

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 536 OF 2024**

Mrs. Sanjjari Sanju Kashyap

....Applicant/Appellant
(Original Defendant)

V/s.

Mrs. Daksha Kamlesh Kothari

....Respondent

Mr. Vaibhav Sugdare *i/b Mr. Ashok Mishra & Mr. Shubham Mishra, for the Applicant / Appellant.*

Mr. Chirag Gandhi *a/w Ms. Rohina Shaikh, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Date : 9 OCTOBER 2024.

P.C. :

1) The Revision Applicant challenges decree dated 10 September 2023 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No. 45 of 2024 and confirming the Judgment and Decree dated 7 March 2024 passed by the learned Judge of the Small Causes Court directing the Revision Applicant to hand over possession of the suit premises in addition to passing of money decree against her.

2) I have Mr. Sugdare, the learned counsel appearing for Revision Applicant and Mr. Gandhi, the learned counsel appearing for Respondent – Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that License Agreement dated 19 June 2017 was executed between Plaintiff and Defendant, under which license in respect of the suit premises being Row House No. D-4, 1st Floor, Crystal Lawn, Thakur Complex, Kandivali East Mumbai – 400 101 was granted in favour of the Defendant for the period from 1 June 2017 till 31 May 2022 on payment of monthly license fees as specified in Clause 3.1 of the agreement. It appears that, Plaintiff issued notice dated 18 April 2019 terminating the license on account of failure on the part of the Defendant to pay license fees. Plaintiff thereafter instituted L.E. & C Suit No. 49 of 2020 in the Court of Small Causes Court at Mumbai seeking recovery of possession of suit premises as well as various amount towards license fees and compensation. Defendant resisted the suit by filing written statement. The Trial Court passed order under provisions of Order 15-A of the Code directing the Defendant to deposit the arrears of license fees. Defendant however failed to deposit such arrears and accordingly her defence was struck-off by the Trial Court. The Trial Court thereafter proceeded to decree the suit on 7 March 2024 by directing the Defendant to hand over possession of the suit premises with further directions to pay Rs.9,50,250/- along with interest 18% p.a. towards monthly license fees and Rs. 8,13,725/- towards damages / compensation for the period up to 15 January 2020. The decree has been confirmed by the Appellate Court by dismissing the Appeal No. 45 of 2024 filed by the Applicant.

4) Mr. Sugdare has submitted that the termination of license on the part of the Plaintiff is improper in view of specific covenant in the agreement for termination only in the event of non-payment of license fees for two consecutive months. He would submit that under the license agreement, there was lock-in period of 36 months and before expiry of the said period, Plaintiff unlawfully terminated the license agreement. He would further submit that there are also disputes among the parties about wrongful induction of another licensee by the Plaintiff for commencing competitive Spa business in the neighboring premises. He would further submit that there was also disconnection of electricity supply for which Defendant was not liable to pay the license fees. He has invited my attention to admission given by the Plaintiff in the cross-examination that 'the last rent was paid in the month of March 2019' to buttresses his contention that the notice issued on 18 April 2019 was accordingly invalid.

5) Perusal of the averments in the plaint would indicate that Defendant was irregular in payment of license fees and license fees were in arrears for 5 months during November 2018 till March 2019. In the written statement, Defendant took a defence that license fees in respect of the period from November and December 2018 and January 2019 was waived off by Plaintiff and that she paid license fees from February to April 2019. Thus, there is an implicit admission by the Defendant in the written statement that license fees during November and December 2018 and January 2019 was not paid. Though the

written statement filed by Defendant is required to be ignored on account of striking off her defence due to failure to deposit the arrears of license fees, it does not mean that the admissions given by her in the written statement cannot be taken into consideration while considering the case of Plaintiff. Therefore, the stray statement made by the Plaintiff in the cross-examination about payment of rent in March 2019 is required to be read in conjunction with the specific admission in the written statement about non-payment of rent during November and December 2018 and January 2019. The contention of the Defendant about waiver of the rent during November and December 2018 and January 2019 would not be proved as her defence has been struck-off. Plaintiff has not admitted in the Plaint there was any waiver in respect of months of November and December 2018 and January 2019. In that view of the matter, non-payment of license fees for two consecutive months prior to date of service of notice is clearly established. The notice dated 18 April 2019 is thus valid.

6) In that view of the matter, no serious error can be stressed in the eviction decree passed by the Trial Court as confirmed by the Appellate Bench.

