

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.9587 OF 2021
WITH
INTERIM APPLICATION NO.2749 OF 2022**

Aditi Sanjay Jaiswal & Anr. ...Petitioners
Versus
State of Maharashtra & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.1797 OF 2023
IN
WRIT PETITION NO.9587 OF 2021**

Manav Utthan Seva Samiti ...Applicant
Versus
Aditi Sanjay Jaiswal & Ors. ...Respondents

Mr. Subhash Jha a/w. Mr. Ghanshyam Upadhyay and Ms. Meena Mishra, for the Petitioners.

Mrs. V. S. Nimbalkar, AGP, for the State-Respondent Nos.1 to 3.

Mr. Anil S. Patel a/w. Ms. Sakina R., for Respondent No.4.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 23rd MARCH 2023**

P.C. :

1. Heard Mr. Jha, learned Advocate appearing for the Petitioners, Mrs. Nimbalkar, learned AGP appearing for

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Respondent Nos.1 to 3 and Mr. Anil Patel, learned Advocate appearing for Respondent No.4.

2. At the outset, Mr. Jha, learned Advocate appearing for the Petitioners submitted that orders dated 17th February 2023 and 24th February 2023 passed by this Court in this Writ Petition are challenged before the Supreme Court. However, he stated that there is no stay granted to this proceeding. It is the request of Mr. Jha that present Writ Petition be adjourned as the matter is pending in the Supreme Court. However, no stay has been granted by Supreme Court and therefore, there is no impediment in proceeding further with this Writ Petition.

3. The said request seeking adjournment is also rejected for following reasons:-

A) On 9th February 2023, request was made by Mr. Tushar Bansode, learned Advocate on the instructions of Advocate Jha who is Advocate-on-record to allow withdrawal of this Writ Petition. However, as this Court prima facie found that said request was made for the mala fide purpose to avoid compliance with ad-interim orders dated 1st April 2022 and 26th April 2022 passed in this Writ Petition and Petitioners have obtained unfair advantage of those ad-interim orders, this Court

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wanted the presence of Mr. Jha learned Advocate of the Petitioner and, therefore, the matter was kept back at 2.30 p.m. On 9th February 2023 at 2.30 p.m., it was informed to this Court by Mr. Tushar Bansode, learned Advocate holding for Advocate Jha, that it would not be possible for Mr. Jha, learned Advocate to remain present at 2.30 p.m. and, therefore, matter was kept on 10th February 2023. On 10th February 2023, Mr. Jha, learned Advocate appearing for the Petitioners requested for time and, therefore, the matter was adjourned to 17th February 2023 (First on Board). On 17th February 2023, this Court recorded brief prima facie observations. On 17th February 2023 Respondent No.4 sought time for filing Sur-Rejoinder to the Affidavit-In-Rejoinder dated 13th February 2023 filed by the Petitioners. In the said Affidavit-In-Rejoinder reasons for allowing Petitioners to withdraw the Writ Petition were set out. Therefore, Writ Petition was adjourned to 24th February 2023 (First on Board).

B) On 24th February 2023, Mr. Anil Patel, learned counsel appearing for Respondent No.4 tendered Affidavit-In-Sur-Rejoinder. Mr. Jha, learned counsel appearing for the original Petitioners sought time to file reply, as Interim Application No.1797 of 2023

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taken out by the original Respondent No.4 was served on him on 23rd February 2023. Therefore, one week's time was granted in the facts and circumstances of this case and the matter was kept on 3rd March 2023. In the said order dated 24th February 2023, this Court inter alia directed as follows:-

“5. It is made clear that on 3rd March 2023, the matter will be heard along with the Interim Application No.1797 of 2023 and all pending Interim Applications, if any. By order dated 17th February 2023, this Court has recorded prima facie opinion that, the Petitioners have taken unfair advantage of the ad-interim orders passed by this Court and without complying with ad-interim orders are seeking withdrawal of the Writ Petition. Paragraph 4 of the said order is set out hereinbelow for ready reference:-

“4. However, the Petitioners are put to the notice that, as it is the prima facie opinion of this Court that, the Petitioners have taken unfair advantage of the ad-interim orders passed by this Court and protected the possession of suit flat admeasuring 2,500 sq.ft. area which is situated in a prime locality at Colaba, Mumbai without complying with the

directions of this Court and, therefore, in the event, even if this Court grants the request of the Petitioners for withdrawal of the Writ Petition, the Court will also pass necessary orders so that, the unfair advantage taken by the Petitioners, will be done away with. Therefore, as prima facie, the order of this Court is violated, this Court while granting order of withdrawal of the Writ Petition or even otherwise may also pass necessary further orders. It is also clarified that the said orders may include appointment of the Court Receiver, as prima facie, it is clear that, the Petitioners have taken unfair advantage of the ad-interim orders of stay granted by this Court.”

