

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.19281 OF 2024

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Chandrahasa Kutty Shetty

...Petitioner

Versus

Yogesh Chandrakant Ghule & Anr.

...Respondents

Mr. Vijay Killedar, for the Petitioner.

Mr. Niranjan A. Mogre, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATED: JANUARY 07, 2025

P.C.:

1. Heard Mr. Killedar, learned Counsel for the Petitioner and Mr. Mogre, learned Counsel for the Respondents.

2. Mr. Killedar, learned Counsel for the Petitioner submits that the Trial Court by exercising power under Order XV-A [Bombay Amendment] of the *Code Of Civil Procedure, 1908* ("CPC"), directed payment of license fees of Rs.3,17,247/- per month with 5% annual increase from 1st November 2023 till the final decision of the Suit by impugned Order dated 9th August 2024 passed by learned 6th Additional Judge, Small Causes Court and Joint Civil Judge, Senior Division, Pune. He states that the Civil Revision Application filed challenging the said Order has been dismissed.

3. Mr. Killedar, learned Counsel submits that although as per the

Leave and License Agreement which is for the period of 12th October 2018 to 31st October 2023, the initial compensation agreed was Rs.2,61,000/- per month which is to be increased by 5% each year which comes to Rs.3,17,347/- for the period of 1st November 2022 till 31st October 2023, still the Respondents were accepting compensation only at the rate of Rs.2,40,000/- per month till the Leave and License Agreement came to an end on 31st October 2022. He submits that the said reduction was done as amenities were not provided, the premises were partially constructed and for completion of the construction and renovation of the premises the Petitioner has to spend Rs.70,00,000/-, in COVID-19 pandemic, the business of Lodging & Boarding has been completely shutdown etc. He further submits that there is MOU dated 12th October 2018 for extension of period of Leave and License Agreement for further 60 months after Leave and License Agreement dated 12th October 2018 comes to an end by efflux of time. He therefore submitted these factors have not been taken into consideration while passing the impugned Orders. He submits that under Order XV-A, there is discretion in the Court. To substantiate said contention, Mr. Killedar, learned Counsel has relied on the the decision of this Court in the case of *PTB Hospitality LLP v. Jayanti Danabhai Patel*¹.

4. On the other hand, it is the submission of Mr. Mogre, learned

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Counsel for the Respondents that the rent which has been granted by the learned Trial Court as confirmed in the Revision, is in accordance with the Leave and License Agreement and therefore no interference is required.

5. For consideration of the rival contentions it is necessary to set out Order XV-A [Bombay Amendment] of CPC, which reads as under:-

**“ORDER XV-A
STRIKING OFF DEFENCE IN A SUIT BY A LESSOR**

[(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 licensor or his Advocate and the receipt of such amount shall not have the effect of prejudicing 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.]”

(Emphasis added)

Order XV-A specifically provides that “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 license fee claimed in the Suit “**as the Court may direct**”. Thus, it is clear that the Court has to determine the amount which the Defendant shall pay on account of arrears. Thus, it is very clear that discretion is there with the Court to determine the amount.

6. In view of this position, as both the Courts have overlooked that there is discretion in the Court, Mr. Mogre, learned Counsel for the Respondents, after taking instructions, states that the matter be remanded back to the learned Trial Court. He further states that even as per the initial amount as agreed in the Leave and License Agreement, the same is Rs.2,61,000/- and not Rs.2,40,000/-. He submits that the factors on which the Petitioner is relying are not relevant now and therefore the Orders passed are in accordance with law. However, he states that the Respondents have no objection if the matter is again remanded back to the learned Trial Court for passing the Order in accordance with the provisions of Order XV-A [Bombay Amendment] of

CPC.

7. Accordingly, the Writ Petition is disposed of by passing following Order :-

- (i) The impugned Order of the learned Trial Court as well as of the learned Revisional Court are quashed and set aside.
- (ii) The Application filed by the Petitioner under Order XV-A of CPC in Civil Suit No.333 of 2023 is remanded back to the learned Trial Court for deciding the same afresh.
- (iii) The learned Trial Court is requested to dispose of the Application filed under Order XV-A expeditiously.
- (iv) Till the disposal of the said Application filed under Order XV-A of CPC, the Petitioner will pay an amount of Rs.2,61,000/- per month w.e.f. from 1st January 2025 to the Respondents.
- (v) It is clarified that the said payment will be without prejudice to the rights and contentions of both the parties.
- (vi) It is further clarified that all contentions raised by both the parties are expressly kept open.

8. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]