

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15442 OF 2025

Hemant Shantaram Pikale

...Petitioner

V/s.

Family Care Hospitals Limited

...Respondent

Mr. Ansh Karnawat i/b Mr. Indrajeet R. Hingane *for the Petitioner.*

Mr. Kunal Katariya with Mr. Shubham Dhamnaskar, Mr. Vineet Jadhav
and Ms. Fatema Lokhandwala i/b Ms. Prakruti Joshi *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATED: 5 May 2026.

Judgment:

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and disposal.

2) The Petitioner is aggrieved by Orders passed by the Trial and the Appellate Courts refusing to strike off defence of Respondent/Defendant despite failure to comply with the order directing deposit of arrears of license fees passed under Order XV-A of the Code of

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Civil Procedure **(the Code)**. Accordingly, the Orders passed on 26 November 2024 by the Appellate Bench of the Small Causes Court rejecting Revision Application No. 10 of 2024 and the Order dated 13 September 2023 passed by the Court of Small Causes on application at Exh.119 are under challenge in the present Petition.

3) Briefly stated, facts of the case are that the Petitioner is the owner of the property comprising basement, ground floor, 1st floor and 2nd floor in a building known as 'Uma Mahesh' situated at plot number 539/1 bearing CTS No. 111222 of Mahim Division, 2nd Cross Road, M.M. Chhotani Marg, Mahim (West) admeasuring 8,458 sq. mtrs. along with two car parking spaces (**suit premises**). Petitioner and Respondent entered into Leave and Licence Agreement dated 14 December 2017 granting licence to the Respondent for running of a hospital. Petitioner has terminated the Leave and Licence Agreement on 27th December 2018 and has instituted L.E. & C Suit No.58 of 2019 before the Court of Small Causes for recovery of possession of the suit premises and for recovery of licence fees. The Plaintiff filed application at Exh. 12 seeking various prayers, including a prayer for deposit of arrears of licence fees under order XV-A of the Code. The Application was partly allowed by order dated 3 May 2021 *inter alia* directing the Respondent-Defendant to deposit arrears of licence fees from 1 February 2019 to 31 January 2020 at the rate of Rs.10,50,000/- per month plus 18% GST and from 1 February 2020 to 31st January 2021 at the rate of Rs.11,02,500/- per month plus 18% GST and from 1 February 2021 to 3 May 2021 at the rate of Rs.11,57,625/- per month plus 18% GST together with annual escalation @ 5% during pendency of the suit. Revision No. 208 of 2022 filed against

the order dated 3 May 2021 was rejected by the Appellate Bench of Small Causes Court vide order dated 23 October 2023. Respondent-Defendant filed Writ Petition No.1114 of 2024 challenging the orders dated 3 May 2021 and 23 October 2023 passed by the Small Causes Court and its Appellate Bench respectively. By order dated 31 July 2024, this Court upheld the order of Small Causes Court dated 3 May 2021 and of Appellate Bench dated 23 October 2023 with a slight modification to the extent of grant of credit for security deposit of Rs.60 lakhs kept by the Respondent with the Petitioner. After giving credit for amount of Rs.60 lakhs, this Court determined the amount of arrears of licence fees payable up to 25 October 2021 at Rs.3,67,73,382/-. This Court granted liberty to the respondent to deposit amount of Rs.3,67,73,382/- by 30 September 2024, and observed that in the event of failure to make the deposit, Petitioner-Plaintiff would be at liberty to revive the execution proceedings and also to seek orders for striking off the defence of the Petitioner. The order passed by this court on 31 July 2024 in Writ Petition No. 1114 of 2024 was further sought to be challenged before the Hon'ble Supreme Court by the Respondent by filing Special Leave to Appeal (C.) No. 23743-23744 of 2024, which was dismissed by order dated 18 October 2024 directing the Trial Court to expedite the trial of the suit.

