

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3628 OF 2024

WITH

INTERIM APPLICATION NO. 6605 OF 2024

1. M/s. K.H.K. Hospitality Services
2. Kunhi Mohammed Kalathil
3. Mr. Mohammed Kunhi Lainakillath

....Petitioners
(Orig. Respondents/
Orig. Defendants)

V/s.
S.A. Developers, A registered Partnership
Firm

....Respondent
(Orig. Applicant/
Orig. Plaintiff)

Mr. Karande *a/w. Mr. Sachin Gelye, for the Petitioner.*

Mr. Kunal Bhanage *a/w. Mr. K.R. Parekh, Ms. Vasima Siddiqui, Ms. Priyanka Acharya i/by. K.R. Parekh & Co. for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 29 July 2024.

P.C. :

1) The present petition challenges order dated 12 February 2024 passed by the Appellate Bench of the Small Causes Court by which the Revision Application filed by the Respondent has been allowed and order dated 22 December 2022 passed by the Small Causes Court on application at Exhibit-21 is set aside. The Small Causes Court had rejected the application filed by the Plaintiff for striking off the defence of Defendants under the provisions of Order XV-A Rule 1 of the Code of Civil Procedure,

1908 (Code). By allowing the Revision filed by the Plaintiff, the Appellate Bench has allowed the application at Exhibit-**21** and has struck off defence of the Defendants for non-compliance of the order dated **28 October 2021**, by which Defendants were directed to pay arrears of license fees **Rs.5,62,100/-** per month plus GST payable thereon from **March 2021** onwards during pendency of the suit. It appears that the Small Causes Court had further directed payment of damages of **Rs.25,000/-** per day from **17 February 2021** towards compensation/damages. While upholding the order dated **28 October 2021** passed by the Small Causes Court in Writ Petition No. **12029/2022**, this Court recorded submission on behalf of the Plaintiff that the amount of damages @ **Rs.25,000/-** per day cannot be directed to be paid under the provisions of Order XV-A of the Code. Thus, the net effect of the order of the Small Causes Court on **28 October 2021** is liability of Defendants to pay license fees @ **Rs.5,62,100/-** from **March 2021** plus GST.

2) I have heard Mr. Karande, the learned counsel appearing for the Petitioners and Mr. Bhanage, the learned counsel appearing for Respondent-Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that there are three defaults on the part of the Petitioners in complying with the order dated **28 October 2021**. Firstly, Petitioners did not consider payment of the entire amount of **Rs.5,62,100/-** plus GST during the period from **March 2021** to **December 2021** and on their own decided that the amount payable in respect of the said period is only **Rs.2,50,000/-** plus GST. Secondly, in respect of the period from **1 October 2022** to **1 February 2023**, Petitioners believed that no amount is payable towards license fees as the hotel was shut down on account of complaints made by the Plaintiff to the Municipal Corporation. Thirdly, even going by the reduced amount of **Rs.2,50,000/-** plus GST from **March 2021** to **December 2021**, as well as NIL amount in

respect of the period from 1 October 2022 to 1 February 2023, Petitioners are still in arrears of rent of amount of Rs.62,46,058/-. Therefore, even going by the chart presented by the Petitioners at page-204 of the petition, prepared on the basis of reduced amount of Rs.2,50,000/- plus GST payable from 1 March 2021 to 1 December 2021, as well as NIL amount payable from 1 October 2022 to 1 February 2023, Petitioners are in arrears of amount of Rs.62,46,058/-. The assumption on the part of the Petitioners about reduced amount of Rs.2,50,000/- plus GST payable from 1 March 2021 to 1 December 2021 in violative of the order dated 28 October 2021 which directed payment of license fees of Rs.5,62,100/- from March 2021 onwards. Secondly absence of liability to pay any license fees for the period from 1 October 2022 to 1 February 2023, though might be a triable issue, could not be a ground for violation of the order dated 28 October 2021 at this stage. Therefore, the chart presented by the Petitioner at page-204 of the petition itself suffers from error. However, even going by that chart, Petitioners are in arrears of amount of Rs.62,46,058/-.

4) In that view of the matter, it appears that the Petitioners have deliberately violated the order dated 28 October 2021 passed by the Small Causes Court which has attained finality on account of order passed by this Court on 19 December 2023.

5) It appears that the Small Causes Court has rejected the application at Exhibit-21 seeking striking off of defence primarily on account of pendency of Writ Petition No. 12029/2022 at that point of time. The said Writ Petition came to be dismissed by this Court on 19 December 2023. Despite dismissal of the petition, Petitioners failed to comply with the order dated 28 October 2021. In that view of the matter, no serious error can be traced in the order passed by the Appellate Bench striking off defence of the Defendants. Writ Petition being devoid of merits is **dismissed** without any order as to costs.

6) With dismissal of the petition, nothing survives in the Interim Application. The same also stands disposed of.

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[SANDEEP V. MARNE, J.]