

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

WRIT PETITION NO.450 OF 2018

M/s Chate Coaching Classes Pvt. Ltd, Aurangabad through its Managing Director
 Shri Macchindra Hanumantrao Chate .Vs. M/s Khatri Complex a partnership Firm by
 its partners Chhugaram Lahorimal Khatri and others

WITH

WRIT PETITION NO.453 OF 2018

M/s Chate Coaching Classes Pvt. Ltd, Aurangabad through its Managing Director
 Shri Macchindra Hanumantrao Chate .Vs. M/s Khatri Complex a partnership Firm by
 its partners Chhugaram Lahorimal Khatri and others

Office Notes, Office Memoranda of
 Coram, appearances, Court's Orders
 or directions and Registrar's order

Court's or Judge's Order

Shri K.S. Agrawal, Adv. h/f Shri S.W. Sambre, Adv. for the petitioner.
 Shri A.J. Gilda, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 27/06/2023

1. Heard.
2. Both these petitions are arising out of the common judgment and order dated 03.11.2004 directing the petitioner to pay monthly rent of maintenance charges at the rate of Rs. 47,410/- per month from March 1999 to June, 1999 after deducting amount of Rs.8,246/- along with the interest @ 12% per annum and Rs.2,97,000/- towards rent and maintenance charges from the period 01.07.1999 till 13.12.1999 along with interest @12% per annum to the plaintiff.
3. It is the case of the petitioner that, the petitioner is a registered Company under the Companies

Act, 1956 and for running coaching classes, the premises owned by the respondents were taken on leave and license basis. It is the further case of the petitioner that, as per the clause 10 of the lease and license dated 01.09.1997, three months notice was served on 29.07.1998 for termination of licence. Accordingly, it is stated that on 30.10.1998, the premises were vacated and thereafter, the petitioner is not liable to pay any rent to the respondents.

4. It is stated that, the respondents filed two suits namely Small Cause Suit No.66 of 99 and Small Cause Suit No.133 of 99. Both the suits were for recovery of arrears of rent. In the Small Cause Suit No.66 of 99, the period involved is from 01.04.1998 to 30.06.1999. Whereas, in Small Cause Suit No.133 of 99, the period involved is from 01.07.1999 to 30.12.1999. Thus, it is the case of the petitioner that the above referred period also covers subsequent period of surrender of the premises. It is therefore, submitted that the plaintiff is not entitled for rent of the period after October, 1998.

5. The learned counsel for the petitioner states that, the learned trial Court has relied upon the Court Commissioner's report which is not sufficient to held that the petitioner was in possession after 28.10.1998 till 30.12.1999 and therefore, directing the petitioner to pay

arrears of rent from the period of November, 1998 to December, 1999, is illegal.

6. The learned counsel for the petitioner would submit that, the plaintiff has not established and proved the fact that, the petitioner was in possession from November, 1998 to December, 1999. He, therefore, submits that the impugned judgment and orders are erroneous and liable to be quashed and set aside.

7. On the other hand, Shri Gilda, learned counsel for the respondents submit that, after the notice issued on 29.07.1998 for termination of leave and license agreement, the petitioner handed over the possession to one Trimurti Services for running a coaching classes. It is submitted that, in cross examination, the witness of the petitioner has categorically admitted the said fact.

8. Thus, he submits that the said admissions are sufficient in addition to Commissioner Report to hold that, the petitioner did not vacate the premises though the notice of termination of leave and license agreement was issued. He, therefore, submits that both the Courts below have rightly held in favour of the plaintiff and no illegality has been committed by the learned lower Appellate Court.

9. In light of rival contentions, I have perused the impugned judgment and order.

10. The learned lower Appellate Court while dismissing the appeal preferred by the petitioner challenging the common judgment and order passed in Small Cause Suit No.66 of 1999 and Small Cause Suit No.133 of 1999, has considered the Commissioner's report as well as oral and documentary evidence produced by the parties.

11. In the present matter, the trial Court appointed PW-2 as Commissioner who visited the said premises on 18.12.1999 and gave his report at Exh.23. In the report, it was recorded that the article belonging to the appellant were found in the suit premises. It is also mentioned that, the Manager of the petitioner was present at the time of making inventory of the article lying in the room and the Manager admitted that all the articles mentioned in the inventory belonging to the petitioner.

12. Similarly, considering the cross examination of the witnesses of the petitioner namely Surendra Mehta and Rajendra Rajput who have admitted the fact that, the petitioner handed over the premises to Trimurti Services for running coaching classes, I find substance in the submission of the learned counsel for the plaintiff that, though the notice was issued, terminating the leave and license agreement, the possession was not handed over to the respondent/plaintiff.

13. Furthermore, the witness of the defendant – Rajendra Rajput in his cross examination has categorically accepted that, while handing over possession on 31.10.1988, no document was prepared or no letter or communication was issued by the defendant and no inventory was prepared while removing the articles belonging to the petitioner.

14. Thus, I am of the opinion that, the learned Appellate Court as well as the learned trial Court have rightly arrived at a conclusion that even after 31.10.1998, the petitioner was in possession of the suit premises and accordingly, the suit was decreed directing the petitioner to pay the arrears of rent for the period of November, 1998 to December, 1999.

15 In the circumstances, since, no perversity has been committed by both the Courts below and I, do not find any reason to interfere with the impugned judgment and order. Accordingly, the writ petitions are **dismissed**.

16. It is informed that the decretal amount is deposited by the petitioner in this Court, the same is permitted to be withdrawn by the respondents including the interest, if any, accrued thereon.

JUDGE