4) The possession of suit premises is handed over by the Respondent to the Petitioner around 25 October 2021 based on initial order dated 3 May 2021 directing deposit of arrears for licence fees. Petitioner/Plaintiff took out application at Exh. 119 for striking off defence of the Respondent/Defendant. The Application had remained pending and in the meantime, Respondent had filed Revision before the

Appellate Bench against the order dated 3 May 2021. By citing the reason of pendency of the Revision as well as pendency of execution proceedings, the Small Causes Court refused to strike off the defence and rejected Application at Exh. 119 by order dated 13 September 2023. By order dated 26 November 2024, the Appellate Bench dismissed Revision confirming Trial Court's Order and refused to strike off the defence of the Defendant and granted liberty to the Plaintiff to file fresh application for striking off defence. Aggrieved by the order passed by the Trial and the Appellate Courts on 13 September 2023 and 26 November 2024 respectively, the Petitioner has filed the present Petition.

5) Mr. Karnawat, the learned counsel appearing for the Petitioner submits that the Trial Court has erred in rejecting the application for striking off the defence despite admitted position of non-deposit of the arrears of licence fees. That mere pendency of revision or filing of execution proceedings cannot be a reason for rejecting the application at Exh. 119. That Appellate Court failed to take into consideration the subsequent events by which the Revision and Writ Petition against the orders fixing interim compensation were rejected. He relies on judgment of the Apex Court in **Pasupuleti Venkateswarlu vs. The Motor & General Traders**¹ in support of his contention that subsequent events also need to be taken into consideration by the Courts. The Appellate Court has erroneously expected the Petitioner to commence fresh round for striking off defence, which would delay the decision of the suit. That since non-deposit of licence fees is an admitted position, Appellate Court ought to have itself granted the relief

1 (1975) 1 SCC 770

in favour of the Petitioner rather than expecting him to start another round of lengthy litigation. That suit has been expedited by the Hon'ble Apex Court and the impugned orders run contrary to the order of the Hon'ble Apex Court. He prays for setting aside the impugned orders and for grant of relief for striking off the defence of the defendants.

6) The Petition is opposed by Mr. Katariya, the learned counsel appearing for the Respondents. He submits that Petitioner is already granted liberty to file fresh application for striking off the defence on two separate occasions viz. by this Court by order dated 31 July 2024 and also by the Appellate Bench of Small Causes Court. However, the said opportunity is not exhausted and therefore the Petition is not maintainable. He submits that this Court cannot directly grant a relief in favour of the Petitioner in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. In support, he relies on judgment of the Apex Court in **Estralla Rubbers vs. Dass Estate (P) Ltd.**² That impugned order otherwise reflects a plausible judicial view, not warranting any interference by this Court.

7) That the Trial Court rightly refused to entertain application for striking off defence in the light of pendency of Revision challenging the order of deposit. The said order was materially altered by this Court by order dated 31 July 2024 and the Appellate Court is justified in directing the Petitioner to file fresh application for striking off the defence. Mr. Katariya further submits that the power of striking off defence is extraordinary and discretionary power which cannot be

² (2001) 8 SCC 97

exercised routinely or mechanically. In support, he relies upon judgment of the Apex Court in **Bimal Chand Jain vs. Sri Gopal Agarwal**³. He also relies on judgment of this court in **Radheshyam vs. Tuljaprasad & Ors.**⁴ in support of his contention that defence cannot be lightly struck off.

8) Mr. Katariya further submits that Respondent has sufficient cause for not depositing the arrears of license fees. That Petitioner faced genuine financial liabilities and has already vacated possession of the suit premises. That in the financial year 2024-25, Petitioner has incurred losses of Rs.44.02 crores. That the order of deposit has attained finality only on dismissal of SLP, by which time the respondent went into severe financial distress.

9) Mr. Katariya further submits that respondent has valid counterclaims against the Petitioner, who created hurdles in operation of the hospital and committed breaches of the licence agreement as well as of MOU. That the case involves cross-demands between the parties and not an admitted failure on the part of the Respondent to pay the license fees. That the dispute relating to liability to pay the license fees is intertwined with Respondent's counterclaim for recovery of damages. That Respondent's counterclaim is in the sum of INR 22.7 crores which exceeds Petitioner's claim for license fees. That in such circumstances, no order directing deposit of licence fees could have been made. He prays for dismissal of the Petition.

