i.e. total amount of Rs.54,28,000/- be deposited within eight weeks. The learned Trial Court further directed the Defendant to deposit monthly license fees at the rate of Rs.2,71,400/- for the period from 1st December 2019 on or before 10th day of each succeeding month. The learned Trial Court also directed that the Defendant shall deposit monthly society maintenance charges at the rate of Rs.11,492/- from 1st April 2018 till 30th November 2019 i.e. total amount of Rs.2,29,840/- and the same be deposited for the period from 1st

December 2019 onwards. For ready reference operative part of order passed by the learned Trial Court is set out hereinbelow :

“ORDER

1. The application is partly allowed.

2. Pending the hearing and final disposal of this suit, the defendant shall deposit in the Court the pre estimated genuine quantified compensation and/or liquidated damages @ Rs.38,500/- per day from 01.04.2018 till disposal of the suit in this Court.

3. The arrears of liquidated damages shall be deposited in the Court for the period from 01.04.2018 to 30.11.2019 within 8 weeks from today under intimation in writing to the advocate for the plaintiff.

4. Upon depositing the said amount shall be invested in any fixed deposit in a Nationalized Bank, initially for a period of 3 years and shall be renewed during pendency of the suit.

5. Pending the hearing and final disposal of this suit, the defendant is directed to deposit monthly licence fee of Rs.2,71,400/- from 01.04.2018 to 30.11.2019 total amounting to Rs.54,28,000/- within 8 weeks subject to adjustment of deposits/payments made to the plaintiff.

6. Pending the hearing and final disposal of this suit, the defendant shall deposit monthly licence fee @ Rs.2,71,400/- for the period from 01.12.2019, on or before 10th day of each succeeding months under the intimation in writing to the advocate for the plaintiff.

7. Pending the hearing and final disposal of this suit, the defendant shall deposit monthly society

maintenance charges @ Rs.11,492/- from 01.04.2018 till 30.11.2019 total amounting to Rs.2,29,840/- within 8 weeks subject to adjustment of deposits, payments made to the plaintiff and variations in the maintenance charges by the society.

8. Pending the hearing and final disposal of this suit, the defendant shall deposit monthly society maintenance charges @ Rs.11,492/- p.m. for the period from 1.12.2019 on or before 10th day of each succeeding month under the intimation in writing to the advocate for the plaintiff.

9. The defendant shall deposit the electricity charges of Rs.36,870/-.

10. The plaintiff is permitted to withdraw the amount referred in clauses 5,6,7,8 and 9."

6. Both the Plaintiff and the Defendant challenged the said impugned order by filing the Revision Application No.51 of 2020 [Plaintiff's Revision] and Revision Application No.32 of 2020 [Defendant's Revision]. The challenge by the Plaintiff to the impugned order passed by the learned Trial Court in Revision is to the extent of rejection of portion of the amount payable by the Defendant under the Amenities and Fixture Agreement. The challenge by the Defendant in Revision is to the impugned order passed by the learned Trial Court directing the Defendant to deposit arrears of monthly compensation and further direction to deposit compensation for every month and permitting Plaintiff to withdraw the same. Both the Revision Applications were dismissed by the impugned order dated 28th October 2021.

7. It is further admitted position that, after passing of the impugned order dated 28th October 2021 by the learned Appellate Bench of the Court of Small Causes at Mumbai, the Defendant deposited the keys of the suit premises before the learned Trial Court on 16th November 2021 and the Plaintiff took the possession of the suit Premises on 10th December 2021.

