



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3862 OF 2023

Shri Sunil Vasant Pedgaonkar,
Aged about 63 years, Occ. Business,
R/o 61, New Ramdaspath, Nagpur-440 010

...Petitioner

// VERSUS //

Shri Amit Rajput (HUF), through its Karta
Mr. Amit Jagdish Rajput, Aged about 38
years, Occ. Business Carrying on business
under the name of "Trans Fitness",
R/o 104, Raghava Apartments, Nelson
Square, Rajnagar, Nagpur

...Respondent

Shri A.S.Jaiswal, Senior Advocate assisted by Shri G.B.Sawal, Advocate
for the petitioner.

Shri P.V.Bansod, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 6th NOVEMBER, 2023.

ORAL JUDGMENT :

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the parties

2. The order dated 20th September, 2021 passed by the learned
Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No.

161 of 2016, rejecting the application Exhibit 51 filed by the petitioner under Order XV-A Rule 1 of the Code of Civil Procedure for directing the defendant to deposit an arrears of occupation charges amounting to Rs.15,93,900/- and water taxes worth Rs.1,07,602/-, is under challenge in this writ petition.

3. It is pertinent to note that, the pleadings made by the petitioner as regards occupation charges and other charges, in the suit for eviction and possession filed against the respondent were not disputed by the respondent in his written statement.

4. The pleadings in paragraph 2 read thus:

“2. That the defendant was allowed to use and occupy portion of the above mentioned accommodation consisting of front and back side portion of Ground Floor i.e. entire ground floor of Municipal House No. 577/A & 577/A, having built up area of 2801 square feet under a Leave and License Agreement made and executed on 4/09/2009 for 59 months for the period commencing from 1/11/2009 and expiring on 30/09/2014, which was duly registered with the office of Sub-Registrar of Documents, Nagpur-1 at Sr.No. 4403/2009, a copy of which is filed herewith as DOCUMENT NO.1, under the terms of which he Licensee was to pay a sum of Rs.40,000/- to the Licensor towards the License fee and Rs.37,000/- p.m. on account of use of the furniture and fixtures, which amounts were payable in advance by the 5th day of every month, which was to be enhanced after 3 years @ 15% on the amount payable as License fee and amount payable on account of use of furniture and fixtures for the preceding 3 years for temporary use and occupation of the said premises alongwith furniture, fittings and fixtures by the Licensor to the Licensee under the Deed, executed by late Shri Vasantrao Pedegaonkar (father of plaintiff) during his lifetime.”

5. The pleadings of respondent in the Written Statement, are as follows:

2. Reply as to para 2:- It is a matter of record that the defendant was allowed to use and occupy portion of the above mentioned accommodation consisting of front and back side portion of Ground Floor i.e. entire ground floor of Municipal House No. 577/A & 577/1, having built up area of 2801 sq.ft. It is specifically submitted that on 4/09/2009 the father of plaintiff has given permission in writing for the modification of the said premises along with the projected map. The copy of which is filed herewith as Document No.1. Thus the defendant has carried out the said modification in respect of the inner wall of the said tenanted premises. Therefore the description mentioned in this para is not in correct therefore, the same is denied. The plan mentioned in the said para is denied. It is a matter of record that lease was made and executed by the father of plaintiff on 4/09/2009 for 59 months for a period commencing from 1/11/2009 and expired on 30/09/2014 which was duly registered with the office of Sub Registrar of Documents, Nagpur-1 at Sr.No.4403/2009. It is a matter of record that under the terms of which the defendant was to pay a sum of Rs.40,000/- to the plaintiff towards the rent and Rs.37,000/- p.m. on account of use of the furniture an fixtures. It is a matter of record which amounts were payable in advance by the 5th day of every month, which was to be enhanced after 3 years @ 15% on the amount payable as rent and amount payable on account of use of furniture and fixtures for the proceeding 3 years for temporary use and occupation of the said premises alongwith furniture, fittings and fixtures by the plaintiff to the defendant under the Deed, executed by late Shri Vasantrao Pedgaonkar (father of plaintiff) during his lifetime.

6. It is the case of the petitioner that since, the respondent failed to pay the occupation charges regularly, the petitioner filed an application under Order XV-A Rule 1 of the Code of Civil Procedure along with the chart showing the arrears of occupation charges. The chart showing

calculation filed along with the application shows that the petitioner claimed to Rs.15,93,900/- towards illegal occupation charges upto October, 2020.

7. Admittedly, no reply was filed by the respondent denying the arrears of illegal occupation charges claimed in the application and as shown in the chart filed along with application.

8. In absence of any such denial or reply, the learned trial Court while rejecting the application has observed thus:

7. The defendant has not filed the say regarding the same. But, plaintiff has not mentioned the period when defendant is at fault for the payment of occupation charges and water taxes. He has not submitted the bill of water charges occurred on the suit premises. He has only mentioned that since January, 2020 defendant is not making the payment of occupation charges.

8. Plaintiff has not submitted the period and calculation of the occupation charges. He has provided separate list for the same. As per the same list from 28.6.2016 to June 2020 the charges has not been paid by the defendant. This enclosure is mere calculation. No evidence in respect of the same has been produced by the plaintiff.

9. Shri Jaiswal, learned Senior Advocate argues that in absence of any denial of the amount mentioned in the application of the chart or any oppose to the prayer made in the application, the finding recorded by the learned trial Court that no evidence was produced by the petitioner, is erroneous.

10. On the other hand, learned counsel for the respondent submits that he is disputing the figures on various grounds. According to him, the amount is not payable to the petitioner.

11. However, he is not disputing that reply was not filed to the application or the amount was not denied on any ground.

12. Moreover, he fairly admits that whatever ground on which he is supporting the order and opposing the application filed by the petitioner under Order XV-A Rule 1 of the Code of Civil Procedure was not argued before the trial Court. The reason given by the learned counsel for the respondent is that some other lawyer argued the said application before the learned trial Court.

13. Be that as it may. The fact remains that there was no denial or oppose raised by the respondent to the application Exhibit 51. Even from the order, it can be seen that there were no arguments made by the defendant denying the amount on any ground.

14. In absence of such denial or dispute raised by the respondent about the amount claimed by the petitioner in application Exhibit 51, rejection of said application on the ground that no evidence was produced by the petitioner is erroneous and not sustainable in the eyes of law.

15. However, considering the fact that now first time before this Court, the respondent is disputing the amount, I am of the opinion that the ends of justice would be subserved if the respondent is directed to

deposit the amount as claimed by the petitioner under the application Exhibit 51 in the trial Court and the withdrawal of the same shall be made subject to the result of the suit. Accordingly, I pass the following order.

- i. The writ petition is allowed.
- ii. The order dated 20th September, 2021 passed by the learned Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 161 of 2016 in application Exhibit 51 is hereby quashed and set aside;
- iii. The respondent is directed to deposit Rs.15,93,900/- towards occupation charges and Rs.1,07,602/- towards water taxes within eight weeks from today in the trial Court. The withdrawal of the same shall be subject to result of the suit.

[ANIL S. KILOR, J.]