3 (1981) 3 SCC 486

4 2006 SCC OnLine Bom 1062

10) Rival contentions raised on behalf of the parties now fall for my consideration.

11) The Petitioner is aggrieved by the Trial and Appellate Court's orders refusing to striking off the defence of the Respondent-Defendant despite failure to comply with the Order passed by the Trial Court on 3 May 2021, as confirmed by the Appellate Bench by order dated 23 October 2023, as slightly modified by the Court vide Order dated 31 July 2024 and as confirmed by the Apex Court while dismissing SLP vide order dated 18 October 2024. By order dated 3 May 2021, the Trial Court directed the Defendant to deposit arrears of license fees in following manner:

4. The defendant is directed deposit arrears of the license fee under order 15(a) of the Code of Civil Procedure, 1908 from the 01.02.2019 to 31.01.2020, at the rate of Rs.10,50,000/- p.m. plus 18% GST, further from 01.02.2020 to 31.01.2021 at the rate of Rs.11,02,500/- p.m. plus 18% GST, further from 01.02.2021 at the rate of Rs.11,57,625/- p.m. plus 18% GST till today and continue to deposit the same alongwith escalation thereon at 5% annually during pendency of the suit, the amount of compensation shall be deposited in court on or before 10 day of each succeeding month.

12) The Appellate Court dismissed the Revision preferred against the Trial Court's Order. The direction for deposit of arrears of licence fees is not disturbed by this Court. However, this Court granted adjustment of security deposit of Rs. 60 lakhs lying with the Petitioner. This Court held in paras-9, 10 and 11 of the order dated 31 July 2024 as under:

9) At this stage, Mr. Jahagirdar would point out that Petitioner has paid security deposit of Rs.60,00,000/- to the Respondent -Licensor and that the said amount needs to be given credit while making deposit as per order passed

by the Small Causes Court. Mr. Patil does not dispute the position about payment of security deposit Rs.60,00,000/- and confirms that the same is lying with the Respondent -Licensor. In that view of the matter, the security deposit of Rs.60,00,000/- will have to be given credit while computing the arrears of license fees to be deposited in pursuance of order dated 3 May 2021.

10) The amount to be deposited towards license fees from 1 February 2019 till 25 October 2021 is to the tune of Rs.4,27,73,382/-. After giving credit to Petitioner in respect of amount of security deposit of Rs.60,00,000/-, the net amount which is required to be deposited by Petitioner as per order dated 3 May 2021 would be Rs.3,67,73,382/-.

11) Accordingly, while dismissing the Petition, Petitioner is granted liberty to deposit an amount of Rs.3,67,73,382/- before the Small Causes Court on or before 30 September 2024. If Petitioner deposits the amount of Rs.3,67,73,382/- on or before 30 September 2024, nothing would survive in execution proceedings and for now, the execution proceedings initiated by Respondent-Plaintiff are accordingly closed. Accordingly, Writ Petition No.14794 of 2022 filed by Petitioner challenging various orders arising out of execution proceeding is also disposed of.

13) Since possession of the suit premises is vacated by 25 October 2021, the Respondent had the liability to deposit arrears of licence fees upto 25 October 2021. This Court determined the arrears of license fees upto 25 October 2021 at Rs. 3,67,73,382/- and granted liberty to the Petitioner to deposit the said amount by 30 September 2024.

14) It appears that due to non-compliance with the order dated 3 May 2021, Petitioner-Plaintiff had taken out application at Exhibit-119 seeking *inter alia* an order for striking off defence of the Defendant. By 13 September 2023, when application at Exhibit-119 was decided, the Revision Application against the order dated 3 May 2021 was still pending before the Appellate Court. It appears that Petitioner had also taken out execution proceedings for recovery of amount of arrears of licence fees. By citing the pretexts of pendency of Revision Application

and filing of execution proceedings, the Trial Court proceeded to reject the Application at Exh. 119 by recording following findings:

16. Upshot of the above, pending Revision Application No.208 of 2022, wherein the order below Exh.12 is challenged, denotes that the said order cannot be said to have attained finality. Moreover, as already an Execution Proceeding is pending in respect of the order below Exh.12 dated 03.05.2021 in this Court, that itself automatically estopped the plaintiff from asking for striking out off defences of the defendant. Hence, I pass the following order