8. In the above background, it is necessary to consider the rival submissions.

9. It is the contention of Mr. Godbole, learned senior counsel appearing for the Petitioner-Plaintiff that as per Order 15-A [Bombay Amendment] of the Code of Civil Procedure, 1908 (for short "**the CPC**"), licensee shall deposit such amount as the Court may direct on account of arrears of rent up to the date of order and, thereafter, continue to deposit in each succeeding month the rent or license fee claimed in the suit as the Court may direct. He submitted that, both the learned Trial Court and the learned First Appellate Court have completely ignored the amenities agreement. He submitted that, the amenities agreement extensively makes reference to leave and license and, therefore, both leave and license agreement and amenities agreement clearly show that, the same is one composite agreement. To substantiate the said contention, he relied on the decision of the Supreme Court in ***S. Chattanatha Kurayalar Vs. Central Bank of India Ltd. & Ors.***[1], more particularly on the following portion in paragraph No.3. The same reads as under :

> "**The principle is well established that if the transaction is contained in more than one document between the same parties they must be read and interpreted together and they have the same legal effect for all purposes as if they are one document**. In *Manks v. Whiteley* Moulton, L.J. stated :
>
> "Where several deeds form part of one transaction and are contemporaneously executed they have the same effect for all purposes such as are relevant to this case as if they were one deed. Each is executed on the faith of all the others being executed also and is intended to speak only as part of the one transaction, and if one is seeking to make equities apply to the parties they must be equities arising out of the transaction as a whole.""
>
> (Emphasis supplied)

10. Mr. Godbole, learned Senior Counsel also relied on the decisions of the Delhi High Court in ***Uberoisons (Machines) Limited Vs. Samtel Color Limited***[2] and in ***Reeaa Hotel and Restaurants (P) Ltd. Vs. Anusri Enterprises***[3]. On the basis of these decisions, he submitted that, the Defendant could not have

1 AIR 1965 SC 1856 : (1965) 3 SCR 318
2 2003 SCC Online Del 477
3 1996 SCC OnLine Del 442

retained the possession of the suit premises without paying the license fees and the amenities agreement charges.

11. On the other hand, Mr. Karl Tamboly, learned counsel appearing for the Defendant–Janata Sahakari Bank Ltd. submitted that, the power under Order 15-A [Bombay Amendment] of the CPC as well as power the Order 39 Rule 10 of the CPC are discretionary powers. During the period of leave and license agreement, entire payment was made in terms of leave and license agreement as well as the amenities agreement. The conduct of the Defendant shows that, it was informed to the Plaintiff well in advance by about three months that, the Defendant would be vacating the suit premises on or before 31st March 2018. Thereafter, two reminder letters were sent on 20th March 2018 and 22nd March 2018 and for the first time Reply was sent on 24th March 2018. He submitted that, after extensive negotiations and correspondence, an agreement was arrived at which was mentioned in the Defendant's letter dated 4th April 2018. He submitted that in spite of this, the Plaintiff went on raising some issues. Ultimately, the Defendant sent the letter dated 23rd August 2018 informing the Plaintiff to deduct maintenance charges from the security deposit. However, in September, 2018, the suit bearing L. E. & C. Suit No.102 of 2018 was filed by the Plaintiff and the Interim Application was taken out. He, therefore, submitted that in the facts and circumstances of this case, the Plaintiff is not entitled for any discretionary relief.

12. Mr. Tamboly, learned counsel also submitted that admittedly for the period from 23rd April 2013 to 31st March 2018 entire monthly compensation and amenities charges were paid. He submitted that, the security deposit of Rs.34,50,000/- is with the Plaintiff and in addition to that the Defendant has deposited Rs.25,00,000/- before the Court of Small Causes at Mumbai as per the order of the Appellate Court. He further submitted that, as the Defendant has vacated the suit premises, the suit itself, will not survive. He submitted that interim order is passed without exercising the discretion in a proper and reasonable manner.

13. Mr. Godbole, learned senior counsel in rejoinder submitted that, Order 15-A [Bombay Amendment] of the CPC has to be read with Section 7(5) of the Maharashtra Rent Control Act, 1999 (for short "**the Rent Act**") and submitted that therefore, charges agreed upon in the amenities agreement are also required to be paid by the Defendant.