6. It is clarified that various observations made in order dated 17th February 2023 are prima facie observations and therefore, the matter needs to be heard by giving opportunity to the Petitioners.

7. Place the matter on 3rd March 2023 [First on Board].”

(Emphasis added)

C) On 3rd March 2023, matter was adjourned to 10th March 2023 (First on Board).

D) On 10th March 2023 matter was adjourned at

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the request of the Respondents to 17th March 2023 and the same was directed to be shown first on the “Supplementary Board”

E) On 17th March 2023, matter was adjourned to 23rd March 2023 and directed to be listed first on the Supplementary Board.

4. Thus, this Court has time and again fixed the matter First on Board. However, on many occasions Mr. Jha took time. In any case, there is no stay granted by the Supreme Court and therefore, there is no impediment in proceeding with the matter.

5. It is the request of Mr. Jha that Writ Petition be allowed to be withdrawn. He pointed out several contentions raised in the affidavit-in-rejoinder dated 13th February 2023 to support his prayer for withdrawal of the Writ Petition. The relevant contentions will be referred to and dealt with as and when necessary in this order.

6. This Court by order dated 17th February 2023, prima facie observed that Petitioners have taken unfair advantage of ad-interim orders of stay. In that behalf, it is the contention of Mr. Jha, learned Advocate appearing for the Petitioners that the

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said order of stay was in operation only for 39 days. He states that subsequently suit was filed and a learned Single Judge has protected the possession of the premises in question of the Petitioner No.1.

7. Mr. Jha relied on Order XXIII Rule 1 of the Code of Civil Procedure, 1908, (“C.P.C.” for short) and also on the following decisions of Supreme Court, this Court as well as other High Courts to contend that withdrawal of the Writ Petition is required to be allowed, if Petitioners seek simplicitor withdrawal.

i. **Anil Dinmani Shankar Joshi & Anr. vs. Chief Officer, Panvel Municipal Council, Panvel & Anr.**¹

ii. **J. B. Patnaik vs. Bennett Coleman & Co. Ltd. & Ors.**²

iii. **Hulas Rai Baij Nath vs. Firm K. B. Bass & Co.**³

iv. **Shiv Prasad vs. Durga Prasad & Anr.**⁴

v. **Shaik Hussain & Sons vs. M. G. Kannaiah & Anr.**⁵

8. Mr. Jha, learned Advocate appearing for the Petitioners submitted that only power which the Court has got is to impose

1 2003 SCC Online Bom 24:AIR 2003 Bom 238

2 1989 SCC Online Ori. 73:AIR 1990 Ori 107

3 (1967) 3 SCR 886: AIR 1968 SC 111

4 (1975) 1 SCC 405

5 (1981) 3 SCC 71

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cost in appropriate cases. He submitted that in the facts and circumstances of this case, cost is not required to be imposed.

9. Mr. Jha also submitted that the Petitioners agreed to purchase the subject flat and therefore, filed Suit (Lodging) No.9650 of 2022 inter alia seeking specific performance of said oral agreement. He submitted that a learned Single Judge has protected the possession of the Petitioners by order dated 10th May 2022.

10. Mr. Jha relied on the decision of the Supreme Court in the matter of **Vikramjit Singh vs. State of Madhya Pradesh**⁶ to contend that one Bench cannot comment on the functioning of the same Court much-less sit in judgment as an Appellate Court over its decision. He submitted that, which could not be done directly could also not be done indirectly. To substantiate the said contention, he also relied on the decision of **Mohinder Kumar vs. State of Haryana & Anr.**⁷. He therefore, submitted that the request for withdrawal of Writ Petition be allowed.

11. Mr. Patel, learned Advocate appearing for Respondent No.4 submitted that the Petitioners have taken unfair

6 1992 Supp (3) SCC 62

7 (2001) 10 SCC 605

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advantage Of the ad-interim orders and therefore request for withdrawal be rejected and by appointing Court Receiver possession be taken from the Petitioners and the same be directed to be handed over to the Respondent No.4. Alternatively he submitted that in case, Court allows prayer seeking withdrawal of Writ Petition then, while passing order of withdrawal, cost be imposed. He submitted that if this Court is allowing the withdrawal of the Writ Petition, then the entire amount as directed by a learned Single Judge in this Writ Petition by order dated 1st April 2022 and 26th April 2022 be directed to be paid as cost to the Respondent No.4.

