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

WRIT PETITION NO. 1843 OF 2024

Siyaram Packaging Pvt. Ltd.

Petitioner
.. (Orig. Plaintiff)

Versus

National Flask Industries Ltd.

Respondent
.. (Orig. Defendant)

WITH

WRIT PETITION NO. 1737 OF 2024

National Flask Industries Ltd.

Petitioner
.. (Orig. Respondent)

Versus

Siyaram Packaging Pvt. Ltd.

Respondent
.. (Orig. Appellant)

.....

- Mr. Yunus Memon, Advocate for Petitioner in Writ Petition No.1843 of 2024 and Respondent in Writ Petition No.1737 of 2024.
- Mr. Vishal Kanade i/by Mr. Vikas Pandey, Advocate for Respondent in Writ Petition No.1843 of 2024 and Petitioner in Writ Petition No.1737 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 05, 2024.

JUDGMENT:

1. This is a group of two Writ Petitions. Writ Petition No.1843 of 2024 is filed by Siyaram Packaging Pvt. Ltd. taking exception to the order dated 01.12.2023 passed below Exhibit “5” by the District Court in M.C.A. (Commercial) No.02 of 2023. Writ Petition No.1737 of 2024 is filed by National Flask Industries Ltd. taking exception to the same order. That order is at page No.30 of Writ Petition No.1843 of 2024.

These are essentially cross Writ Petitions, facts of which are similar. Hence for the purpose of narration, facts and page numbers in Writ Petition No.1843 of 2024 are quoted and delineated herein.

2. Siyaram Packaging Pvt. Ltd. (for short “**Petitioner**”) filed Commercial Suit No.40 of 2021 against National Flask Industries Ltd. (for short “**Respondent**”) seeking various reliefs based on two registered Agreements dated 07.05.2014 and 22.05.2014. Without delineating on the issue on merits, what is at the root of controversy is the nomenclature and nature of these two registered Agreements between the parties. Petitioner would contend that these Agreements have to be considered as Lease Agreement whereas Respondent would contend that these Agreements are essentially Leave and Licence Agreements. Be that as it may, it is only on reading of those Agreements that the intention of the party and nature of the Agreements can be deciphered which shall be adverted to later on.

3. Application is filed below Exhibit “5” in both the Suits which were heard together and decided by the common order dated 27.06.2023. Suit property is an industrial unit comprising of land ad-measuring 18,900 square meters and a structure standing thereupon ad-measuring approximately 61,825 square feet situated in Village Naroli, Silvassa (United Territory). Respondent is admittedly the owner of the Suit property. It let out the Suit property to the Petitioner. Registered Agreement dated 07.05.2014 is nomenclatured

as Leave and Licence Agreement and is in respect of open land ad-measuring 18,900 square meters and Second Leave and Licence Agreement dated 22.05.2014 is in respect of the structure ad-measuring 61,825 square feet nomenclatured as Agreement for a period of 7 years standing on open land ad-measuring 8,640 square meters out of the total land belonging to Respondent. According to Respondent, both these Licence Agreements expired by efflux of time on 30.04.2021 and 15.04.2021 and on the Petitioner neglecting to hand back vacant and peaceful possession of the Suit property, Respondent was compelled to file Commercial Suit No.39 of 2021. Simultaneously, Petitioner filed also Commercial Suit No.40 of 2021 after receiving Demand Notice dated 08.04.2021 from the Respondent. Suit filed by Petitioner as Plaintiff seeks declaration that the Leave and Licence Agreement dated 07.05.2014 be declared as a "Lease" executed in favour of Petitioner by the Respondent and consequential reliefs. Dispute is also raised on the amount demanded by Respondent. Both parties filed their respective Applications below Exhibit "5" which were heard together. Common order was passed by the Trial Court, which has been modified by the District Court in Appeal by the impugned order dated 01.12.2023. Hence parties are before me. Certain details in respect of the relationship between the parties, *inter alia*, pertaining to letting out of the Suit property are required to be stated and considered.

4. Agreement dated 07.05.2014 was for a tenure of 7 years and expired on 30.04.2021. Licence fee stated in the Agreement was Rs.50,000/- per month. Similarly, Agreement dated 22.05.2014 had a tenure of 7 years, it expired on 14.05.2021 and licence fee stated therein was Rs.5,000/- per month.