15) In my view, both the reasons cited by the Trial Court for rejecting the application at Exh. 119 vide order dated 13 September 2023 are egregiously wrong. Mere pendency of Revision against the order directing deposit of arrears of licence fees cannot be a ground for rejection of application for striking off the defence. It is well settled that mere filing of Appeal/Revision against an order does not automatically operate as stay to the order. Merely because plaintiff is also required to file execution proceedings for recovery of arrears of licence fees, the same would not *ipso facto* be a reason for the Trial Court not to exercise powers under Order XV-A of the Code by directing striking off defence. Once the Court makes an order directing Defendant to deposit the arrears of licence fees and if there is failure to comply with the said directions, the Court can exercise powers of striking off the defence of the Defendant. In a case involving leave and license, where the licensor may depend on income generated through license fees, it is natural for the licensor to file proceedings for execution of the order. Therefore, mere filing of execution proceedings does not preclude the Plaintiff from applying for striking off defence of the Defendant, who defies the order of the Court. In my view therefore, the Trial Court grossly erred in

rejecting the application at Exh. 119 merely on the ground of pendency of revision and pendency of execution proceedings.

16) Coming to the order passed by the Appellate Court on 26 November 2024, the challenges raised by the Respondent in respect of the direction for deposit of arrears of licence fees had come to an end by the time the Appellate Court took up the Revision for decision. This Court had decided Writ Petition No. 1114 of 2024 on 31 July 2024 and the Hon'ble Apex Court had dismissed SLP on 18 November 2024. Thus, the liability of Respondent to deposit arrears of licence fees had attained finality by the time the Appellate Court took up Revision No.10 of 2024 for decision on 26 November 2024. Despite this position, the Appellate Court has refused to strike of the defence by recording following findings :

14. Moreover, it is the matter on record that the order passed below Exh.12 was also challenged in Revision No. 208 of 2022, though Appellate Bench of this Court declined to grant stay but, the revision was pending when the impugned order was passed. In peculiar facts and circumstances of the matter, the Ld. Trial Court came to the conclusion that the order passed below Exh.12 has not attended the finality and as it is challenged in revision. The view taken by the Ld. Trial Court cannot held as illegal, improper and perverse.

15. At this stage it is pertinent to note that in view of Rule 2 of Order XV(A) of the Code of Civil Procedure 1908, if the defendant succeeded in showing sufficient cause for non compliance of the order then he should be relieved from the order of striking of the defence. Therefore, as the order passed below Exh.12 under Order XV(A) of the Code of Civil Procedure 1908 was unchallenged and has not attended the finality, was sufficient cause for not complying the same.

16. In peculiar circumstances, we are of the opinion that the cause made out by the defendants is sufficient for relieving him from the order of striking off the defence. In the cumulative reason of the above discussion we are of the opinion that view taken by the Ld. Trial Court that the order passed below Exh.12 has not attended the finality and therefore, declined to strike of the

defence of the defendant is legal and proper. There is no any perversity in the order of Ld. Trial Court.

17. It is also the matter of fact that the Hon'ble Lordships pleased to modify the order passed below Exh.12 and the defendant was granted liberty to deposit the amount of Rs.3,67,73,381/- before the Ld. Trial Court on or before 30/09/2024. It is further observed in para No. 12 as follows;

“Para No. 12 : Needless to observe that if the petitioner fails to make the deposit of Rs. 3,67,73,381/- by 30/09/2024, the respondent/defendant would be at liberty to review the execution proceeding in addition to strike off the defence of the defendants.”

18. In the peculiar facts and circumstances we are of the opinion that in view of modification of amount which should be deposited by the defendants, the order passed below Exh. 119 of 2019 cannot be set aside. The liberty is also given to the plaintiff to seek relief of striking off the defence of the defendant failed to comply with the order of Hon'ble Bombay High Court withing stipulated time. Accordingly, it is a fit case to dismiss the revision application. So, Point No.1 is answered in the negative and for Point No.2 we proceed to pass following order.