14. As already set out herein above most of the factual aspects are admitted. The period of leave and license agreement was from 23rd April 2013 to 22nd April 2018. There is no dispute that agreed monthly compensation and amenities charges were paid till 31st March 2018. On 1st January 2018, the Defendant informed the Plaintiff that it shall vacate the suit premises on 31st March 2018 and called upon the Respondent to return the security deposit on 31st March 2018. The Defendant by letter dated 20th March 2018 and 22nd March 2018 again informed the Plaintiff that it would be vacating the suit premises on 31st March 2018 and that simultaneously security deposit of Rs.34,50,000/- be refunded to the Defendant. Two and half months later from first letter dated 1st January 2018 the Plaintiff informed the Defendant on 24th March 2018 that they would deduct Rs.13,34,369/-. Thereafter, the dispute started between the parties about the said deductions.

15. It is significant to note that, the Defendant agreed to pay an amount of Rs.8,94,940/- towards society maintenance charges and also water charges immediately on 4th April 2018. In fact, by letter dated 23rd August 2018 the Defendant - Bank proposed a compromise formula by which it proposed that the Plaintiff would deduct Rs.8,94,940/- from security deposit towards society maintenance charges for the period of 23rd April 2013 to 31st March 2018 and then transfer the balance amount of Rs.25,55,060/- to Defendant via RTGS.

16. It is further significant to note that, as far as water charges are concerned along with the letter dated 4th April 2018, Pay Order for said amount of Rs.3,61,947/- was handed over to the Plaintiff by the Defendant-Bank. Thus, it is significant to note that as far as the deduction of Rs.13,34,369/- on account of the Plaintiff, a very small portion of Rs. 40,000/- is towards electricity charges. It is an almost admitted position that, on or before 31st March 2018, the Defendant has actually vacated the suit premises and only retained the keys of the suit premises.

17. It is significant to note that, in further letter dated 31st May 2018 of the Defendant, it is clarified at the end of paragraph No.3 therein that, the maintenance charges as well as the electricity and water charges up to 31st March 2018 have been paid.

18. Thus, in the above background, it is significant to note that, the learned Trial Court has passed the order by which the Petitioner was directed to deposit liquidated damages at the rate of Rs.38,500/- per day from 1st April 2018 till the disposal of the suit. The order of the learned Trial Court is purportedly passed under Order 15-A [Bombay Amendment] of the CPC. The said Order 15-A [Bombay Amendment] reads as under :

> "Striking off Defence in a suit by a lessor ---
> [(1) In any suit by a lessor or a licensor against a lessee or a licensee, 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 of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination."
>
> (Emphasis added)

Perusal of said Order 15-A [Bombay Amendment] clearly shows that, what is contemplated is the arrears of rent or license fees claimed in the suit. Thus, the amount of the liquidated damages is outside the purview of the said provision.

19. It is very clear that, the Order passed by exercising power under Order 15-A [Bombay Amendment] of the CPC is a discretionary order as it is provided that, the Defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order and, thereafter continue to deposit in each succeeding month the rent or license fees claimed in the suit as the Court may direct. In the present case, the Defendant has actually vacated the suit premises on or before 31st March 2018 and only retained the keys to be handed over simultaneously at the time of receiving the deposit amount. It has also come on record that, entire dues towards compensation and amenities agreement were paid till 31st March 2018 and in spite of that, the Defendant was insisting on deducting various amounts from the security deposit. It is also significant to note that the Defendant has also proposed that maintenance amount would be paid by the Defendant to the Society or the same can be paid by the Plaintiff and the Defendant would re-imburse the same. Thereafter, the Defendant suggested that the same be deducted from the deposit amount.

20. It is also required to be kept in mind that, the suit is still pending awaiting determination of dues. In this case, the Defendant has surrendered the possession of the suit premises by depositing license keys with the learned Trial Court on 16th November 2019. Therefore, in the facts and circumstances of this case, this is not a case where, compensation and liquidated damages at this stage can be adjudged and directed to be paid.

21. The Order 39 Rule 10 of the CPC reads as under :

> "10. Deposit of money etc. in Court. - 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 further direction of the Court**."