5. Mr. Memon, learned Advocate appearing for Petitioner (Siyaram Packaging Pvt. Ltd.) would vehemently argue that one of the reasons agreed for the licence fee as stated in the two Agreements was in view of the fact that Petitioner had virtually resurrected the Suit property and made it habitable and conducive for carrying out business therefrom since before the tenure of the Agreements, the Suit property was mortgaged with outstanding dues since the year 1996, it had suffered a massive fire sometime in the year 2001 pursuant to which it required repairs, rather heavy repairs, the Suit property was in symbolic possession of secured creditors since 2006 and there were two Civil Suits pending in the Civil Court against the Respondent in respect of the Suit property. He would submit that in view of the substantial assistance rendered by Petitioner to the Respondent, the Agreements dated 07.05.2014 and 22.05.2014 were executed with certain conclusions which were agreed upon by both parties and the licence fee stipulated was much less than the market value.

6. In view of the above submissions, Mr. Memon would conclude that in view of the pendency of the Suit proceedings, any order passed by the learned Trial Court and/or modified by the learned Appellate Court requiring Petitioner to pay monthly compensation during the interregnum of pendency of the Suit should not be higher than the amount determined between the parties in the aforementioned two Agreements. I have perused both the Agreements and *prima facie*, I am not inclined to accept the submission made by Mr. Memon for various reasons which are delineated herein under. I have perused both the Agreements. It is seen that the tenure in both the Agreements is fixed. It expired on 30.04.2021 and 14.05.2021. If Mr. Memon would be right, then it would not have had the aforementioned tenure.

7. Be that as it may, once the tenure of both Agreements is over, there is no legal right whatsoever to the Petitioner to continue to occupy the Suit property and the Petitioner is deemed to be in unauthorized possession of the Suit property. Before the learned Trial Court, Respondent furnished and placed on record evidence of comparable sale instances of similarly situated properties like the Suit property in order to prove the present market rate of similarly situated properties in the said area. Three instances which were specifically Leave and Licence Agreements during the same period gave a return of Rs.15 per square feet to Rs.20 per square feet per month. It is

significant to note that Petitioner did not produce any evidence whatsoever. Today, Mr. Memon would argue that the comparable sale instances produced by Respondent were merely placed on record without any valuation report and also no inquiry was conducted by the learned Trial Court in respect of arriving at a determination of what should be the market rate of Leave and Licence Agreement per square foot per month in respect of the Suit property. It is seen that record clearly reveals that Petitioner was a mere silent spectator and did not file any evidence whatsoever before the learned Trial Court for such determination. Petitioner needs to be mindful about the fact that the order which was required to be passed by the learned Trial Court at Exhibit "5" stage ought to balance the interest of both parties since both have filed Civil Suits. Without placing any material evidence on record or any valuation on record, it cannot lie in the mouth of the Petitioner to contend before this Court that the Trial Court was in error in accepting or even considering the three comparable sale instances placed on record by the Respondent. That apart, Respondent has also placed on record before the learned Trial Court evidence in the form of comparable sale instances to show and prove the letting rate of open land which was to the extent of Rs.3 per square feet. Once again the Petitioner did not file any contradictory evidence whatsoever before the learned Trial Court.

8. A detail and reasoned judgment is returned and delivered by the learned Trial Court by its common order passed below Exhibit “5” dated 27.06.2023. The learned Trial Court determines and frames five specific issues in order to consider the case at the interim stage and pass an appropriate interim order. It hears both the parties at length and takes into cognizance the documentary evidence placed by them and also various case laws which have been referred to and relied upon by them. On the one hand, Petitioner pleaded that precursor to the Leave and Licence Agreements executed between the parties was infact an Agreement which was agreed upon by the parties to repair, run and return the premises back to the owner and in that view of the matter, the issue of tenure would be irrelevant for the Court to consider and derivate that the two Leave and Licence Agreements expired on a particular date. This *factum* necessarily was in view of the submissions advanced by Mr. Memon and which have been referred to and alluded to herein above, which the Petitioner would undoubtedly be in a possession to prove. However this would only be a matter of evidence and trial.