17) Thus, the Appellate Court observed that there was modification effected by this Court to the order dated of the Trial Court on 31 July 2024 and that therefore the order passed at Exhibit-119 by the Trial Court could not be set aside. In my view, the Appellate Court has also erred in dismissing Revision Application No.10 of 2024. This Court did not modify the order of the Trial Court but only granted an adjustment in respect of the security deposit. The Appellate Court therefore ought to have allowed the Revision and granted the prayer for striking off the defence rather than expecting the Petitioner to file fresh application for striking off the defence.

18) It may happen to be an attractive and a convenient proposition to direct the Petitioners to apply afresh for seeking an order of striking off the defence. However, if the maze of litigation between the

parties so far is kept in mind, it is clear that any filing of fresh application for striking off defence would not only result another round of long litigation between the parties on that issue but also delay the suit indefinitely. The suit is pending since the year 2019. It is a mere licensee eviction suit, which cannot remain pending for such a long time. The first order refusing to strike off the defence was passed on 13 September 2023 and by now, period of almost three long years has passed. Thus, period of three years was spent on challenging the orders at various hierarchical Courts. In such circumstances, it was necessary for the Appellate Court to decide the issue of striking off defence with a view to shorten the litigation between the parties and to ensure that the suit can be decided expeditiously rather than spending time on challenging the interlocutory orders.

19) The objective behind amendment of the Code by introduction of Order XV-A therein needs to be appreciated. Order XV-A of the Code provides thus :

ORDER XVA

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 or 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.

20) Order XV-A is aimed at ensuring that the tenant or licensee does not misuse pendency of litigation for the purpose of occupying the premises without payment rent/license fees. Since existence of landlord-tenant relationship gives rise to obligation to pay rent/license fees, it is obligatory that the elementary condition of payment of rent/license fees is fulfilled by the occupier, and this is the main objective behind incorporation of Order XV-A of the Code. Though the quantum of rent in respect of protected tenancies is ridiculously low, when it comes to a leave and license, the licence fees usually are on par with the market rental returns. The license fees may be a source of livelihood for the licensor. Therefore, Order XV-A of the Code ensures that if the defendant in the suit is desirous of defending the suit, he/she must deposit the arrears of rent/license fees.

21) Order XV-A gives an opportunity to the occupier to make good the default in payment of rent/license fees. After the Court makes an order for deposit of rent/license fees, the occupier secures an

opportunity to defend the proceedings by complying with the order made by the Court. However, an occupier who refuses to comply with the order of the Court and insists that he would occupy premises without making any deposit during pendency of proceedings, the Court would take recourse to a drastic action of striking off the defence of such an occupier. Thus, once an order of deposit of arrears of rent/license fees is made, opportunity to defend the eviction action for recovery of rent/license fees depends on the Defendant complying with the order of deposit passed by the Court. A party defying the order passed by the Court incurs the risk of losing the defence raised in the Suit.

22) No doubt, power under Order XV-A for striking off the defence is a drastic one and may involve dangerous consequences for a defendant in the suit. This is a reason why it is repeatedly highlighted that a power is not to be exercised mechanically or in a routine manner. In ***Bimal Chand Jain*** (supra), the Apex Court has held that the power under Order XV-A to strike off the defence is discretionary. The Apex Court has held in para-6 of the judgment as under:

6. ...We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. **A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the defence if on the facts and circumstances already existing on the record it finds good reason for not doing so.** It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defence should or should not be struck off. The word “may” in sub-rule (1) merely vested power in the court to strike off the defence. It does not oblige it to do so in every case of default. To that extent, we are unable to agree with the view taken by the High Court in *Puran Chand* [Civil Revision No. 356 of 1978, decided on October 30, 1980] . We are of opinion that the High Court has

placed an unduly narrow construction on the provisions of clause (1) of Rule 5 of Order 15.

(emphasis added)

23) In **Radheshyam** (supra), this Court has held as under:

9. ... Needless to say, the striking off the defence is not automatic only because of non depositing of the amount as directed by the Court. The defence cannot be so lightly struck off as has been done in the present case.

