

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4924 OF 2025

Mr. Ashraf Firoz Shaikh

...Petitioner

Versus

Mr. Dost Mohammed Gulam Mohammed
Achhwa

...Respondent

Mr. Saiprasad R. Dudhane for Petitioner.

Mr. Hira Gumma for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 13th January 2026

P.C.:

1. Heard Mr. Saiprasad Dudhane, learned Counsel for the Petitioner and Mr. Hira Gumma, learned Counsel for the Respondent.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, challenge is to the legality and validity of Order dated 30th January 2025 passed by the learned Appellate Bench of Small Causes Court, Mumbai in Revision Application No. 222 of 2024 as also Order dated 30th July 2024 passed by the learned Judge of Small Causes Court, Mumbai below Exhibit-8 in L.E. Suit No. 29 of 2023.

3. By the impugned Order dated 30th July 2024 passed by the learned Trial Court, the present Petitioner i.e. the Defendant has been directed to pay interim compensation from 1st March 2020 till 30th June 2024 i.e. for 52 months @ Rs.13,000/- per month i.e. the aggregate of amount of Rs.6,76,000/- and further directed to deposit Rs.13,000/- per month on or before 10th day of each succeeding month till disposal of the suit.

4. The said Order has been confirmed by the Appellate Bench of Small Causes Court.

5. It is the main submission of Mr. Dudhane learned Counsel for the Petitioner that there is a cloud on the title of the Respondent and the F.I.R. has been filed by the Petitioner against the Respondent that the Leave and License Agreement has been executed by misrepresentation. He further submits that there is document of surrender of tenancy and signature of the same is forged and fabricated.

6. On the other hand, Mr. Gumma, learned Counsel for the Respondent points out S.C. Suit No.1361 of 2020 filed by the

present Petitioner and more particularly paragraph No.3 of the same. He therefore submits that in fact the Petitioner has come up with the case that there is a Leave and License Agreement executed with the parties on 18th February 2020 and the period of said agreement is 1st January 2020 till 30th November 2020. He submits that admittedly from 1st March 2020 till date, not a single farthing has been paid by the Petitioner and the Petitioner is in possession of the suit premises.

7. Before considering the rival contentions, it is necessary to set out certain factual aspects.

8. The Petitioner has filed S.C. Suit No. 1361 of 2020 in the Bombay City Civil Court, seeking injunction and in the said Suit, the Plaintiff has come up with following contentions:-

“2. The defendant is a tenant and owner of the suit premises from which the Plaintiff has taken the same on leave and license basis. The defendant is residing at the address mentioned in the case title.

3. The Plaintiff states that about three and half years back the defendant gave the suit premises to the plaintiff on leave and license basis. However, at that time no written agreement was executed between the plaintiff and the defendant. The Plaintiff states that

thereafter, the defendant insisted on executing written leave and license agreement and therefore, on 18th February, 2020, leave and license agreement has been executed between the plaintiff and the defendant in which is shown that the said agreement is deemed to have commenced on 1st day of January, 2020 and shall expire on 30th day of November, 2020. Hereto annexed and marked as "**EXHIBIT - A**" is copy of leave and license agreement dated 18th February, 2020. The Plaintiff states that he is having documents of the defendant such as rent receipt, aadhar card, pan card, etc. Hereto annexed and marked as "**EXHIBIT B-Colly**" are copies of Rent receipt, Aadhar card and Pan card of defendant. The plaintiff states that he is having documents in respect of the suit premises such as Aadhar card, Pan card and Electric bill at the address of the suit premises. Hereto annexed and marked as "**EXHIBIT - C**" is copy of Aadhar card. Hereto annexed and marked as "**EXHIBIT - D**" is copy of Pan card. Hereto annexed and marked as "**EXHIBIT E**" is copy of Electric bill."

(Emphasis added)

9. Thus what the present Petitioner in the Bombay City Civil Court suit, stated that the present Respondent is owner of the suit premises. The said premises has been taken by the Plaintiff on leave and license basis. It has been further stated that about 3½ years back, the present Respondent gave the suit premises to the Petitioner on leave and license basis, however, at that time, no written agreement was executed and thereafter leave and license

agreement dated 18th February 2020 has been executed. The period of said agreement is 1st January 2020 till 30th November 2020. Thus, even as per contentions raised by the present Petitioner in Bombay City Civil Court suit, it is clear that he has admitted that the Respondent is the owner of suit premises and the Petitioner entered in the suit premises on leave and license basis, initially on the basis of oral leave and license and thereafter written agreement dated 18th February 2020. Admittedly as per said leave and license agreement, the agreed compensation is Rs.13,000/- per month.

10. The learned Trial Court has directed the Petitioner to deposit said amount Rs.13,000/- per month in the Trial Court.

11. At this stage, it is required to be clarified that although Clause No.2 of the Order dated 30th July 2024 mentions that the Defendant i.e. the present Petitioner is directed to pay interim compensation, however Clause No. 3 clarifies that the direction is to deposit the said amount. Thus, it is clear that by reading Clauses 2 and 3 clearly show that the said amount of Rs.13,000/- per month is required to be deposited before the learned Trial Court.

12. The learned Appellate Court has confirmed said Order by giving cogent reasons.

13. Learned Counsel for the Respondent points out Order dated 18th January 2025 passed by the learned Trial Court below Exhibit-43 in L.E. Suit No. 29 of 2023 by which defence of the Defendant i.e. the present Petitioner is struck out.

14. It is required to be noted that the challenge in this Petition is to the Order dated 30th July 2024 passed by the learned Trial Court as also Order dated 30th January 2025 passed by the learned Appellate Bench of Small Causes Court.

15. Throughout there was no stay granted to the Order dated 30th July 2024. It is admitted position that the Petitioner has not paid a single farthing from 1st March 2020 till date i.e. for last about 6 years. Admittedly, the Petitioner is not the owner of the property. He is occupying the property without making any payment. Accordingly in the facts and circumstances, no case is made out for interference in the impugned Order under Article 227 of the Constitution of India.

16. Accordingly, Writ Petition is dismissed, however, with no Order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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