

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.1114 OF 2024**

Scandent Imaging Ltd.

*....Petitioner***V/s.**

Hemant Shantaram Pikale

*....Respondent***WITH****WRIT PETITION NO.14794 OF 2022**

Scandent Imaging Ltd.

*....Petitioner***V/s.**

Hemant Shantaram Pikale

....Respondent

Mr. Y.S. Jahagirdar, *senior counsel with Mr. S.S.Kanetkar, Mr. Kausthubh Thipsay and Mr. Pradeep Salgar for the Petitioner.*

Mr. Samyak Patil i/b. M/s. RHP Partners for Respondent.

CORAM : SANDEEP V. MARNE, J.**Dated: 31 July 2024.****P.C. :**

1) Writ Petition No.1114 of 2024 is filed challenging the order dated 3 May 2021 passed by the learned Judge, Small Causes Court at Mumbai, *inter alia* directing Petitioner to deposit arrears of license fees under Order XV-A of the Code of Civil Procedure, 1908 (**Code**) from 1 February 2019 onwards. Order dated 3 May 2021 passed by the learned Judge of the Small Causes Court has been confirmed by the Appellate Bench by dismissing Revision No.208 of 2022 by Judgment and Order dated 23

October 2023, which is also subject matter of challenge in the present Petition.

2) I have heard Mr. Jahagirdar, the learned senior advocate appearing on behalf of Petitioner and Mr. Samyak Patil, the learned counsel appearing on behalf of Respondent.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, there is no dispute about execution of leave and license agreement dated 14 December 2017 between the parties. Under the said agreement, the Petitioner-licensee is under obligation to pay license fees to Respondent-licensor at the rates provided for in the agreement.

4) According to Mr. Jahagirdar, license is not granted on a standalone basis and is required to be read together with covenants of the Asset Purchase Agreement (**APA**) dated 14 December 2017 and Memorandum of Understanding (**MoU**) dated 14 December 2017. After going through the APA dated 14 December 2017, it is seen that what was sought to be purchased by way of the said agreement are essentially various furniture, fixtures and equipment forming part of the tangible assets of hospital business. Mr. Patil is quick enough to respond that the APA is executed by an altogether different entity - M/s. Pikale Healthcare Pvt. Ltd. whereas leave and license agreement is executed by Dr. Hemant Pikale and that therefore there is no direct connection between the two agreements. In my view, this aspect needs to be decided at the time of the trial of the Suit.

5) Perusal of MoU dated 14 December 2017 would indicate that same was executed essentially to confer right on the licensee to seek renewal of tenure of license for further period of four years at the end of initial period of license at the rate of license fees agreed in the said MoU. The MoU also provides for a lock-in period in respect of leave and license agreement.

6) Thus, the position that stands as of now is that Petitioner was a mere licensee in respect of the suit premises and has possibly purchased various tangible assets of the hospital including furniture, fixtures and equipment. There is no document on record to indicate, and it is not even Petitioner's case, that it has become owner in respect of the premises in question. Suit is filed for recovery of possession of the suit premises. In that view of the matter, provision under Order XV-A of the Code are clearly attracted in the present case and Petitioner becomes liable to deposit arrears of license fees as well as to continue to deposit license fees during pendency of the Suit.

7) It however appears that Petitioner has handed over possession of the premises to the Plaintiff-licensor on 25 October 2021. This would mean that liability to deposit license fees as per the order of the Small Causes Court would be from 1 February 2019 to 25 October 2021.

8) After going through the findings recorded by the Small Causes Court and the Appellate Court, I do not find any palpable error in the same. Both the Courts have rightly directed Petitioner to deposit the agreed license fees in respect of possession of the suit premises by it till 25 October 2021. In that view of the matter, no inference is warranted in the

impugned orders dated 3 May 2021 of Small Causes Court and 23 October 2023 of its Appellate Bench.

9) At this stage, Mr. Jahagirdar would point out that Petitioner has paid security deposit of Rs.60,00,000/- to the Respondent -Licensor and that the said amount needs to be given credit while making deposit as per order passed by the Small Causes Court. Mr. Patil does not dispute the position about payment of security deposit Rs.60,00,000/- and confirms that the same is lying with the Respondent -Licensor. In that view of the matter, the security deposit of Rs.60,00,000/- will have to be given credit while computing the arrears of license fees to be deposited in pursuance of order dated 3 May 2021.

10) The amount to be deposited towards license fees from 1 February 2019 till 25 October 2021 is to the tune of Rs.4,27,73,382/-. After giving credit to Petitioner in respect of amount of security deposit of Rs.60,00,000/-, the net amount which is required to be deposited by Petitioner as per order dated 3 May 2021 would be Rs.3,67,73,382/-.

11) Accordingly, while dismissing the Petition, Petitioner is granted liberty to deposit an amount of Rs.3,67,73,382/- before the Small Causes Court on or before 30 September 2024. If Petitioner deposits the amount of Rs.3,67,73,382/- on or before 30 September 2024, nothing would survive in execution proceedings and for now, the execution proceedings initiated by Respondent-Plaintiff are accordingly closed. Accordingly, Writ Petition No.14794 of 2022 filed by Petitioner challenging various orders arising out of execution proceeding is also disposed of.

12) Needless to observe that if Petitioner fails to make a deposit of Rs.3,67,73,382/- by 30 September 2024, the Respondent-Plaintiff would be at liberty to revive the execution proceedings, in addition to seeking an order for striking off defence of Petitioner.

13) Both the Petitions stand disposed of accordingly.

[SANDEEP V. MARNE, J.]