

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.30173 OF 2022
IN
FIRST APPEAL NO. 641 OF 2020

Shri.Manilal Babubhai Dhodi ... Applicant

In the matter between:

Dr.Chhittusinh Mohansinh Chauhand ... Appellant
V/s.

Shri.Manilal Babubhai Dhodi ... Respondents.

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Mr.Sanjiv Sawant a/w. Mr.Abhishek Matkar i/b. Abhishek
Deshmukh for the Applicant in IA/30173/2002.

Dr.Ranjit A.Thorat Senior Advocate a/w. Ms.Varsha Palav
a/w.Ms.Pratibha Shelke a/w. Ms.Ajinkya Palav a/w. Mr.Anuj Tiwari,
a/w. Ms.Priyank Jadav i/b. The Laureate for the Respondent
No.1/Original Appellant.

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 27 October 2023.

P.C. :

Heard the learned Counsel for the Applicant.

**JYOTI
RAJESH
MANE**

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by JYOTI
RAJESH MANE
Date: 2023.10.31
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2 This application is taken out with a prayer that the Appellants
(Original Defendant No.1) be directed to pay certain amounts to the
Applicant, per month, in respect of leave and license agreement

executed by the Respondents. The circumstances in which this application is taken out are peculiar. The First Appeal No.641 of 2020 is filed by the Appellant - original Defendant assailing the judgment and decree passed by the Civil Judge, Senior Division, Dadra & Nagar Haveli, Silvassa, on 28 January 2020 directing the Appellant to handover the possession of the suit property. When this Appeal came up on board, the Appeal was admitted by order dated 9 March 2021. Thereafter, the interim application taken out by the Appellant for stay of the execution of the Decree was considered on 7 March 2022. The said application was disposed of observing thus:

“5. We direct the Appellant not to part with possession, create third party rights or encumbrances of any nature whatsoever over or in respect of the land or the building until further orders of the Court. We are told that there is an industrial factory plant on the premises. We do not permit letting out, leasing or giving on leave and license for any part of the land or the building without prior leave of the Court obtained after at least three weeks’ prior notice to the Advocate for the Respondent.

6. The Respondent is at liberty to make an appropriate application, if so advised, as to any terms and conditions that should be imposed on the Appellant.”

3 In the present interim application grievance is made that in spite of the mandate the Respondent - original Appellant has let out the property on leave and license to third party. Two affidavits have been filed by the original Appellant. In the affidavit dated 18 January 2023, the Appellant has stated that there was already a leave and license agreement on the date on which an order dated 7 March

2022 was passed which remained to be pointed out to the Court and praecipe was moved on 14 March 2022. However, in the said affidavit the Appellant has stated that the leave and license agreement was to expire on 31 March 2023 and a praecipe for modification was moved on 14 March 2022. Therefore, Appellant had almost a year to get the order modified if the Appellant had intended to do so, before expiry of the leave and license agreement. Not only the Appellant did not move an application for modification even no orders were taken on praecipe and after 1 March 2023 the Appellant proceeded to renew the leave and license agreement in respect of one Surya Polycontainers. This conduct is clearly in breach of the order of this Court and consequences can ensue in respect of this breach.

4 The learned Counsel for the Applicant-original Plaintiff states that apart from moving upon dis-obedience and the breach of order of the Court, hardship to the original plaintiff be considered and some part of the compensation received from leave and license agreement be directed to be paid to the original Plaintiff who is now stated to be 75 years of age. Therefore, considering this submission, at present, we do not intend to proceed further under contempt jurisdiction, but on the request of the original Plaintiff is that part of the payment of compensation to be paid to him.

5 The leave and license agreement which is placed on record by way of an additional affidavit states that the license fee which is being

received by the Appellant is to the tune of Rs.3,81,990/-.

Considering the facts and circumstances we are of the opinion that the original Appellant will pay 15% of the amount of license fee starting from the month of October 2023 till the disposal of the Appeal by way of Bank transfer to the account of the original Plaintiff which the learned counsel for the original Plaintiff will provide to the learned counsel for the Appellant. This amount be transferred before 15th day of each month.

5 In case of default in payment, we grant liberty to the Applicant - original Plaintiff to revive his prayer for proceeding under the contempt jurisdiction against the Appellant. The interim application is accordingly disposed of.

6 As regards the contention of the Appellant that the Respondent- Plaintiff be directed to give security is concerned, all that we state at this stage that this course of action we have adopted is instead of proceeding against Appellant for contempt which as of today is clear and apparent to us. The request whether Respondent - original Plaintiff be directed to adjust or refund the amount, which will be paid during the pendency of the Appeal as above, would be considered at the time of hearing of the Appeal.

7 Copy of the leave and license agreement be placed on record with copy thereof to the learned counsel for original plaintiff.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)