7) Mr. Sugdare has raised serious objection to the monetary claim filed by the Plaintiff. Operative part of decree dated 7 March 2024 reads thus:-

1. The suit is decreed with costs.
2. The defendant is hereby directed to handover vacant and peaceful possession of the suit premises i.e. Row House No.D-4, situated on 1st Floor, Crystal Lawn, Thakur Complex, Kandivali (East), Mumbai- 400 101, well described in para 1 of the plaint, to the plaintiff, within one month from the date of this order.
3. The defendant is ordered to pay to the plaintiff Rs.9,50,250/- alongwith interest @ 18% p.a. as shown in the particulars of claim Exh.E towards (i) the monthly license fee of Rs.82,500/- per month from March 2019 to 31/5/2019 and Rs.90,750/- from 1/6/2019 to 15/1/2020.
4. The defendant is ordered to pay to the plaintiff Ps.8,13,725/- as shown in the particulars of claim Exh.E being the liquidated, agreed and quantified damages/compensation @ Rs.2,750/- per day for the period from 18/4/2019 to 31/5/2019 (44 days) and Rs.3,025/- from 1/6/2019 to 15/1/2020 (229 days).
5. Inquiry be held for determining Mesne Profit under Order XX Rule 12 of the Code of Civil Procedure, 1908.
6. Decree be drawn up accordingly.
7. Notice before execution.

8) It appears that the compensation awarded by the Trial Court is referable to the averments in paragraph No. 18 of the Plaint which read thus :-

18. The Plaintiff state and submits that till the date of filing the present suit (calculation upto 15th January, 2020) the said amount of liquidated agreed, quantified, damage/compensation at the Rate of Rs.2,750 (Two Thousand Seven hundred and Fifty Only) per day for the period from 18th April, 2019 to 31st May, 2019 (44 days) aggregates to Rs.1,21,000/- (Rupees One Lakh Twenty One Thousand Only) and 3,025/- from 1 June 2019 to 15th January, 2020 (229 days) aggregating to Rs. 6,92,725 and both the amount aggregating to Rs. 8,13,725/- as per the terms and conditions mentioned in the said agreement. The Plaintiff is entitled to a decree directing the Defendant to pay the said amount of Rs. 9,50,250/- (Rupees Nine lakhs Fifty Thousand Two Hundred Fifty Only) plus interest @ 18% and compensation of double the license fees i.e. 8,13,725 in terms of the said agreement as shown in the particulars of claim annexed hereto as Exhibit E.

9) However, perusal of the license agreement does not show that any compensation was to be paid either @ 2,750/- or @ Rs. 3,025/- as has been erroneously awarded by the Trial Court. The error has apparently crept in on account of striking off defence of the Defendant. Perusal of the license agreement would indicate that failure on the part of the Defendant to vacate the suit premises made her liable to pay compensation at the rate of double the monthly license fees fixed under the agreement. Clause 11 of the license agreement in this regard reads thus:-

11. On the expiration of this License Agreement and/or earlier determination as envisaged herein the Licensee shall remove all persons using the said Licensed Premises and all its belongings chattels articles and things from the said Licensed Premises and vacate and hand over charge of the said licensed Premises to the Licensee so as to enable the Licensee to handover charge of the vacant Licensed Premises to the Licensor. If on the expiration or earlier determination or termination of this License Agreement, the Licensee does not vacate and give charge of the said licensed Premises to the Licensor then the Licensee shall be liable to pay to the Licensor compensation at double the monthly license fee fixed under this agreement for the use of the said licensed Premises without prejudice to the other lawful remedies available to the Licensee. The Licensor are also entitled to withhold the security deposit till the Licensee handover the vacant and peaceful possession of the said Premises.

10) In my view therefore, slight modification in the decree of the Trial Court is warranted to the extent of award of liquidated damages and compensation.

11) I accordingly proceed to pass the following order :-

(i) The decree dated 7 March 2024 passed by the Trial Court is upheld to the extent of paragraph Nos.1 and 2 of the operative portion of the decree.

(ii) Paragraph Nos. 3, 4 and 5 of the decree shall stand modified as under:-

(i) Defendant shall pay to the Plaintiff compensation/damages at the rate of double the amount of license fees from 18 April 2019 till the date of filing of the suit i.e. 29 January 2020, which shall be @ Rs.1,65,000/- per month from 18 April 2019 to 30 May 2019 and Rs. 1,81,590/- from 1 June 2019 till 29 January 2020.

(ii) An inquiry be conducted into mesne profits from the date of filing of the suit till recovery of possession of the suit premises.

12) Subject to the modification, the Civil Revision Application is dismissed.

[SANDEEP V. MARNE, J.]