9. Mr. Memon has also drawn my attention to certain clauses in the Leave and Licence Agreements to drive home the specific point that it will give a flavour of the Petitioner having assisted and aided the Respondent in regard to the Suit properties so that the same can be used by the Petitioner. In that view of the matter, the learned Trial

Court after hearing the parties as also considering the fact that the Petitioner had invested a substantial amount in the repair of the said factory building prior to entering into the Agreements and after taking into consideration all aspects, balance of convenience and the case of both parties concerned passed the following order:-

“ **:- ORDER :-**

1. *The application at Exh.5 for M/s. National Flask Industries Limited in Commercial Suit (Civil Court) No.39/2021 is partly allowed as under :-*
 - (i) *M/s. Siyaram Packaging Pvt. Ltd. is hereby temporarily restrained from creating any third party rights or executing any leave and license agreement or subletting the suit property till the disposal of Commercial Suit (Civil Court) No.39/2021.*
 - (ii) *M/s. Siyaram Packaging Pvt. Ltd. is hereby directed to deposit interim compensation to the tune of Rs.7/- per sq. feet for total 51,825 sq. feet area per month and to deposit interim compensation to the tune of Rs.1/- per sq. feet for total 8,640 sq. mtrs. (i.e. 92,950 sq. feet) area per month from the date of filing of the Commercial Suit (Civil Court) No.39/2021, till its disposal.*
 - (iii) *The rest of the reliefs stands rejected.*
2. *The application at Exh.5 for M/s. Siyaram Packaging Pvt. Ltd. in Commercial Suit (Civil Court) No.40/2021 is partly allowed as under :-*
 - (i) *The National Flask Industries Limited is hereby temporarily restrained from creating any third party rights or parting with the possession of the suit premises till the disposal of the Commercial Suit (Civil Court) No.40/2021.*
3. *The above orders will not cause any prejudice or affect the rights of the secured creditors to take any action, if any, against the suit property as a secured asset.”*

10. By virtue of the above order, a restraint was placed on the Petitioner not to create any rights, rather third party rights in respect

of the Suit properties. Petitioner was directed to deposit interim compensation @ Rs.7/- per square feet for the area that is mentioned in the said order. Similarly, an injunction and restraint is also placed on the Respondent by the learned Trial Court.

11. At this stage, in view of the rival contentions as enumerated in the issues framed by the learned Trial Court having been considered by the learned Trial Court while passing the Exhibit “5” order are concerned, I need not delineate on the same. The issue before me is much narrow and more specifically with respect to determination and direction of the interim / *ad-hoc* compensation directed to be paid by the Petitioner to the Respondent and whether the same is justifiable or otherwise until the determination of both the Suits.

12. Before I comment on the justifiability of the interim / *ad-hoc* compensation amount fixed by the learned Trial Court, it needs to be stated that both the parties filed Miscellaneous Civil Appeal before the Appellate Court. M.C.A. (Commercial) No.2 of 2023 is filed by the Petitioner whereas M.C.A. (Commercial) No.1 of 2023 is filed by the Respondent. M.C.A. (Commercial) No.2 of 2023 is decided by the learned Appellate Court by passing the order below Exhibit “7” on 01.12.2023. By virtue of the said order dated 01.12.2023, the learned Appellate Court has modified the terms set by the learned Trial Court by reducing the outstanding arrears amount to be deposited from

Rs.1.05 crore to 35 lacs and during the interregnum directed Petitioner to pay monthly licence fee @ Rs.55,000/- per month till the disposal of the Appeal. It is against this order that both, Petitioner and Respondent have filed the present Writ Petitions and they are heard and decided together.

13. I have heard Mr. Memon, learned Advocate for Petitioner in Writ Petition No.1843 of 2024 and Respondent in Writ Petition No.1737 of 2024 and Mr. Kanade, learned Advocate for Respondent in Writ Petition No.1843 of 2024 and Petitioner in Writ Petition No.1737 of 2024 and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

