

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.28 OF 2022
IN
WRIT PETITION NO.10718 OF 2018
WITH
INTERIM APPLICATION NO.321 OF 2021
IN
REVIEW PETITION NO.28 OF 2022
WITH
INTERIM APPLICATION NO.2404 OF 2022
IN
REVIEW PETITION NO.28 OF 2022
WITH
INTERIM APPLICATION NO.15239 OF 2024
IN
REVIEW PETITION NO.28 OF 2022**

Mobin Ahmed Khan
V/S

....Petitioner

Ida Celene Mathias & Ors.

....Respondents

Dr. Abhinav Chandrachud with Mr. Saurish Shetye with Mr. Prem Kumar Pandey with Mr. Pavan Pandey, Mr. Pravin Pandey Ms. Sneha Mishra *for the Petitioner.*

Mr. G.S. Godbole, Senior Advocate i/b Mr. Sumit Kothari *for Respondent Nos.1 to 6.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 13 DECEMBER 2024.**

P.C.:

1. Mr. Mobin Ahmed Khan—original Respondent in Writ Petition No.10718 of 2018 who happens to be the Defendant in LE & C Suit No.16 of 2017 and Plaintiff in RAD Suit No.221 of

2017 has sought review of the order dated 22 October 2018 passed by this Court.

2. I have heard Dr. Chandrachud, the learned counsel appearing for the Review Petitioner and Mr. Godbole, the learned Senior Advocate appearing for the Respondents in the Review Petition.

3. At the outset Dr. Chandrachud would invite my attention to the order dated 19 August 2019 passed in the Review Petition (Stamp) No.33066 of 2018 by which this Court had directed that in the event of there being even a single default in deposit of the amount, the Review Petition shall stand dismissed without further reference to the Court. He would submit that Review Petitioner, by way abundant caution, has sought prayer clause (c) in Interim Application No.2404 of 2022 for restoration of the Review Petition in the event of the same being treated as dismissed on account of any default on the part of Review Petitioner. It however appears that the Registry has not recorded dismissal of the Review Petition and the same continues to survive. The Review Petition is accordingly taken up for hearing and disposal.

4. It appears that Ms. Ida Celene Mathias and others have instituted LE & C Suit No.16 of 2017 for eviction of Mr. Mobin Ahmed Khan branding him to be licensee in respect of the suit

premises. In that suit, Plaintiffs therein filed application seeking direction against the Defendant to deposit pre-estimated genuine quantified compensation and/or liquidated damages at the rate of Rs.20,000/- per day from 1 May 2016 till decision of the suit. The learned Judge of the Small Causes Court passed an order dated 17 April 2018 allowing the said Application at Exhibit-13 and directed the Defendant in LE & C Suit No.16 of 2017 to deposit the pre-estimated genuine quantified compensation and/or liquidated damages at the rate of Rs.20,000/- per day from 1 May 2016 with liberty to Plaintiffs to withdraw the same. The learned Judge further directed Mr. Mobin Ahmed Khan to deposit monthly license fees at the rate of Rs.2,00,000/- per month from 1 May 2016 with liberty to the Plaintiffs to withdraw the same.

5. It appears that Mr. Mobin Ahmed Khan has filed a separate RAD Suit No.221 of 2017 before the Small Causes Court seeking a declaration that he is a tenant in respect of the suit premises. In RAD Suit No.221 of 2017, the Small Causes Court passed an order dated 17 April 2018 on an Application filed by Plaintiff therein granting him liberty to deposit an amount of Rs.75,000/- per month in respect of use and occupation of the suit premises.

6. Thus two separate orders came to be passed in the two suits for deposit of compensation/damages/occupancy charges in respect of the same premises viz. (i) Rs.20,000/- per day and

Rs.2,00,000/- per month towards license fee in LE & C Suit No.16 of 2017, (ii) Rs.75,000/- per month in RAD Suit No.221 of 2017.

7. It appears that order dated 17 April 2018 passed by the learned Judge of the Small Causes Court on Application at Exhibit-13 filed in LE & C Suit No.16 of 2017 was subjected to revision before the Appellate Bench of Small Causes Court, which set aside the order dated 17 April 2018 and modified the arrangement by directing the Defendant/Mobin Ahemd Khan to deposit monthly license fees of Rs.2,00,000/- per month from 1 May 2016 onwards during pendency of the suit.

