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

**COMMERCIAL APPEAL FROM ORDER NO.8 OF 2024
WITH
INTERIM APPLICATION NO.9337 OF 2024
IN
COMMERCIAL APPEAL FROM ORDER NO.8 OF 2024**

TATA STEEL LIMITED
VS.

..APPELLANT

PITTIE STRIPS PRIVATE LIMITED & ORS. ..RESPONDENTS

Mr. Rashmin Khandekar a/w. Mr. Vijay Purohit, Ms. Nikita Bangera &
Mr. Samkit Jain i/b. P&A Law offices for appellant.

Mr. Sanjiv Punalekar a/w. Mr. Sachin Kanse i/b. PRS Legal for
applicant in IA/9337/2024 and for respondent

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 5th JULY 2024.

JUDGMENT (PER : RAJESH S. PATIL, J.) :

1. This Commercial Appeal from Order has been filed by appellant – original plaintiff challenging the impugned judgment and order dated 14th December 2023 passed by Additional District Judge, City Civil Court, Mumbai, in Notice of Motion No.1674 of 2022 in Commercial Suit No.63 of 2022, thereby dismissing Notice of Motion No.1674 of 2022 filed by appellant (original plaintiff).

2. For sake of convenience the parties are referred to as per their

nomenclature before the Bombay City Civil Court.

3. The plaintiff had filed the Commercial Suit in the Bombay City Civil Court against the respondents – defendants and its Directors.

4. It is the case of the plaintiff in the plaint that defendant nos.4 and 5 were the earlier Directors of defendant no.1 – company and were also Promoters and Directors of Bhushan Steel Limited (for short “BSL”), which was taken over by the plaintiff – TATA Steel Limited, under Corporate Insolvency Resolution process, in terms of the provisions of the Insolvency and Bankruptcy Code, 2016. Subsequent to the take over, the erstwhile BSL was renamed as TATA Steel BSL Limited, which was then amalgamated into and with the plaintiff company – TATA Steel Limited, by way of order dated 29th October 2021 of National Company Law Tribunal, Mumbai Bench.

5. The plaintiff on 29th March 2022 filed a Commercial suit against the defendants claiming therein a refund of Rs.34,00,000/- being the security deposit of Leave and License Agreement, and a sum of Rs.9,86,000/- being the interest on the said amount of Rs.34,00,000/- @ 12% per annum from 1st October 2018 till 28th February 2021. In the said suit the plaintiff also preferred Notice of Motion No.1674 of 2022, seeking therein a relief of interim

injunction against the defendants, restraining them from alienating, encumbering or in any manner creating any third party interest in the suit premises; and also an interim injunction against the defendants to deposit with the Registry of City Civil Court a sum of Rs.34,00,000/-.

6. The defendants appeared in the matter and filed their reply to the Notice of Motion. So also, the defendants filed their written statement in the suit thereby denying the allegations made in the plaint. The defendants also pointed out that they have already filed L.C. Suit against the plaintiff in the Court of Small Causes under Section 41 of the Presidency Small Causes Court Act, seeking therein recovery of the license fees, in aggregate of Rs.2,56,38, 267/- along with interest @ 18% per annum.

7. The Judge of the Court of the City Civil after hearing the parties in Notice of Motion in the Commercial Suit by judgment and order dated 14th December 2023 rejected the Notice of Motion of the plaintiffs.

8. The present Commercial Appeal from Order challenges the said impugned judgment and order dated 14th December 2023 which dismissed the Notice of Motion filed in the Commercial Suit by the

plaintiff.

9. Mr. Rashmin Khandekar appeared on behalf of the plaintiff and made his submissions.

(i) Mr. Khandekar submitted that there are several cases pending against the erstwhile BSL and its Directors. He submitted that there were fraudulent transactions between the erstwhile BSL and various companies, which included the defendants' company and its Directors.

(ii) Mr. Khandekar submitted that though the Leave and License Agreement's term was from 1st April 2016 till 31st March 2019, his client issued a termination notice on 25th September 2018 and as per the clause of the Leave and License Agreement sought refund of the deposit amount. So also, in the said notice it was clearly mentioned that the plaintiffs were ready to hand over possession of the suit premises immediately.

(iii) Mr. Khandekar submitted that once the plaintiffs were ready to hand over possession, by its notice dated 25th September 2018, there cannot be any liability of plaintiffs to pay the license fee thereafter.