12. He submitted that, as far as the contention that the Petitioners agreed to purchase the said flat and certain amounts were advanced in that behalf is totally incorrect and false case is made out. The same is not mentioned in the application seeking leave to defend filed in the eviction proceedings initiated by the Respondent No.4 under Section 24 of the Maharashtra Rent Control Act, 1999 (**“Rent Act”** for short). He submitted that under Rent Act, special procedure is prescribed under Section 43 of the Rent Act. As per the special

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procedure, licensee is required to obtain leave to contest the eviction application and the Competent Authority has refused such leave and the said orders have become final. He submitted that explanation (b) to sub-Section 3 of Section 24 of the Rent Act specifies that an agreement of licence in writing shall be conclusive evidence of the fact stated therein. He submitted that as per Section 47 of the Rent Act, no Civil Court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an officer authorised by it is empowered by or under this Act, to decide, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such Officer.

13. He relied on certain emails which are at page 339 and 340 of the compilation. As far as said contention is concerned, Mr. Jha submitted that the said emails are of 2015 and amount is paid in 2017.

14. At the outset, it is clarified that the Suit (Lodging) No.9650 of 2022 is pending in this Court regarding said alleged

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claim of purchase and it will not be proper for this Court to observe anything about the said dispute. Mr. Jha is right in relying on the decision of the Supreme Court in **Vikramjit Singh** (supra) and **Mohinder Kumar** (supra).

15. Before considering the rival contentions regarding request of the Petitioners seeking withdrawal of the Writ Petition, it is necessary to set out the factual position in the present case. Certain factual aspects are mentioned in this Court's order dated 17th February 2022. The same will be again mentioned in this order just for the completeness of the order.

i) In this case, it is admitted position that, the flat in question i.e. Flat being **Flat No. A/9, admeasuring 2500 sq. ft.** of built up area, on the 4th floor of the building known as 'Acropolis' belonging to Sagar Sangeet & Conversion Scheme CHS Ltd., situated at **58, Shahid Bhagat Singh Road, Near Colaba Post Office, Colaba, Mumbai - 400 005**, bearing C. S. No. 258 of Colaba Division in the registered district and sub-district of Mumbai City and Suburban alongwith one car parking (Hereinafter referred to as "**the suit flat**") is of the ownership of Respondent No.4. The said suit flat consists of **three bed-rooms, Hall Kitchen+study room and one car parking**. The suit flat is situated in

very prime locality of Mumbai i.e. Colaba, Mumbai

ii) A Leave and License Agreement was executed at Mumbai on 12th August, 2010 between the Respondent No.4 herein as the Licensor of the One Part and M/S. Blue Bird Leisure & Holiday Ltd., as the Licensee of the Other Part, in respect of Suit Flat. The said Leave and License Agreement was executed for a **period of 36 months commencing from 12th September, 2010 and expiring on 11th September, 2013 at a monthly compensation of Rs.2,00,000/- (Rupees Two Lakhs Only).**

iii) A fresh Leave and License Agreement dated 28th October, 2013 was made and executed between the Respondent No.4 as licensor of one part and M/S. Blue Bird Leisure & Holiday Ltd., as licensee of other part in respect of Suit Flat **commencing from 12th September, 2013 and expiring on 11th September, 2016.** Under the said registered Leave and License Agreement, the Respondents were permitted to use the said suit flat for a **period of 36 (Thirty Six) months for monthly compensation of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) commencing from 12th September, 2013 and expiring on 11 September, 2016 with an increase in the license fees @ 7% p.a. for every year till the agreement is in existence and shall be payable on or before 15th of each month without any default.**

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iv) In spite of expiry of leave and license Agreement by the efflux of time, the possession of the suit flat was not handed over and, therefore, the Respondent No.4 filed proceedings bearing Eviction Application No.160 of 2019 before the Competent Authority, Bandra on 3rd October, 2019 under Section 24 of the Rent Act. The said Eviction Application was filed against Blue Bird Leisure and Holiday Ltd, Petitioners and three directors of said Blue Bird Leisure and Holiday Ltd.

v) By separate orders dated 28.02.2020, applications for leave to defend filed by the Petitioner Nos.1 and 2 respectively were rejected.

vi) The learned Competent Authority, Rent Control Act Law Court, Konkan Division, Mumbai, by order dated 17th March, 2021 passed following operative order in said Eviction Application No.160 of 2019 :

“i) The application is allowed.

ii) The respondents are hereby directed to hand over vacant and peaceful possession of Flat No. A/9, admeasuring 2500 sq. ft. of built up area, on the 4th Floor, of the building known as “Acropolis” belonging to Sagar Sangeet & Conversion Scheme C.H.S. Ltd., situated at 58, Shahid Bhagat Singh Road, Near Colaba Post Office, Colaba, Mumbai-400 005, bearing C. S.