8. Cross Petitions were filed both by Plaintiffs and Defendant in LE & C Suit No.16 of 2017 in this Court challenging the order of the Revisional Court dated 17 August 2018. By order dated 22 October 2018, which is subject matter of the Review Petition, this Court dismissed Writ Petition No.9952 of 2018 filed by Mr. Mobin Ahmed Khan and allowed Writ Petition No.10718 of 2018 filed by Plaintiffs (Ms. Ida Celene Mathias and other). This Court restored the order dated 17 April 2018 passed by the learned Judge of the Small Causes Court by directing Defendant Mobin Ahmed Khan to deposit pre-estimated genuine quantified compensation and/or liquidated damages at the rate of Rs.20,000/- per day as well as license fees at the rate of

Rs.2,00,000/- per month from 1 May 2016 till decision of the suit. Defendant-Mobin Ahmed Khan has sought review of the order dated 22 October 2018.

9. Plaintiffs' Application at Exhibit-13 was filed under the provisions of Order 15A of the Code. Order 15A of the Code provides thus:

“(1) In any suit by a lessor or a licensor against a lessee or a licensee, as the case may be for his eviction with or without the arrears of rent or licence fee and future mesne profits from him, the defendant shall deposit such amount as the Court may direct on account of arrears up to the date of the order (within such time as the Court may fix) and thereafter continue to deposit in each succeeding month the rent or licence fee claimed in the suit as the Court may direct. The defendant shall, unless otherwise directed, continue to deposit such amount till the decision of the suit.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff lessor or license or his Advocate and the receipt of such amount shall not have the effect of pre-judging the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination.

Explanation.- The suit for eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule."

10. Thus by exercising power under Order 15A of the Code, the Court can direct the Defendant to deposit in the Court such amount as the Court may decide towards arrears of rent or license fees. I do not see any provisions under Order 15A of the Code under which Court can determine pre-estimated genuine quantified compensation and/or liquidated damages and direct the same to be deposited as a pre-condition for not striking off defence of the Defendant under Order 15A of the Code. Therefore this Court could not have directed the Defendant in LE & C Suit No.16 of 2017 to deposit any amount towards pre-estimated genuine quantified compensation and/or liquidated damages by exercising power under provisions of Order 15A of the Code. The provision of Order 15A of the Code essentially enable the court to ensure that the Defendant does not enjoy possession of the premises without paying rent/license fees. The provision does not contemplate determination of damages likely to be suffered by Plaintiff and direction to the Defendant to deposit the same as a precondition for not striking off the defence. The order dated 22 October 2018 passed by this Court thus suffers from an apparent error on face of record and deserves to be reviewed. Instead the Defendant needs to be directed to deposit the monthly licence fees of Rs.2,00,000/- with 5% yearly increment thereon.

11. I accordingly proceed to pass the following order:

- i) Review Petition is allowed.

ii) Order dated 22 October 2018 passed by this Court is recalled. Writ Petition No.10718 of 2018 filed by Plaintiffs as well as Writ Petition No.9952 of 2018 filed by the Defendant are dismissed.

iii) Order dated 7 August 2018 passed by the Appellate Bench of Small Causes Court directing the Defendant to deposit monthly license fees of Rs.2,00,000/- is confirmed, subject to slight modification directing that there shall be yearly increment of 5% on the amount to be so deposited.

iv) Accordingly the Defendant-Mobin Ahmed Khan shall deposit in the Small Causes Court monthly license fees of Rs.2,00,000/- per month with yearly increment of 5% from 1 May 2016 till the disposal of LE & C Suit No.16 of 2017.

v) The amount of Rs.75,000/- depositable as per order dated 17 April 2018 passed in RAD Suit No.221 of 2017, to the extent the same is actually deposited, shall be set off and adjusted against the amount liable to be deposited by the Defendant in paragraph (iv) above.

vi) If the Defendant in LE & C Suit No.16 of 2017 deposits the entire arrears of license fees at the rate of Rs.2,00,000/- per month with annual increase at the rate of 5% from 1 May 2016 on or before 31 December 2024, his defence, which has been struck off by the Small Causes Court shall stand restored.

vii) The Plaintiff in LE & C Suit No.16 of 2017 shall be at liberty to withdraw amounts deposited by the Defendant in pursuance of the order passed by this Court.

12. Considering the facts and circumstances of the case, hearing of LE & C Suit No.16 of 2017 and RAD Suit No.221 of 2017 is expedited and the Small Causes Court is requested to make an endeavour to decide the same as expeditiously as possible preferably within a period of one year.

13. With the above directions, Review Petition as well as all pending Interim Applications are **disposed of**.

(SANDEEP V. MARNE, J.)