

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 582 OF 2024

Abdul Salaam Mohd. Mustafa Khan

....*Applicant*

: *Versus* :

Ravindra Kumar Shrivastava & Ors.

....*Respondents*

Mr. Dhiraj Dubey *i/by. Law Competere Consultus , for the Applicant.*

Mr. Diwakar Dwiwedi *a/w. Mr. Shubham Tripathi, for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

Dated: 16 DECEMBER 2024.

P.C. :

1) The Revision Application challenges order dated 27 September 2024 passed by the Appellate Bench of the Small Causes Court dismissing Misc. Appeal No.51/2024 filed by the Applicant-Defendant and confirming the order dated 2 May 2024 passed by the Small Causes Court by which the application filed by the Applicant/Defendant seeking rejection of the plaint under the provisions of Order 7 Rule 11 of the Civil Procedure Code has been rejected. At the outset, Mr. Dubey, the learned counsel appearing for the Applicant would complain that despite this Court recording

Undertaking on the part of the Respondents to deposit the entire arrears of license fees, the said Undertaking is violated. Mr. Dwivedi, the learned counsel appearing for the Respondents would submit that an amount of Rs.7,93,500/- has been transferred to the Account of the Petitioner on 7 December 2024. He would however fairly admit that the said amount of Rs.7,93,500/- does not represent the complete deposit as per the order passed by the Small causes Court on 2 May 2024. Though he has expressed desire on the part of the Respondents to challenge the order dated 2 May 2024, in my view, in absence of filing of any proceedings challenging the order dated 2 May 2024, the Respondents cannot avoid payment of license fees as directed in the order dated 2 May 2024. Faced with this situation, Mr. Dwivedi, after taking instructions from his clients, makes a further statement that the entire difference of license fees as per the order dated 2 May 2024 shall be paid to the Petitioner within a period of 2 weeks from today. Statement is accepted as an Undertaking given to the Court and it is made clear that in the event there is an any default on the part of the Respondents in breaching the Undertaking given to this Court, the Applicant would be at liberty to initiate proceedings for contempt of Court against the Respondents.

2) Coming to the merits of the Revision Application, it appears that the Plaintiff has instituted Suit seeking declaration of subsistence of Leave & License Agreement dated 5 September 2018. The prayer is premised essentially on Clause-6(a) of the Leave & License Agreement, which though vague, does seem to indicate that the five year agreed period was a mere lockin period and the

Agreement was to continue after five years as well. There appears to be no end date for the Agreement and it becomes difficult to comprehend atleast at this juncture that the License Agreement would continue for ever. In any case, these are issues to be decided by the Court on merits. In that view of the matter, no case is made out for rejection of the plaint under the provisions of Order 7 Rule 11 of the Code which power can be exercised only by perusing the averments made in the plaint by completely ignoring the possible defence that the Defendant may raise. I therefore do not find any valid ground to interfere in the impugned order in exercise of revisionary jurisdiction of this Court.

3) Recording the statements made on behalf of the Respondents as Undertakings given to this Court, the Civil Revision Application is **rejected**.

[SANDEEP V. MARNE, J.]