

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11793 OF 2024

Bibi Fatima Yusuf Mavani

...Petitioner

V/s.

Jabeen Feroz Shaikh

...Respondent

Mr. Kezer Kharawala with *Mr. Pradosh Patil i/b. M/s. Lex Juris* for the Petitioner.

Mr. N.P. Bhavsar for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 August 2024.

P.C. :

1) By this Petition, Petitioner/Plaintiff has challenged order dated 1 July 2024 passed by the learned Judge of the Court of Small Causes at Mumbai rejecting application filed by the Plaintiff for striking off the defence of the Defendant for failure to comply with order dated 5 December 2023.

2) By order dated 5 December 2023 the Small Causes Court had directed the Defendant to deposit the amount of outstanding license fees of Rs.11,52,000/- within a period of two months under the provisions of Order XV-A of the Code of Civil Procedure, 1908. The Defendant has admittedly not deposited the said amount till date. This prompted the Plaintiff to file an application seeking striking off the defence of the Defendant. While opposing the application the only defence taken by the Defendant was about

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filing of Revision against order dated 5 December 2023 before the Appellate Bench. Admittedly, the Appellate Bench has not granted any stay on the order dated 5 December 2023 and the order continues to operate. Therefore, the Defendant was under obligation to make a deposit in terms of the order dated 5 December 2023 and failure to make such deposit would result in striking off defence of the Defendant. The learned Judge has however, erroneously held that the order dated 5 December 2023 has not attained finality on account of pendency of Revision.

3) In my view, the learned Judge has clearly erred in rejecting the application filed by the Plaintiff by branding the same as premature. In absence of any stay order granted by the Appellate Bench, mere filing of Revision by Defendant does not save the Defendant of the consequences arising out of failure to obey the order dated 5 December 2023. The order dated 1 July 2024 passed by the learned Judge is thus clearly erroneous and is liable to be set aside.

4) At this stage, the learned counsel appearing for the Respondent -Defendant submits that the Defendant is willing to deposit the amount of arrears of license fees as per order dated 5 December 2023 within the reasonable time. In that view of the matter, the application filed by Petitioner/Plaintiff at Exhibit-28 can be considered and decided afresh by the learned Judge of the Small Causes Court after four weeks so as to test the *bonafides* of the Defendant. If the Defendant fails to deposit the amount as directed by order dated 5 December 2023 and or fails to secure any stay order from the Appellate Bench, the learned Judge of the Small

Causes Court shall proceed to decide the application at Exhibit-28 without considering the pendency of the revision application.

5) Accordingly, order dated 1 July 2024 is set aside. Application at Exhibit-28 is restored on the file of the learned Judge of Small Causes Court, who shall proceed to decide the same afresh after a period of four weeks as directed.

6) With the above direction, the Writ Petition is allowed and disposed of.

[SANDEEP V. MARNE, J.]