



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

CIVIL REVISION APPLICATION NO.150/2024

M/S. RAVIRAJ PROCESS CONTROLS
THR. ITS PROP. RAVI BANSILAL DARIRA ..APPLICANT

VS.

M/S. UMA PRINTERS THR. ITS PROP.
PRATAP KAMAT ..RESPONDENT

Adv. Karl Tamboly i/b. Adv. Kunal R. Kumbhat for the
applicant.

Adv. Hrushi Narvekar a/w. Adv. E. A. Sasi for the respondent.

CORAM : RAJESH S. PATIL, J.

DATE : MAY 7, 2024.

P.C. :

1. This civil revision application is filed under the provisions of Section 115 of the Code of Civil Procedure (for short 'CPC') by the defendant, challenging the order dated 14/2/2024, passed by the Civil Judge, Senior Division, Belapur, thereby rejecting the application filed by the defendant.

2. Admittedly, the respondent herein is entitled to a property bearing Plot No.A-795, situated at village Khairane,

TTC Industrial Area, Navi Mumbai, Thane, admeasuring 2100 sq.mts. alongwith structures standing thereon admeasuring 2092.63 sq.mts. (for short 'suit property').

3. A registered leave and license agreement was entered into between the respondent (owner) and the applicant herein with regard to the suit property for a period of five years starting from 1/5/2018 to 30/4/2023, at monthly license fee for the period from 1/5/2018 to 30/4/2021 for Rs.5,75,000/- per month and from 1/5/2021 to 30/4/2023 for Rs.6,61,250/- per month.

4. As per clause 18 of the license agreement, if license fees was not paid for two consecutive months, it was considered to be a default and the respondent was entitled to terminate the license after giving notice. Apart from the license fees, the applicant was also supposed to pay a sum of Rs.35,06,747.60 paise to the MIDC as their charges.

5. As according to the respondent, there was a default and notice was issued to the applicant terminating the leave and license agreement.

6. In spite of issuance of the notice since the applicant did not vacate the suit property neither did they pay the

license fees and the MIDC charges. Civil Suit No.51/2020 was filed before the Civil Judge, Senior Division, Belapur, seeking therein eviction and recovery of amounts as also damages for wrongful possession.

7. During pendency of such civil suit, the parties entered into the consent terms on 27/10/2021. As the consent terms were tendered by the parties before the Civil Judge, Senior Division, Belapur, the Civil Judge, Senior Division, decreed the suit on 17/11/2021, in terms of the consent terms entered into between the parties.

8. Thereafter, the respondent herein filed an execution application, as according to them, the applicant was not ready to comply with the consent terms. Thereafter, the applicant sought time to file reply to the execution application.

9. Subsequently, the applicant preferred an application challenging the consent terms, on 12/10/2023. So also, the applicant preferred an application seeking a stay to the execution of the decree passed in terms of the consent terms. The said application (Exhibit-07) was heard by the Civil Judge, Senior Division, Belapur and by his order dated

14/2/2024, the application (Exhibit-07) was rejected. Against said rejection, the present civil revision application under the provisions of Section 115 of the CPC is filed by the applicant.

10. Mr. Tamboly appearing for the applicant made his submission that as of today there is no outstanding dues to be payable by the applicant to the respondent. He submits that in the suit property there are heavy machineries of the applicant and the applicant is desirous to remove the same if sufficient time is granted to the applicant. Mr. Tamboly, on instructions of his client, submitted that period of one year be granted to the applicant, and they will be able to shift their machineries and during the said period of one year they would certainly pay an amount per month to the respondent for using the premises.

11. Mr. Narvekar appearing for the respondent submits that the applicant had admittedly entered into a registered leave and license agreement. The said leave and license agreement was signed by the parties. The clauses in the leave and license agreement specifically mentioned that in case there is a delay on the part of the licensee (applicant

herein), the respondent will be entitled to terminate the license. He further submitted that as per the clause in the leave and license agreement, even if there was two defaults the respondent was entitled to terminate the leave and license agreement. He submits that there were seven consecutive defaults made by the applicant, therefore, the licensor (respondent herein) had no alternate but to terminate the leave and license agreement. He submits that as of today a sum of Rs.6,12,06,094/- are due from the applicant. He submits that the applicant was well aware in the month of December 2019 that the respondent has terminated the leave and license agreement, and they were supposed to vacate and hand over the possession. He submits that even after filing of the suit in the year 2020 the applicant did not find a new place and shift their machineries. He submits that even though indulgence were shown by his clients to the applicant by way of filing consent terms on 27/10/2021, whereby they were supposed to vacate the premises on 30/4/2023. He submits that after a period of two years after the consent terms were executed, and tendered in the Court, and accordingly a

decree being passed; an application under the provisions of Order XXIII, Rule 3A of the CPC was filed by the applicant challenging the consent terms. He submits that therefore, the said application which was filed along with the application seeking stay to the execution of the decree passed on the basis of the consent terms was rejected by the trial Court. He submits that there is no case made out by the applicant to entertain the present civil revision application under the provisions of Section 115 of the CPC.

12. I have heard counsels for both sides and I have also considered the documents on record.

13. It is a matter of record that leave and license agreement was entered into between the parties. The said leave and license is a registered document signed by both the parties and as per the said leave and license agreement in case there were two defaults of payment to be made by the licensee (present applicant), the respondent (licensor) could have terminated the leave and license agreement. It is a matter of record that there were seven consecutive defaults made by the applicant in making payment of license fee. Therefore, the respondent (licensor) terminated

the leave and license agreement on 12/12/2019.

14. Since the applicant did not vacate the suit property, neither did they pay the license fee nor they paid the charges to the MIDC, a civil suit was filed by the respondent seeking eviction of the applicant from the suit property and for recovery of monies. In the said civil suit, the consent terms were entered into between the parties on 27/10/2021. After a gap of two years, the applicant preferred an application challenging the consent terms under the provisions of Order XXIII Rule 3A of the CPC. Along with the said application an application has been preferred by the applicant seeking stay to the execution of the decree. The execution application has already been filed by the respondent in order to execute the decree.

15. I have considered the impugned order passed by the Civil Judge, Senior Division, Belapur. Here is a case where the applicant did not pay the license fee and after entering into the consent terms subsequently after a gap of two years preferred an application under the provisions of Order XXIII, Rule 3A of the CPC. No case is made out before me to entertain this civil revision application under the provisions

of Section 115 of the CPC.

16. The civil revision application is dismissed.

17. No costs.

(RAJESH S. PATIL, J.)