(iv) Mr. Khandekar submitted that the City Civil Court did not consider this vital point while deciding the Notice of Motion. He

submitted that hence, this Court being an Appellate Authority under the Commercial Court Act should admit the Appeal from Order and direct the defendants to deposit the amounts as claimed by the plaintiff, or this Court should pass an order of injunction against the defendants, prohibiting them with parting with possession and/or creating any third party right in respect of the suit premises.

10. Mr. Sanjiv Punalekar, appeared on behalf of the respondent-Company and made his submissions.

(i) Mr. Punalekar submitted that it is a matter of record that possession of the suit premises was handed over by the plaintiff-company to the defendant-company only on 26th February 2022, which was duly recorded in the Minutes of the Meeting which is part of the records before this Court.

(ii) Mr. Punalekar submitted that therefore, the liability of the plaintiff to pay the license fee will come to an end only on 26th February 2020.

(iii) Mr. Punalekar further submitted that his client has already filed a suit under Section 41 of the Presidency Small Causes Court Act for recovery of its dues, being the license fees payable. He submitted that as of 15th July 2021, the date when the defendants filed a suit in the

Small Causes Court, the amount payable by the present appellant was quantified at Rs.2,56,38,267/- along with 18% interest.

(iv) Mr. Punalekar submitted that against the claim made by the plaintiff of Rs.34,00,000/-, his client's claim against the appellant is of Rs.2,56,38,267/- along with interest.

(v) Mr. Punalekar submitted that all these aspects were considered by the City Civil Court and by a well reasoned order has dismissed the Notice of Motion filed by the plaintiff.

11. We have heard counsels for both sides and have also considered the documents on record, including the impugned judgment and order dated 14th December 2023 passed by the Judge of the Court of Small Causes.

12. The Leave and License period was for three years, starting from 1st April 2016 to 31st March 2019. There was a lock in period of six months and the license fee payable at the beginning of the license period was @ Rs.8,25,000/- per month with 10% increase every year. The licensee (plaintiff) at the time of entering into the Leave and License Agreement had deposited Rs.34,00,000/- as security deposit, which was to be returned back to the plaintiff at the time of handing over possession of the suit premises back to the defendants.

13. Though the license period was of three years, on 25th September 2018, the plaintiff issued a notice to the defendants seeking a refund of the security deposit of Rs.34,00,000/-. The plaintiff also mentioned in the notice that they are terminating the Leave and License Agreement. Thereafter, the defendants replied to the said termination notice by its reply dated 24th November 2018 and by further reply dated 19th November 2019. The defendants in the said reply claimed its outstanding amount. The Minutes of the Meeting dated 26th February 2020 records that the possession of the suit premises has been handed over by the plaintiff to the defendants on the said day.

14. The plaintiff's filed a Commercial Suit before the City Civil Court on 29th March 2022, claiming a sum of Rs.43,86,000/- along with interest @ Rs.12% per annum. Before plaintiff could file the Commercial Suit before the Commercial Court at City Civil Court, the defendant on 15th July 2021 had filed a suit under Section 41 of the Presidency Small Causes Court Act before the Small Causes Court seeking therein outstanding license fees amounting to Rs.2,56,38,267/- along with interest @ 18% per annum.

15. We have been informed that both the suits are pending before

the respective Courts for hearing. In the impugned judgment and order, the Commercial Court Judge has considered all the aspects and has come to a finding that the plaintiff has not complied with the notice period and has overstayed the suit premises. Hence, the plaintiff failed to prove the *prima facie* case and balance of convenience is not in favour of the plaintiff. Hence, no relief was granted of injunction or security deposit to the plaintiff and the plaintiff was granted liberty to raise all their contentions during the trial.

16. We have considered the above facts and we find that no ground is made out by the plaintiff (appellant herein) to grant any kind of relief as prayed by plaintiffs, seeking injunction of not creating third party rights by the defendants in the suit premises or for deposit of security amount of Rs.34,00,000/- before the Commercial Court. The findings recorded by the Commercial Court are *prima facie* findings and all the issues raised by the plaintiff and the defendants can be considered by the Court at the time of trial when the parties would lead their evidence.

17. We find no perversity in the impugned judgment and order dated 14th December 2023. No case is made out for interference,

hence, the Commercial Appeal from Order is dismissed. In sequel, the Interim Application also stands dismissed.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]