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No. 258 of Colaba Division along with furniture and fixtures and one car parking within 30 days to the applicant.

iii) **The respondent nos.1, 4 to 6 are directed to pay arrears of license fee a sum of Rs.96,44,700/- within 30 days to the applicant.**

iv) **The respondent Nos. 1, 4 to 6 are further directed to make a payment of license fee at the double rate i.e. $3,06,260 \times 2 = 6,12,520/-$ per month from 12.09.2016 to till handover the vacant and peaceful possession of the application premises to the applicant.**

iv) The applicant at liberty to appropriate the security deposit, if any."

(Emphasis added)

vii) Thus, it is clear that, the learned Competent Authority by said order dated 17th March 2021 directed payment of license fee at the double rate i.e. $3,06,260/- \times 2$ i.e. $6,12,520/-$ per month from 12th September, 2016 till handing over the vacant and peaceful possession of the suit premises to the Respondent No.4 and arrears of Rs.96,44,700/- for earlier period were directed to be paid. Thus, the said amount as determined by the learned Competent Authority as on the date of said order dated 17th March 2021 comes to $[Rs.96,44,700/-] + Rs.6,12,520/- \times 54 \text{ months} = Rs.3,30,76080/-]$

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Rs.4,27,20,780/-. Thus, as on 17th March 2021, outstanding amount was Rs.4,27,20,780/-.

viii) The said order dated 17th March, 2021 is confirmed by the learned Additional Commissioner, Konkan Division, Mumbai by order dated 14th December, 2021, by which, the Revision Application No. 163 of 2021 filed by said M/s. Blue Bird Leisure & Holiday Ltd. and by Petitioners was rejected.

ix) On 18th December 2021 the present Writ Petition was filed.

x) A learned Single Judge passed following order on 1st April, 2022:-

“1. Learned counsel for the Respondent No.4/ Licensor submitted that, **para No.25 (iii) & (iv) of the impugned Order dated 17th March 2021 amounts to money decree. He submitted that, the Petitioners without paying the said decreetal amount and without paying further occupancy charges continues to reside in the suit premises, though there is a decree of eviction against them, which has been upheld by the Appellate Authority.**

2. In view thereof, the Petitioners are directed to deposit 50% of the decreetal amount as has been directed in para No.25 (iii) & (iv) of the impugned Order dated 17th March 2021 in the Registry of this Court within a period of three weeks from today. The Petitioners are further directed to continue to

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pay the monthly compensation / licence fees to the Respondent No.4-landlord from December 2021 during the pendency of present Petition.

3. List the Petition for 'Reporting Compliance' of the Order on 26th April 2022.

4. Subject to deposit of the said amount within stipulated period, execution proceedings initiated by the Respondent No.4 are stayed."

x) On 26th April, 2022, Single Judge passed following order:-

"At the sincere request made by Mr. Subhash Jha, learned counsel appearing for the Petitioners/Applicants, the period to deposit decretal amount as specified in Order dated 1st April, 2022, is hereby extended upto 10th May, 2022, as a last chance."

(Emphasis added)

16. As per the aforesaid order dated 1st April 2022 read with order 26th April 2022, the Petitioners were required to deposit total amount of Rs.2,13,60,390/- i.e. 50% dues as on 17th March 2021 and upto 17th March 2022, additional amount of Rs.36,75,120/- i.e. Rs.3,06,260/- per month. Thus, total amount of Rs.2,50,35,520/- was required to be deposited on or before 10th May 2022 in terms of order dated 1st April 2022 read with

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order dated 26th April 2022, which is only 50% of the amount as directed to be paid by the Competent Authority.

