



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5170 OF 2026

Eliran Russo

...Petitioner

V/s.

Shyam Bihari Vishnukar Sanghi and
Anr.

...Respondents

Mr. Saurish Shetye *i/b. Mr. Raveen Ameet Palekar for the Petitioner.*

Mr. Girish Thanvi *With Mr. Suraj Singh for Respondent No.1.*

CORAM: SANDEEP V. MARNE, J.

DATED: 20 APRIL 2026.

P.C.:

1) The Petition challenges order dated 10 April 2026 passed by the Executing Court issuing warrant of arrest against the Petitioner in proceedings filed in execution of the decree dated 4 October 2024.

2) Petitioner is the Managing Director of the Defendant Company-M/s Emsons Exim Private Limited. In his capacity as the Managing Director, the Petitioner had approached the Plaintiffs, who are owners of the licensed premises and has secured licenses in respect of the suit premises vide Agreement dated 28 May 2015. The license was further renewed on 1 June 2018 for further period of three years. Since September-2019 the Defendant became irregular in payment of license

fees and from November-2019 it did not pay any license fees to the Plaintiffs. The Defendant drove the Plaintiffs to Small Causes Court for filing the Suit for recovery of possession of licensed premises. Though Defendant appeared in the Suit, it failed to file written statement and invited a decree dated 4 October 2024 against it. The Small Causes Court directed the Defendant to handover possession of the suit premises. The Plaintiffs were further directed to conduct enquiry into *mesne* profits under Order XX Rule 12 of the Code of Civil Procedure, 1908 (**the Code**). It is only after passing of decree dated 4 October 2024 that the Defendant ultimately vacated the possession of the licensed premises on 5 February 2025.

3) It appears that *mesne* profit enquiry is underway. As of now the Plaintiffs sought recovery of only amount of costs awarded by the Small Causes Court, which are to the tune of Rs.2,82,255.82. The amount of costs include court fees paid by the Plaintiff of Rs.2,02,830/-. The Defendant and the Petitioner thus made Plaintiffs spend an amount of Rs.2,02,830/- towards court fees for recovery of possession of the suit premises by filing a Suit which was never defended by the Defendant. After the Suit is decreed, the Defendant failed to pay costs of Rs.2,82,255.82 awarded in favour of the Plaintiffs.

4) The case thus involves a situation where company of the Petitioner not only defaulted in payment of license fees, remained in unauthorised possession of the licensed premises and thereby caused huge losses to the Plaintiff, but they are not even willing to pay the amount of court fees spent by the Plaintiffs in filing the Suit. As and

when *mesne* profit application would be decided, the Defendant would be fastened with liability for payment of *mesne* profits in respect of unlawful possession of the suit premises. As of now, the least that is payable by the Defendant to the Plaintiffs is amount of costs of Rs.2,82,255.82. However in its usual brazen conduct, the Defendant has failed to pay even the amount of costs to the Plaintiffs, which required Plaintiffs to take out application at Exhibit-8 seeking warrant of arrest against the Petitioner, who is admittedly Managing Director of the Defendant-Company. The Petitioner is not only the main person incharge of the Defendant-Company but the Plaint contains specific averment that it was the Petitioner, who had approached the Plaintiffs for securing license in respect of the licensed premises.

5) The learned counsel appearing for the Petitioner has relied upon judgment of the Hon'ble Supreme Court in **Ansal Crown Heights Flat Buyers Association(Regd.) V/s. Ansal Crown Infrabuild Pvt. Ltd. and Others¹** in support of his contention that since the Petitioner was not impleaded to the Suit and since there is no decree passed against the Petitioner, no order can be made against him in the execution proceedings. However, in **Ansal Crown Heights Buyers Association** (supra) Respondent Nos.2 to 9 therein were impleaded as parties to the Suit but there were no pleadings attributing personal role to them. Similarly, there was no evidence led against them. In the present case however, there are specific pleadings *qua* the Petitioner and also there is evidence of he approaching the Plaintiffs for securing license in respect

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of the suit premises. The judgment in *Ansal Crown Heights Buyers Association* (supra) is thus clearly distinguishable.

6) The learned counsel appearing for the Petitioner relies upon judgment in *Bhudev Mallick alias Bhudeb Mallick & Anr. V/s. Ranajit Ghoshal & Ors.*² in support of his contention that the Court needs to record a finding that the Judgment Debtor has willfully disobeyed or failed to comply with the decree inspite of opportunity granted to him. However, in the present case it is seen that what is sought to be recovered against the Defendant and the Petitioner is merely the amount of costs incurred by the Plaintiffs in prosecuting the Suit. It is specifically demonstrated before the Executing Court that neither Defendant-Company nor the Petitioner showed any willingness to pay the amount of costs to the Plaintiffs. In fact, the Petition was heard on 18 April 2026 and was adjourned today for providing an opportunity to the Petitioner to pay to the Plaintiffs the amount of costs of Rs.2,82,255.82. However, even before this Court no willingness is shown by the Petitioner or by the Defendant-Company to pay an amount of costs to the Plaintiffs. It is also demonstrated before the Executing Court that the Petitioner has deliberately maintained low balance in his Bank Accounts leaving no prospects for recovery of amount of costs from him.

7) Considering the above position, this Court is not inclined to exercise extraordinary jurisdiction under Article 227 of the Constitution of India to assist the Petitioner in avoiding liability to pay even the amount of costs to the Plaintiffs. Conduct of the Defendant and of the

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Petitioner appears to be such that Plaintiffs would face an uphill task to recover amount of *mesne* profits as and when determined by the Small Causes Court. This is clear from the fact that the Petitioner is trying every trick for the purpose of avoiding even payment of costs awarded against the Defendant. The amount of costs is minuscule i.e. Rs.2,82,255.82 as compared to the monthly license fees in respect of licensed premises of approximately Rs.2,00,000/- per month. If Plaintiffs' case is to be believed, no license fees are paid for the period from November 2019 till the premises were vacated in February-2025. The Defendant thus has the liability to clear license fees/ *mesne* profits for the period of almost six long years.

8) Considering this position, if the present Writ Petition is entertained on the basis of technical objections sought to be raised by the Petitioner, same would tantamount to assisting the Petitioner in somehow frustrating the decree. Jurisdiction of a High Court under Article 227 of the Constitution of India is of supervisory in nature. It is well settled position of law that in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India, the High Court need not correct every error of law especially when the final conclusion reached by the Court is acceptable. Reference in this regard can be made to judgment of the Apex Court in **Garment Craft V/s. Prakash Chand Goel^s** in which the it is held in paragraph 15 as under:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the

limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when 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 that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

9) Considering the peculiar circumstances of the present case, I am of the view that extraordinary jurisdiction under Article 227 of the Constitution of India cannot be exercised to assist the Petitioner, and ultimately the Defendant, in frustrating the decree passed in favour of the Plaintiffs. Writ Petition is accordingly **dismissed**. The order dated 10 April 2026 shall be forthwith executed by the concerned Bailiff.

[SANDEEP V. MARNE, J.]