

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.48 OF 2020
IN
NOTICE OF MOTION NO.972 OF 2019
IN
SUIT NO.409 OF 2019**

Sunita Dileep Nevatia & Anr. ... Appellants
(Org. Defendant Nos.1 & 2)
V/s.

Ambrosia Restaurants Pvt. Ltd. ... Respondent
(Org. Plaintiff)

**WITH
INTERIM APPLICATION NO.194 OF 2020
IN
APPEAL NO.48 OF 2020**

AND

**APPEAL NO.50 OF 2020
IN
NOTICE OF MOTION NO.972 OF 2019
IN
SUIT NO.409 OF 2019**

Sunita Dileep Nevatia & Anr. ... Appellants
(Org. Defendant Nos.1 & 2)
V/s.

Ambrosia Restaurants Pvt. Ltd. ... Respondent
(Org. Plaintiff)

**WITH
INTERIM APPLICATION NO.486 OF 2020
IN
APPEAL NO.50 OF 2020**

Mr. Dileep Nevatia, Appellant No.2 in person present in both the Appeals.

Mr. Rajiv Narula a/w Mr. Tarang Jagtiani and Mr. Milind Mane i/by Jhangiani Narula & Associates for the Respondent in both the Appeals.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 02nd FEBRUARY 2024

P.C. :

This order will dispose of both the captioned Appeals.

2. Appeal No.48 of 2020 impugns an Order dated 15th November 2019 passed in Notice of Motion No.972 of 2019, whereas Appeal No.50 of 2020 impugns an Order dated 20th December 2019 passed in Notice of Motion No.1445 of 2019.

3. We have heard Mr. Nevatia, who appears in person on behalf of the Appellants in both the captioned Appeals, at some length. His principal grievance is that by the Order dated 15th November 2019, the Appellants, who he claims are the owners of the premises in question in the captioned Suit, have been enjoined from dealing with the same without there being any, let alone sufficient reasons, to support such an order.

4. Inviting our attention to the Complaint, he then additionally submitted that the Suit itself was not maintainable since the reliefs sought for were in the nature of recovery of possession of immovable property under a Leave and Licence Agreement and thus this Court would not have the requisite jurisdiction to decide such an issue. He pointed out that given the nature of reliefs which had been sought for, it was only the Small Causes Court which would have the requisite jurisdiction to entertain the captioned Suit. He additionally took us to the terms of the Leave and Licence Agreement to submit that in fact juridical possession of the licensed premises was always with the Appellants and not the Respondent. He made further

submissions to demonstrate that, the Respondent had committed breach of its obligations under the Leave and Licence Agreement and that the very term of the Leave and Licence Agreement had come to an end on 20th March 2023. He thus submitted that the question of the Respondent being put back in possession of the Suit premises therefore did not arise. He then invited our attention to the Order dated 20th December 2019 and pointed out that though the same was passed in an entirely different proceeding, by the said order the Learned Judge had continued the Order dated 15th November 2019 while dismissing the said Application. He submitted that the Appellants were thus constrained to challenge the Order dated 20th December 2019 to that limited extent. Basis these submissions he prayed that both the Appeals deserved to be allowed.

5. *Per contra*, Mr. Narula appearing on behalf of the Respondent opposed the present Appeals and at the outset pointed out that Notice of Motion No.972 of 2019 was yet pending hearing and no final order therein had been passed. He

pointed out that there had infact been no adjudication on the merits of the said Notice of Motion and the Order dated 15th November 2019 was merely in the nature of a holding order passed only till the time that the Court was to hear the said Notice of Motion. Mr. Narula then submitted that the Learned Judge had infact specifically recorded in the Order the reason as to why the said order was passed, i.e. Mr. Nevatia who appeared in person even on that date was unwilling to make a statement that the Appellants would not induct a third party into the premises coupled with the finding that it would not be possible for Mr. Nevatia to assist the Court, that the order came to be passed. Mr. Narula then submitted that instead of proceeding with the hearing of the Notice of Motion, the Appellants had taken out multiple Interlocutory Applications and themselves delayed the hearing of the Notice of Motion. While he submitted that he had an answer to all the contentions raised by Mr. Nevatia, the correct course of action would be for the Learned Single Judge to hear and decide Notice of Motion No.972 of 2019 on merits as the Court of first instance instead of the Appeal Court effectively undertaking that exercise.

6. When we put this to Mr. Nevatia, he did not dispute that Notice of Motion No.972 of 2019 had not been decided on merits. He however submitted that by virtue of Notification dated 22nd January 2024 issued by Registry of this Court in view of Bombay City Civil Court (Amendment) Act, 2023, the captioned Suit and Notice of Motion would now stand transferred to the City Civil Court and thus apprehended that because of the process of transfer, the hearing of the Notice of Motion may take some time but he did not *per se* oppose the suggestion put forth by Mr. Narula.

7. Having heard both Mr. Nevatia and Mr. Narula, we find merit in the suggestion put forth by Mr. Narula. There is no dispute between the parties that Notice of Motion No.972 of 2019 has not been heard and decided on merits. There is also no dispute that the Impugned Order is in the nature of a holding order till the Notice of Motion is heard on merits. Now given the fact that the pleadings in the said Notice of Motion are complete and that the Impugned Order has admittedly been operating

since 15th November 2019, we find that both the Appeals can be disposed of by the following order, viz.

ORDER

- (i) The Notices of Motion No.972 of 2019 and 541 of 2019 to be heard and disposed of within a period of 8 (eight) weeks from the date on which the copy of this order to be placed before the Learned Judge, who is hearing the same.
- (ii) The parties shall cooperate by ensuring that no unnecessary adjournments are taken.
- (iii) The Appellants to maintain status quo in respect of the Suit premises in terms of the Order dated 15th November 2019 until the hearing and disposal of Notice of Motion No.972 of 2019.

8. With these directions, both the captioned Appeals are disposed of accordingly.

9. In view of disposal of Appeals, all interim applications, if any, does not survive and the same are disposed of accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)