17. To appreciate whether the request made by the Petitioners to withdraw the Writ Petition is bonafide request or to avoid payment as per above referred interim orders dated 1st April 2022 read with 26th April 2022, it is necessary to set out the contention raised in the Affidavit-In-Rejoinder dated 10th March 2023 (which has been filed for keeping on record reasons for withdrawal of the Writ Petition) particularly, in paragraph No.14, which reads as under:-

“14. I say that under these **circumstances it was advised that the order dated 1st April, 2022 of this Hon’ble Court could be challenged in the Hon’ble Supreme Court of India, however, a decision was later on taken after having a lot of deliberations and discussions on the pros and cons that it would be appropriate to file a suit instead of approaching the Hon’ble Supreme Court of India** and accordingly, as stated hereinabove, **a suit bearing Suit (Lodging) No.9650 pf 2-22 was filed in this Hon’ble Court on 24th March, 2022 seeking the aforesaid reliefs.”**

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18. The above statement in the Affidavit-In-Rejoinder is totally false. This Court by order dated 1st April 2022 directed payment of 50% amount as directed by the learned Competent Authority and also directed payment of monthly compensation/licence fees and said amount comes to **Rs.2,50,35,510/-**. The above contention raised on the solemn affirmation in the Affidavit-In-Rejoinder specifically states that possibility of challenging said order dated 1st April 2022 in the Supreme Court was considered however, decision was taken to file suit. In fact, **the said suit was already filed on 24th March 2022 and thereafter the Petitioners obtained stay in this Writ Petition by said order dated 1st April 2022 on the condition that 50% amount as directed by the Competent Authority would be paid and compensation/licence fees for further period would be deposited. In fact, the learned Single Judge by further order dated 26th April 2022 recorded that sincere request was made by Advocate Subhash Jha to extend period to deposit 50% of the amount as specified in order dated 1st April 2022 upto 10th May 2022 as a last chance. The above contention raised in the Affidavit-In-Rejoinder clearly shows that said request was made**

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on 26th April 2022 just to get extension of stay for protecting the possession and it was never the intention of Petitioners to comply with said statement.

19. The Petitioners in the meanwhile on 24th March 2022 as set out hereinabove filed Suit (Lodging) No.9650 of 2022. In the Interim Application (Lodging) No.11299 of 2022 filed in said suit, a learned Single Judge on 10th May 2022 (Vacation Court) passed the following order:-

1. “Heard.
2. Mr. Jha, learned counsel appearing for the Applicant submits that he shall deposit an amount of Rs. 1,00,00,000/- in this Court within a period of 10 days to show his bonafide. Mr. Zha confirms that he shall not claim any equity in the flat on deposit of the aforesaid amount as his client is desirous of an amicable settlement
3. Mr. Jha has requested the Court that he shall make appropriate submissions for consideration upon deposit of the amount on the merits of the matter. At this stage, the Court has not expressed any opinion on the merits of the matter.
4. It is made clear that deposit of the aforesaid amount shall be without prejudice to the rights and contentions of the Respondents/Defendants. In the

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meantime, possession of the subject flat shall remain protected.

5. Stand over to **8th June, 2022** before the regular Court.”

(Emphasis added)

20. Although, as observed hereinabove in this Writ Petition this Court is not concerned with the merits of Suit (Lodging) No.9650 of 2022 and Interim Applications taken out in the said suit, however, it is relevant to note the contentions raised by the Petitioners in paragraph 15 in the said Affidavit-In-Rejoinder regarding said order dated 10th May 2022 passed in Interim Application filed in said suit. The same is relevant as the **same reflects the conduct of the Petitioners.**

“15. I say that in the above suit, **this Hon’ble Court by order dated 10th May, 2022 was pleased to record statement made voluntarily by my counsel that I shall deposit a sum of Rs.1,00,00,000/- in this Hon’ble Court within a period of 10 days to show my bonafide. I say that we were not prepared even for depositing a sum of Rs.1,00,00,000/- for which statement was made by my counsel in this Hon’ble Court, however, my counsel looking into the facts and**

circumstances of the case and visualising that I could be otherwise dispossessed from the suit premises, made a statement of depositing a sum of Rs.1,00,00,000/- within a period of 10 days.”