24) Thus, the consequences of striking off the defence cannot be automatic and the Court needs to apply its mind to the facts of the case for deciding whether the defence needs to be struck off or not. This is a reason why Order XV-A (1) uses the word 'may' while conferring the power of striking off the defence.

25) However, merely because the power of striking off the defence is discretionary and is not to be exercised in a mechanical manner, the same does not mean that the provision creates any right in favour of the tenant/licensor to defy the order passed by the Court. In the present case, the Respondent has challenged the order passed by the Trial Court on 3 May 2021 at three different hierarchical levels of Appellate Bench, High Court and the Supreme Court. It has lost before all the four fora. In all such circumstances, it is the duty of the Respondent to comply with the order passed by the Trial Court for deposit of arrears of license fees.

26) Respondent is a business entity who had taken the premises on license for operating a business venture therein. It tried its luck in raising the defence of pendency of counterclaim while opposing the

order for deposit of license fees upto the Apex Court. It cannot set up the same defence for opposing the order for striking off. Court granted repeated indulgence to the Respondent for making good the default. This Court had granted time to the Respondent to deposit the arrears of license fees by adjusting the security deposit. However, even that opportunity was not availed by the Respondent, who unsuccessfully challenged the order before the Hon'ble Apex Court. Those litigations were fought by the Respondent with a view to avoid an order for striking off the defence. Even this Court granted indulgence to the Respondent in the present proceedings to examine whether any amount can be deposited by it. However, Respondent has expressed inability to make any deposit. Therefore, this is a fit case where discretion needs to be exercised for ordering striking off the defence of the Respondent.

27) Mr. Katariya has strenuously contended that this Court cannot directly grant relief in favour of the Petitioner who needs to be relegated to the Trial Court for filing fresh application for striking off defence. In my view, such course of action needs to be avoided in the facts and circumstances of the present case. Firstly, the Trial Court has erred in citing a pretext of pendency of Revision and pendency of eviction proceedings while rejecting the prayer for striking off the defence. The Appellate Court misconstrued the order passed by this Court on 3 May 2021 to mean as if it was compulsory for the Plaintiff to file fresh application for striking off the defence. This Court directed that if Respondent failed to make deposit by 30 September 2024, the Plaintiff would be at liberty to revive the execution proceedings in addition to 'seeking an order' for striking off defence of the Petitioner. This Court

therefore never contemplated filing of fresh application but merely granted liberty to the Plaintiff to 'seek' an order for striking off the defence. At that time, Revision Application No. 10 of 2024 was pending before the Appellate Bench and it was open for the Plaintiff to 'seek' an order for striking off the defence from the Appellate Court as well. However, instead of deciding the issue of striking off the defence, the Appellate Court has passed the buck on to the Trial Court ignoring the position that such a course of action would entail lengthy litigation between the parties. The Appellate Court ought to have borne in mind that a simple order directing deposit of arrears of license fees was challenged by the Respondent way up to the Hon'ble Apex Court. If Petitioner is relegated to the Trial Court for seeking an order of striking off the defence, any order passed in those proceedings would again be made subject matter of challenge at various hierarchical courts. The Appellate Court therefore ought to have put a full stop by making an order of striking off the defence once it was satisfied that the Respondent did not deposit the amount determined by this Court by 30 September 2024. By the time the order dated 26 November 2024 was passed by the Appellate Court, the time limit of 30 September 2024 had already passed. Thus, right to secure order for striking off the defence had accrued in favour of the Petitioner/Plaintiff.

28) The Apex Court has already expedited hearing of the Suit which is pending for the last 7 long years. In such circumstances, if parties are allowed to commence a fresh round of litigation from the level of Trial Court, the same would indefinitely delay the final decision of the suit. Considering this position, it would be appropriate to decide

the issue of striking off the defence in the present Petition rather than relegating the Petitioner to the Trial Court for the said purpose.