Thus, Order 39 Rule 10 provides that, where the subject matter of a suit is 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. It is clear that, enquiry contemplated under Order 39 Rule 10 is such that in the facts and circumstances of each particular case, the Court has to form an opinion that one party is retaining the money or object as trustee for another party. In the present case, there exists a serious dispute between the parties and the dispute is regarding the entitlement of the Plaintiff to the said amount of liquidated damages.

22. Thus, even by taking aid of Order 39 Rule 10 of the CPC, the said damages could not have been awarded by the learned Trial Court as confirmed by the learned First Appellate Court.

23. The learned Trial Court also directed payment of license fees of Rs.2,71,400/- per month from 1st April 2018 onward. It is an admitted position that, the Defendant has actually vacated the suit premises on or before 31st March 2018 and only retained the keys for delivery of the same to the Plaintiff when the deposit amount is simultaneously returned to the Defendant. The correspondence on record to which reference is made clearly shows that, the Defendant has paid the said amount of electricity as well as water charges as mentioned in letter dated 24th March 2018. The Defendant has shown readiness to pay the maintenance charges of the society. Ultimately, by letter dated 23rd August 2018, instructions are given by the Defendant to deduct maintenance charges of the premises from the security deposit of Rs.34,50,000/-. It is significant to note that, in spite of this, the Plaintiff immediately in September, 2018 filed the Eviction Suit and took the Interim Application on 14th January 2019.

24. Mr. Godbole, learned senior counsel appearing for the Plaintiff has relied on the decision of the Delhi High Court in ***Uberoisons (Machines) Limited (supra).*** In paragraph No.11 it has been held that, the tenant could not have retained the possession of the premises without paying the rent thereof on account of non-refund of security amount by the plaintiff. The said paragraph No.11 reads as under :

> "(11) **NOW the question arises whether the tenant could have retained the possession of the premises without paying the rent thereof on account of non-refund of security amount by the plaintiff. The answer is emphatic no**. The tenant has an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. Such a possession by the tenant is a possession for which he has to pay the rent as the premises could not have been put in use by the landlord nor have been let out by the plaintiff. No tenant can take the defence that he is entitled to retain the possession of the premises unless security amount is refunded to him. When there is an independent remedy to recover this amount, the retention of possession cannot be justified. In order to avoid the liability of rent, the tenant has the obligation to handover the possession. **It is immaterial whether premises was put into use by the defendant/tenant or not. What is material was whether possession is retained by him or not**."
>
> (Emphasis added)

25. In the present case, the amount mentioned in the letter dated 24th March 2018 are entirely cleared by the Plaintiff in the manner set out herein above. It is significant to note that, instead of replying to the letter dated 24th August 2018, the Plaintiff has filed the suit and refused to accept the possession. The learned Trial Court has passed the order by directing deposit of leave and license fees of Rs.2,71,400/- per month from the period of 1st April 2018 onward, however, the said order could not have been passed in the light of the factual aspects of the present case. The discretion exercised by the learned trial Court is not sound and reasonable.

26. As far as the Revision filed by both the Plaintiff and the Defendant are concerned, the learned Appellate Court has held that the Revision is not maintainable and, therefore, dismissed the Revisions and as a result of which the order of the learned Trial Court is confirmed.

27. This Court in the decision of ***Colaba Central Co-operative Consumer Wholesale and Retail Stores Ltd. alia Sahakar Bhandar Vs. Kusumben Kantilal Shah & Ors.***[4] in paragraph 8 therein has expressly held that order passed under Sub-Rule (1) of Order 15-A cannot be said to be merely procedural order and is not subject to a Revision and, therefore, Revision is maintainable.