14. It is seen that the order dated 27.06.2023 is passed by the learned Trial Court while determining the interim / *ad-hoc* compensation taking into cognizance the Leave and Licence Agreement and similarly situated properties filed by the Respondent below Exhibit “L” collectively which were placed at page Nos.263 to 383 of the proceedings before the Trial Court. What the learned Trial Court has done is enumerated the summary in respect of the five Agreements which were placed on record in respect of similarly situated industrial structures in order to consider arriving at a reasonable amount of interim / *ad-hoc* compensation that would be required to be paid by

the Petitioner to the Respondent. In view of the Suit proceedings, it needs to be reiterated that the learned Trial Court while passing the order on the Exhibit “5” has considered the rival submissions on merits also and noted them down extensively and therefore in that view of the matter, it was deemed incumbent by the learned Trial Court to determine the interim compensation that would be due and payable during the interregnum until the Suits are decided. The exercise for determining the compensation i.e. interim / *ad-hoc* compensation in order to allow continuation of possession of the Suit property by the Petitioner was undertaken by the Trial Court. Rival submissions in so far as whether the Suit property was affected by any proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short “**SARFAESI Act**”) were also considered. Learned Trial Court concluded that under that situation, in order to protect the rights of the owner of the property namely the Respondent it was necessary that interim / *ad-hoc* compensation for continuing possession of the Petitioner will have to be therefore deposited in the Court only. The exercise undertaken by the learned Trial Court is enumerated in paragraph Nos.59 to 67 of its order and more specifically on consideration of the material placed before it and adhering to the fact that the Petitioner is in possession and use of the Suit property admittedly by adhering to the basic principles of valuation namely by relying on comparable sale instances

method. The learned Trial Court has explained the reasons in paragraph No.63 wherein the learned Trial Court notes that the Court will have to consider the prevailing market of similarly situated premises and on the basis of the evidence placed on record, the lowest rate is found to be Rs.15/- per square foot. However, adhering to the submissions advanced by Mr. Memon before me and which are referred to and alluded by me herein above, Court can not lose sight of the fact that parties had agreed upon a particular licence fee while entering into the Agreements to be reasonable owing to the aid and assistance provided by the Petitioner to the Respondent for resurrecting the factory building in the past; hence the learned Trial Court fixed the interim / *ad-hoc* compensation @ Rs.7/- per square feet which is @ 50% rate of the lowest rate of the market value so as balance the convenience and preserve the interest of for both the sides. In so far as the open land enjoyed by the Petitioner was concerned, the learned Trial Court undertook a similar exercise by determining the rate @ Rs.3/- per square foot on the basis of evidence placed before it. This rate was also less than 50% of the prevailing rates.

15. However it is seen that in view of the parties having fixed the amount of Rs.5,000/- per month for open land as lumpsum licence fee and entered into the Agreement, the learned Trial Court still took one step further and reduced the amount of licence fee interim / *ad-hoc* compensation payable for open land to Re.1/- per square foot.

The degree of reasonableness accepted and considered by the learned Trial Court while determining the aforesaid amount in paragraph Nos.59 to 65 is clearly exemplified and I find no reason whatsoever to interfere with the same as the same is passed after undertaking a thorough exercise at the interim stage to balance convenience of both sides. As opposed to this, the order dated 01.12.2023 impugned in the present Writ Petition passed by the learned District Court in MCA which is at page No.30 of the Writ Petition reduces the amounts which have been arrived at by the learned Trial Court drastically without assigning cogent reasons.

16. As per the order dated 27.06.2023, @ Rs.7/- per square feet for the building area and @ Re.1/- for the open land is the total compensation payable per month and in rupees it will be Rs.4,55,725/-, whereas the learned Appellate Court has reduced that amount to Rs.55,000/- per month. The Appellate Court has reduced the amount from Rs.4,55,725/- to Rs.55,000/- per month to be paid by the Petitioner to the Respondent till the date of disposal of the Appeal without any reasons.

17. In so far as deposit of arrears of compensation is concerned, it is seen that @ Rs.4,55,725/- per month as granted by the Trial Court, the total amount of compensation due and payable as on the date of passing of the order would be approximately Rs.1,05,93,125/-