(Emphasis added)

21. As the Petitioner No.1 i.e. Plaintiff in that suit could not comply with the said order dated 10th May 2022 passed in Interim Application (Lodging) No.11299 of 2022 in Suit (Lodging) No.9650 of 2022 within time and therefore, another Interim Application (Lodging) No.16172 of 2022 was filed inter alia seeking following relief:-

(a) “that this Hon’ble Court may be pleased to modify its earlier order dated 10th May, 2022, being Exhibit-’II’ annexed herewith, in as much by permitting the Applicant to deposit a sum of Rs.50,00,000/- out of the sum of Rs.1,00,00,000/- directed to be deposited in this Hon’ble Court by order dated 10th May, 2022 immediately and whereas for the balance sum of Rs.50,00,000/-, the Applicant be granted extension of time for a period of three weeks more”

22. The said Interim Application (Lodging) No.16172 of 2022 in vacation came up before this Court. It is significant to note

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that only order dated 10th May 2022 passed by a learned Single Judge passed in Interim Application (Lodging) No.11299 of 2022 in Suit (Lodging) No.9652 of 2022 was pointed out to this Court. This Court passed the following order on 25th May 2022:-

1. Heard Mr. Jha, learned counsel appearing for the Applicant i.e. Original Plaintiff and Mr. Anil Patel along with Advocate Sakina Rangwala, for the Defendant No. 1. By order dated 10th May, 2022 this Court recorded statement made by Mr. Jha that his client would deposit an amount of Rs. 1,00,00,000/- in this Court within a period of 10 days to show his bonafide.

2. By this Interim Application, the Applicant is seeking extension of time to deposit the said amount of Rs. 1,00,00,000/- in following manner:

1) Rs. 50,00,000/- to be paid immediately.

2) Balance Rs. 50,00,000/- to be paid within a period of three weeks.

3. The Applicant is present in this Court and after taking instructions from her, Mr. Jha states that an amount of Rs. 50,00,000/- will be paid on or before 30th May, 2022 and balance amount of Rs. 50,00,000/- will be paid on or before 7th June, 2022, so that, the matter can be heard by the regular Court on 08th June, 2022. Statement made by Mr. Jha, on instructions of the Applicant who is present

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in the Court is accepted. In view of this statement, time granted by order dated 10th May, 2022 to deposit an amount of Rs. 1,00,00,000/- in this Court is extended as follows:

i) The amount of Rs. 50,00,000/- to be deposited on or before 30th May, 2022.

ii) Balance amount of Rs. 50,00,000/- to be deposited on or before 7th June, 2022.

4. Mr. Jha, states that, rejoinder in IA (Lodging) No. 11299 of 2022 is ready and already served on the Respondents. The office is directed to accept the said rejoinder.

5. Stand over to 8th June, 2022.”

(Emphasis added)

23. It is the contention of Mr. Jha that co-ordinate Bench has granted orders in said proceeding being Suit (Lodging) No.9650 of 2022 and therefore, this Court should not pass any order which will have bearing on said suit.

24. Mr. Jha, learned Advocate appearing for the Petitioners has relied on Order 23 Rule 1 of C.P.C. to contend that the Petitioners be allowed to withdraw the petition. He relied on the following decisions of the Supreme Court and the High Court:-

i. **Anil Dinmani Shankar Joshi & Anr. vs. Chief**

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Officer, Panvel Municipal Council, Panvel & Anr.

(supra)

ii. **J. B. Patnaik vs. Bennett Coleman & Co. Ltd. & Ors.**(supra)

iii. **Hulas Rai Baij Nath vs. Firm K. B. Bass & Co.**
(supra)

iv. **Shiv Prasad vs. Durga Prasad & Anr.** (supra)

v. **Shaik Hussain & Sons vs. M. G. Kannaiah & Anr.**(supra)

25. He relied on the decision of the Supreme Court in the matter of **Vikramjit Singh** (supra) to contend that one Bench cannot comment on the functioning of the same Court much-less sit in judgment as an Appellate Court over its decision. He submitted that which could not be done directly could also not be done indirectly. To substantiate the said contention, he also relied on the decision of **Mohinder Kumar** (supra).

26. In view of rival submissions, following points arise for consideration:-

(i) Whether the Petitioners are entitled to seek withdrawal of the Writ Petition?

(ii) Whether as contended by Respondents, if prayer of withdrawal is allowed then, in the facts and

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circumstances of this case, very heavy cost should be imposed on the Petitioners?

27. To substantiate the contention that if the Petitioners seek withdrawal of the Writ Petition, then the same is required to be granted and only power the Court will have is to impose cost, Mr. Jha relied on several decisions. In **Shaik Hussain & Sons** (supra), it has been held by the Supreme Court that where Writ Petitioner seeks to withdraw the Writ Petition, High Court should permit him to do so and not to proceed to decide upon the Writ Petition. In **Hulas Rai Baij Nath** (supra), Supreme Court in the context of prayer for withdrawal of suit observed that the language of Order XXIII Rule 1 sub-rule (1) of C.P.C. gives an unqualified right to a Plaintiff to withdraw from a suit.