28. A Full Bench of this Court in the decision of ***Bhartiben Shah Vs. Gracy Thomas & Ors.***[5] has held that, a Revision Application under Section 34(4) of the Rent Act is not maintainable in respect of a procedural order passed under the CPC in a suit arising out of

4 (2004) 1 Bom CR 547 : 2003 SCC Online Bom 875
5 2013 (2) All MR 9 : 2013 SCC Online Bom 98

the Rent Act, if such order does not affect the rights of parties under the Rent Act or any other substantive law. It has been further held that, while an order to be revisable need not necessarily be an order for possession or fixation or recovery of rent, nevertheless, the order sought to be revised must directly affect the substantive rights and liabilities of parties under the Rent Act or any other substantive law but not merely rights under a procedural law like the CPC or the Evidence Act.

29. Thus, it has been held in ***Colaba Central (supra)*** that an order passed under Sub-Rule (1) of Order 15-A of the CPC [Bombay Amendment] cannot be termed as procedural order. In the Full Bench decision in ***Bhartiben Shah (supra)***, it has been held that Revision lies with respect to order regarding recovery of rent. Therefore, the Revisions filed by the Plaintiff as well as the Defendant are maintainable and, hence, the learned Revisional Court is not right in holding that Revisions are not maintainable.

30. It is also significant to note that, it has been held by the Appellate Bench that on the basis of language of Order 15-A of the Rent Act as well as on the basis of the decision of this Court [Nagpur Bench] in ***Jaihind Vidyalaya, Nagpur Vs. Ghanshyam Girdharilal Khinchi & Ors.***[6], an order passed under Order 15-A of the CPC is a discretionary order. In the facts and circumstances of

6 (1987) 3 Bom CR 474 : 1987 SCC Online Bom 85

this case, it cannot be said that, the Plaintiff is entitled for said discretionary order. In the present case, the Defendant vacated the suit premises and have paid almost entire amount as demanded by the Plaintiff by letter dated 24th March 2018 and instructed the Plaintiff to deduct the maintenance charges of the suit premises from the deposit amount by letter dated 24th August 2018. Thus, this is not a case where, the Defendant can be directed to pay monthly license fees from 1st April 2018 onwards and also liquidated damages of Rs.38,500/- per day till the disposal of the suit.

31. Mr. Tamboly, learned counsel is right in pointing out that in view of the Defendant having paid said security deposit of Rs.34,50,000/- as well as having deposited Rs.25,00,000/- in the Court, the Plaintiff is not entitled for any order. He submitted that the letter dated 23rd August 2018 instructs the Plaintiff to adjust the said amount of maintenance charges and further states that, further actions can be taken and executed on the appointed date. The said letter dated 23rd August 2018 is reproduced hereinbelow :-

"Date : 23.08.2018

To
(1) Mr. Shah Surendra Damji
(2) Mr. Shah Vijay Damji
(3) M/s. Gada Enterprises,
Builders and Developers,
Office/Shop No. 1 & 2,

Gulmohar Cross Road No. 1,
Off L. T. Road,
Opp. Vrundas Veg Hotel,
Next to Vodaphone Gallery,
Borivali (W), Mumbai – 400 092

Sub :- **Refund of Security Deposit and delivery of the shop premises Nos. 1 and 2, and basement, in "Aadeshwar Co-operative Housing Society" at CTS No. 2468, 2468/1 to 6, Borivali (W), Mumbai Suburban, Mumbai**.

In pursuance of trail of correspondence and the personal meeting of our Deputy General Manager and Assistant General Manager with Mr. Surendra Shah, a partner of M/s. Gada Enterprises, Mumbai, on 26.06.2018, we would like to write this letter.

The bank had given you an advanced notice for quitting the aforesaid premises, with a view to enable you to keep the funds ready, for refund of security deposit, at the time of vacating the same. As for the bank, it has cleared all the dues of the premises, voluntarily, before vacating the premises. The only issue was that of payment of Maintenance Charges to Aadeshwar Co-operative Housing Society. We, therefore, had given you several options in that behalf. However, at the end of our wit, none of them were acceptable to you. Be that as it may. **In the wake of the meeting dt. 26.06.2018, as stated above, we may propose a compromise formula to overcome the deadlock as follows :-**