after giving benefit and adjustment of the amount (Rs.9,85,500/-) which has been paid by the Petitioner to the Respondent for the said period, still there would be a balance outstanding amount of Rs.88,08,125/- which is due and payable by Petitioner to the Respondent. As against this balance outstanding amount of Rs.88,08,125/-, the learned Appellate Court has on its wisdom and without assigning any reasons whatsoever reduced the same to Rs.35,00,000/- to be paid by the Petitioner to the Respondent. I have perused the order dated 01.12.2023 passed by the Appellate Court. While reducing the amounts which have been determined by an exhaustive exercise determined by the Trial Court, the Appellate Court has not given any reasons whatsoever but has merely stated that under the such situation the Petitioner will remain in possession of the entire factory building and the open land ad-measuring 18,900 square meters till the final disposal on merits and it will take considerable time, hence the direction and modification to pay part amount of the compensation alongwith arrears of licence fee. Findings returned by the learned Appellate Court in paragraph No.10 are completely sans reasons. They do not take into account the exercise undertaken by the learned Trial Court and merely substitute and reduce the compensation without assigning any reasons. Such a finding by the learned Appellate Court can never be accepted by this Court. It gives a largesse to the Petitioner, rather it gives a certificate to the Petitioner

to continue paying a ridiculously low amount of licence fee i.e. Rs.55,000/- per month until the Suit is decided, which may even continue thereafter. Infact, in paragraph No.10, the learned Appellate Court clearly states the final decision of the Suit on merits will take a considerable time and hence the reduction. Such a reason is unacceptable. Admittedly Petitioner is using the Factory Building and land.

18. Be that as it may, there can be no reason to allow the Petitioner to enjoy the Suit property in the facts and circumstances and background of the present case in so far as the two contentious documents which are referred to and alluded to herein above are concerned. At this stage, I would not like to opine on any merits of the said Leave and Licence Agreements i.e. documents since it would affect the rights of the Petitioner.

19. Be that as it may, since the learned Appellate Court has also held that the Defendant cannot be permitted such use of the factory and open place without payment of compensation or licence fee, that cannot be a ground for the learned Appellate Court to substitute and reduce a well reasoned and speaking order passed by the learned Trial Court. It could have been understood if the learned Appellate Court had undertaken a cogent exercise of determination of the compensation, but that has not been done. The order passed by the

learned Appellate Court merely records the facts and nothing more in the first 9 paragraphs and the only reasoning is contained in paragraph No.10 in the last 7 lines thereof which are on internal page No.8 of the order. Such an order of the learned Appellate Court is completely unsustainable and cannot be accepted at all and deserves to be interfered with. The order dated 27.06.2023 therefore deserves to be upheld.

20. In view of the above observations and findings, the following order is passed:-

- (i) Order dated 01.12.2023 passed by the District Court, Silvassa is quashed and set aside;
- (ii) Resultantly, the common order dated 27.06.2023 passed by the learned Trial Court in Application filed below Exhibit “5” in both the Suits filed by the parties is upheld and confirmed;
- (iii) Balance amount of Rs.88,08,125/- (including the amount calculated till the date of passing of this order) is directed to be paid by the Petitioner to the Respondent within a period of three months from today;

- (iv) It is directed that monthly compensation determined by the learned Trial Court @ Rs.4,55,725/- shall be paid by the Petitioner to the Respondent unfailingly from the month of April, 2024 onwards which shall be paid by the 15th day of each calendar month; the compensation for April 2024 shall be paid by the 25th of April 2024;
- (v) In view of the above order, I am inclined to direct the learned Trial Court to dispose both Commercial Suit Nos.39 of 2021 and 40 of 2021 within a period of six months from today;
- (vi) Resultantly, in view of the above, M.C.A. (Commercial) No.2 of 2023 which is the subject matter of the present Writ Petitions is disposed;
- (vii) Resultantly, M.C.A. (Commercial) No.1 of 2023 filed by the Respondent also stands disposed;
- (viii) Proceedings are relegated back to the learned Trial Court for disposal of Commercial Suit Nos.39 of 2021 and 40 of 2021 together, with the above directions.

21. The aforesaid order shall be in operation until the Suits are determined and shall be subject to the final outcome of the Suits to be determined by the learned Trial Court. All contentions of both parties

are expressly kept open so as to enable the parties to apply before the learned Trial Court strictly in accordance with law. In case of default, liberty to apply in accordance with law.

22. Needless to state that, the learned Trial Court shall determine the Suit proceedings strictly in accordance with law without being influenced by any of the observations and findings in the Exhibit “5” order as also by the learned Appellate Court since those observations and findings are *prima facie* in nature and both Suits shall be determined on the basis of the evidence that would be led by both parties.

23. With the above directions, Writ Petition No.1737 of 2024 is disposed. Accordingly, Writ Petition No.1843 of 2024 is disposed.

[MILIND N. JADHAV, J.]

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