28. In view of the above legal position, there is substance in the contention of Mr. Jha that, if the withdrawal is sought, withdrawal should be allowed and the Court has got jurisdiction only to impose cost.

29. In the present case, as set out hereinabove, the total amount due as on 17th March 2021 was Rs.4,27,20,780/-. The learned Single Judge by order dated 1st April 2022 directed

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deposit of 50% i.e. Rs.2,13,60,390/-. The learned Single Judge also directed the Petitioners to deposit regularly leave and license charges i.e. about Rs.3,06,260/- per month. It is significant to note that learned Single Judge by order dated 1st April 2022 granted interim relief on the condition that 50% amount i.e. Rs.2,13,60,390/- + Rs.45,93,900/- = Rs.2,59,54,290/- would be deposited in the Court on or before 26th April 2022 and for reporting compliance of the said order, the matter was kept on 26th April 2022. On 26th April 2022, learned Single Judge has recorded that at the sincere request made by Mr. Subhash Jha, learned Advocate for the Petitioners, the period to deposit decretal amount as specified in order dated 1st April 2022 is extended upto 10th May 2022 as a last chance and therefore, time was granted upto 10th May 2022. As already set out hereinabove, in the meanwhile, i.e. even before order dated 1st April 2022 was passed, the Petitioner No.1 on 24th March 2022 has filed the aforesaid suit bearing Suit (Lodging) No.9650 of 2022 and in the Interim Application (Lodging) No.11299 of 2022 order was passed by the learned Single Judge on 10th May 2022 in vacation to deposit amount of

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Rs.1,00,00,000/- within a period of 10 days. The Interim Application (Lodging) No.16172 of 2022 is taken out for extending the said period and this Court as Vacation Court has extended the said period as set out in the order dated 25th May 2022.

30. In this background of the matter, it is important to assess the conduct of the Petitioners as reflected in the contentions raised in said Affidavit-In-Rejoinder dated 13th February 2023 particularly in paragraphs 14 and 15. It is stated in the said Rejoinder that it was contemplated that order dated 1st April 2022 by which 50% of amount i.e. Rs.2,13,60,390/- + Rs.45,93,900/- = Rs.2,59,54,290/- was directed to be deposited be challenged in Supreme Court. However, it was decided to file the suit and not to challenge the same. In fact, the suit was filed on 24th March 2022 and thereafter, the learned Single Judge passed order on 1st April 2022 directing deposit of 50% of the amount. It is further significant to note that as recorded in order dated 26th April 2022 that at the sincere request of Mr. Jha, learned Advocate of the Petitioners said period to deposit Rs.2,59,54,290/- was extended upto 10th May 2022 as a last

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chance and the said orders were never complied with. **Thus, it is clear that it was never the intention of the Petitioners to comply with said orders dated 1st April 2022 and 26th April 2022.**

31. It is further significant to note that as far as the order dated 10th May 2022 passed by the learned Single Judge in Interim Application (Lodging) No.11299 of 2022 in Suit (Lodging) No.9650 of 2022, in the said Affidavit-in-Rejoinder it has been contended that voluntarily learned Advocate of the Petitioners i.e. Mr. Subhash Jha made a statement that the Petitioner No.1 would deposit sum of Rs.1,00,00,000/- in this Court within a period of 10 days. It is further stated that the Petitioners were not prepared even for depositing the said Rs.1,00,00,000/-, for which statement was made by Mr. Jha. It is further stated that looking into facts and circumstances of the case and visualising that the Petitioners could be otherwise dispossessed from the suit premises, Mr. Jha, learned Advocate voluntarily made a statement of depositing a sum of Rs.1,00,00,000/- within a period of 10 days. Although this conduct is in the suit, as in the rejoinder filed in this Writ

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Petition, the Petitioners themselves have set out the contention regarding the same, it is necessary to refer to said contention only from the point of view of assessing conduct of the Petitioners. **Therefore, it is clear that the Petitioners have obtained order dated 1st April 2022 and 26th April 2022 by totally misrepresenting the Court that said 50% amount i.e. Rs.2,13,60,390/- + Rs.45,93,900/- = Rs.2,59,54,290/- would be paid on or before 10th May 2022 and on that basis, eviction orders were stayed.**

32. **Therefore, this is a case where the Petitioners have taken unfair advantage of the interim order passed by this Court in the present Writ Petition.** In fact, it was represented to this Court that Rs.2,59,54,290/- as per the above details would be deposited and on that basis, a learned Single Judge has granted the stay by passing above referred orders dated 1st April 2022 and 26th April 2022.