(a) That **out of security deposit of Rs. 34,50,000/-** (Rs. Thirty Four Lakhs Fifty Thousand Only), **the amount of Society Maintenance Charges, related to the period from 23.04.2013 to 31.03.2018 amounting to Rs.8,94,940/-** (Rs. Eight Lakh Ninety Four Thousand Nine Hundred & Forty Only); **shall be deducted and the balance of Rs.25,55,060/- (**Rs. Twenty Five Lakh Fifty Five Thousand & Sixty Rupees Only) **shall be paid by you to us by RTGS.**

(b) **Simultaneous with the payment of Rs.25,55,060/- (Rs. Twenty Five Lakh Fifty Five Thousand & Sixty Rupees Only) by RTGS to us and in consideration of the**

said payment, both of you partners shall execute and handover an original notarized indemnity bond, in favour of the Janata Sahakari Bank Ltd., Pune, assuring and protecting it from any claim, demand, action, expenses, charges, penalties, damages, compensation, or any liability as regards Society Maintenance Charges pertaining to the aforesaid premises and the period of Leave and License i.e. 23.04.2013 to 31.03.2018 and assuring that no dues are payable by the Janata Sahakari Bank Ltd., Pune, to you, or any other person, in relation to the aforesaid premises, and the bank is fully acquitted and discharged of any liability, if any.

(c) **At the same time, and in the same meeting, when you shall refund the amount of Rs.25,55,060/- (Rs. Twenty Five Lakh Fifty Five Thousand & Sixty Rupees Only) to the Janata Sahakari Bank Ltd., Pune, the bank shall hand over or deliver the aforesaid premises to you, by declaring in writing that, the bank has no claim, whether on the aforesaid property, or on any amount, or otherwise, against you.**

(d) **All those actions are to be performed and executed in one meeting on any appointed date**, day and the place and the dispute shall be declared to have been resolved amicably in writing by both the parties. Minutes of the meeting will be recorded with the signatures of your both the partners and the authorized officer of the bank.

You are hereby requested to inform us any day, date, time and place for such meeting, so that the documentation like indemnity bond can be kept ready and the issues between us will be set at rest, in case you are interested in settling the matter amicably. Please note that, in you interest also court litigation with the bank will be proved to be very costly. We hope that, you will take positive approach in the matter and will accept the aforesaid compromise formula.

Thanking you in anticipation.
Regards

Yours faithfully,

For Janata Sahakari Bank Ltd., Pune
Assistant General Manager (Estate)"

(Emphasis supplied)

32. In spite of the above detailed letter, no reply was sent by the Plaintiff to the said letter and in fact, the Plaintiff has filed the suit. Therefore, this is not a case where, the Plaintiff is entitled for a discretionary order as granted by the learned Trial Court. It is an admitted position that, the Defendant has cleared all the dues towards maintenance charges.

33. Therefore, the impugned order dated 20th November 2019 passed by the learned Trial Court as well as the the impugned order dated 28th October 2021 passed by the learned Division Bench of the Court of Small Causes at Mumbai are quashed and set aside. The Application bearing Exh.-14 filed in L. E. & C. Suit No.102 of 2018 is dismissed. However, it is clarified that, the amount of Rs.25,00,000/- which has been deposited before the Court of Small Causes at Mumbai shall remain deposited till the disposal of the suit. It is very clear that the said deposit of Rs.25,00,000/- is over and above the security deposit of Rs.34,50,000/- which will remain deposited with the Plaintiff. It is to be noted that Mr. Tamboly, learned counsel appearing for the Defendant has rightly submitted that in view of said security deposit of Rs.34,50,000/- and deposit in Court of Rs.25,00,000/-

no further deposit order is required. Accordingly, it is directed that the deposit of said amount of Rs. 25,00,000/- in the Court and deposit of said amount of Rs. 34,50,000/- with Plaintiff will be subject to the result of the suit. However, the Plaintiff is directed to bring back the said deposit amount of Rs. 34,50,000/- in the Court of Small Causes at Mumbai, if and when directed by the learned Trial Court.

34. Accordingly, both the Writ Petitions are disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]