29) Reliance by Mr. Katariya on judgments of the Apex Court in *Estralla Rubber* (supra) and *Sadhana Lodh vs. National Insurance Co. Ltd. and Anr.*⁵ in support of his contention about impermissibility for this Court to directly decide rights of parties is misplaced in the facts and circumstances of the present case. In *Estralla Rubber*, the Apex court held in para-6 of the judgment as under:

6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

30) In *Sadhana Lodh* (supra), the Apex Court has held in para-7 as under:

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the

5 (2003) 3 SCC 524

supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

31) No doubt, this Court is exercising supervisory jurisdiction under Article 227 of the Constitution of India and the ambit of jurisdiction is restricted to examination of exercise of jurisdiction by the Trial and Appellate Courts without their bounds. In the present case, this Court has arrived at a finding that exercise of jurisdiction by the Trial Court was faulty. By citing the pretext of pendency of Revision and pendency of execution proceedings, the Trial Court erroneously refused to exercise the jurisdiction vested in it. Similarly, the Appellate Court has also refused to exercise jurisdiction vested in it by misconstruing the order passed by this Court to mean as if Petitioner was expected to file fresh application before the Trial Court. In my view therefore, this Court would be justified in exercise of supervisory jurisdiction under Article 227 when the Trial and Appellate Courts have committed jurisdictional errors while deciding the proceedings before them.

32) In the present case, Respondent has openly flouted the order passed by the Trial Court on 3 May 2021 as modified by this Court vide order dated 31 July 2024. Having secured license in respect of the suit premises, it is the elementary duty of the Respondent to pay license fees to the licensor. Respondent cannot continue to fight litigation with the Petitioner without even bothering to pay license fees till the period it occupied the suit premises. Whether the Respondent was in a position to put the premises to best use or not is not the concern of the licensor or

of the Court. Therefore, the allegations of Petitioner causing alleged hindrances in running of the hospital cannot be considered at the stage of making of an order under Order XV-A. What is directed is mere deposit of amount of license fees. If Respondent has counterclaims against the Petitioner, the same can be adjudicated separately. However, merely because the Defendant raises a counterclaim, the same does not mean that he gets immunity from depositing the arrears of license fees.

33) The alleged weak financial condition of the Respondent is also an irrelevant factor while deciding the issue of striking off defence. In fact, when weak financial condition of Respondent was sought to be highlighted before this Court, this Court granted opportunity by order dated 23 April 2026 to the Respondent to make deposit of arrears of license fees. To show bonafides, Respondent ought to have deposited at least some amount towards arrears of license fees. However, the Respondent has flatly refused to make any deposit and this is how the Petition was required to be decided on merits. This Court cannot come to the rescue of a litigant who not only remains in possession of the premises without paying license fees but also openly flouts the order passed by the Court. Respondent is an experienced operator in healthcare services. It appears that it carried out large scale operations on pan-India basis. In the year 2023-24, its operational revenues were to the tune of Rs. 4,000 crores. It earned profit of Rs.1254.76 crores during FY 2023-24. It is submitted on behalf of the Respondent that from the next financial year (2024-25) onwards, Respondent is consistently making losses. However, the first order of deposit was made by the Trial Court on 3 May 2021 at which stage Respondent was in healthy financial

conditions and was making huge profits. As compared to the volume of its operations running into several thousand crores, the amount of arrears of license fees are comparatively insignificant (Rs.3,67,73,382/-). However, the Respondent took the risk of challenging the order directing deposit of arrears of license fees upto the Hon'ble Supreme Court though it had the financial wherewithal to deposit the arrears. Now the changed financial status is sought to be projected for avoiding an order of striking-off. Considering this position, this Court cannot take into consideration the current status of the Respondent for granting any indulgence to it by retaining its defence despite flat refusal by it to deposit any part of the arrears.

34) Considering the above position, in my view, a perfect case is made out for exercise of discretion for striking off the defence of the Respondent.

35) The petition accordingly succeeds and I proceed to pass the following order:

- (i) The order dated 26 November 2024 passed by the Appellate Bench of the Small Causes Court in Revision Application No.10 of 2024 confirming the Trial Court's order dated 13 September 2023 passed on Application at Exh.119 is set aside.
- (ii) The application at Exh.119 is made absolute by directing striking off the defence of the Respondent/Defendant.

(iii) The Trial Court shall expeditiously decide the Suit as directed by the Hon'ble Apex Court vide order dated 18 October 2024.

36) With the above directions, the Writ Petition is allowed. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]