33. It is further significant to note that as per order of Competent Authority, total dues as on 17th March 2021 are Rs.4,27,20,780/- and as recorded by the Competent Authority, the Petitioners have not paid any amount from 12th September

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2016 onwards and as on 12th September 2016, arrears of license fees was Rs.96,44,700/-. Therefore, **the Petitioners have continued to occupy the said premises admeasuring about 2500 sq.ft. area of 3 bedrooms, hall, kitchen + study room and one car parking in very prime locality of Mumbai i.e. at Colaba, Mumbai from 12th September 2016 onwards without paying any amount whatsoever and obtained the stay and conditions on which the said stay order was obtained are not complied with.**

34. The Supreme Court in **S.P. Chengalvaraya Naidu (Dead) by LRS vs. Jagannath (Dead) by LRS & Ors.**⁸ has held that the courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. The Supreme Court observed that more often than not, process of the court is being abused. **Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely.** The Supreme Court held that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

8 (1994) 1 SCC 1

35. The Supreme Court in **Kishore Samrite vs. State of Uttar Pradesh & Ors.**⁹ has held that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final. The Court must ensure that its process is not abused and in order to prevent abuse of the process the court would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty-bound to impose heavy costs.

36. In the present case, the Petitioners have obtained stay of execution of eviction order as well as order directing payment of money passed by the Competent Authority as confirmed by the Additional Commissioner by misrepresenting to the learned Single Judge that 50% amount i.e. Rs.2,13,60,390/- + Rs.45,93,900/- = Rs.2,59,54,290/- would be deposited in this Court on or before 10th May 2022. The conduct of the Petitioners as well as the contention raised in paragraph 14 of the Affidavit-In-Rejoinder clearly show that the Petitioners never intended to comply with order of the learned Single Judge dated 1st April 2022 and statement made to this Court on

9 (2013) 2 SCC 398; (2013) 2 SCC (Cri) 655

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26th April 2022 and just to obtain order of stay misleading statement was made as recorded in order dated 26th April 2022.

37. The Petitioners are now withdrawing the Writ Petition as stay has been granted in the suit filed by the Petitioner No.1. The contention of Mr. Jha that stay was operating in this Writ Petition only for 39 days is totally irrelevant, as what is important is that by misleading this Court that Rs.2,59,54,290/- would be deposited on or before 10th May 2022, stay was obtained and it was never the intention of the Petitioners to comply with said statement as reflected in paragraph 14 of the said Affidavit-In-Rejoinder.

38. It is significant to note that as on 23rd March 2023, total amount due as per said order of Competent Authority comes to Rs.5,74,21,260/-. In terms of order dated 1st April 2022 read with 26th April 2022 passed by the learned Single Judge in this Writ Petition, the Petitioners are required to deposit 50% amount which till date comes to Rs.2,87,10,630/-. It is admitted position that, nothing is deposited by the Petitioners in this Writ Petition and what is deposited is only Rs.1,00,00,000/- in

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the said suit. The factual position on record shows that the Petitioners have not deposited any amount towards leave and licence charges and they are occupying property being flat admeasuring 2500 sq.ft. built up area situated at Colaba, Mumbai since 12th September 2016 without paying any charges and in fact as on 2016, the arrears were of Rs.96,00,000/-. Thus, the conduct of the Petitioners clearly shows total abuse of the process of law.

39. Therefore, in the light of the decisions of the Supreme Court in the matter of **Shaik Hussain & Sons** (supra) and in **Hulas Rai Baij Nath** (supra), I am allowing withdrawal of the Writ Petition, however I am imposing cost of Rs.20,00,000/- (Rs. Twenty Lakhs only) on the Petitioners to be paid to the **Respondent No.4** within a period of two weeks from uploading of this order on the website of this Court.

40. In view of the withdrawal of the Writ Petition, the same is dismissed as withdrawn and therefore, nothing survives in the Interim Applications and the same are also dismissed. All ad-interim and interim orders, if any, passed in the Writ Petition stand vacated forthwith.

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41. At this stage, Mr. Jha, learned Advocate appearing for the Petitioners requests to stay order of imposing cost for a period of four weeks. However, in view of the conduct of the Petitioners which I have noted hereinabove, the Petitioners are not entitled for any discretionary order including stay of order imposing cost. Therefore, the said request is rejected.

[MADHAV J. JAMDAR, J.]

Note: This order is modified as per Speaking to the Minutes order dated 17th April 2023. The corrections are shown in paragraph No.39 in bold, italics and underlined.