2025 INSC 1345

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C)No. 871 of 2024)

ATUL J DOSHI & ORS. **APPELLANT(s)**

VERSUS

PRAMUKH PROPERTIES AND DEVELOPERS PVT. LTD **RESPONDENT(s)**

O R D E R

1) Leave granted.

2) The present appeal arises from the impugned order[1] of the High Court of Bombay in exercise of its jurisdiction under Article 227 of the Constitution of India. The High Court partly set aside the concurrent orders of the Court of Small Causes, Mumbai (Bandra branch) (hereinafter referred to as 'Trial Court') dated 03.08.2022 and the Appellate Court dated 02.09.2023 in an application under Order XXXIX Rules 1 and 2 CPC[2] for grant of injunction and damages, to the extent of

1 Impugned order dated 01.12.2023 passed in Writ Petition No. 12142 of 2023.

2 Code of Civil Procedure, 1908.

directing payment of liquidated damages/*mesne* profits at Rs.10,000/- per day.

3) Briefly stated, the facts not in dispute are that the appellants (licensors) and the respondent (licensee) executed a Leave and License Agreement (hereinafter referred to as 'Agreement' in short) dated 08.10.2013 for a period of thirty-six months, from 01.11.2013 till 31.10.2016. In terms of the Agreement, the license fee was stipulated to increase at the rate of 7% annually.

4) Even after expiry of the said period, the respondent did not vacate the premises, therefore the appellants were constrained to file a Suit[3] before the Trial Court under Section 41 of the Maharashtra Rent Control Act, 1999 read with the Presidency Small Causes Courts Act, 1882 praying for recovery of vacant and peaceful possession and to pay Rs. 1,39,56,905/- as arrears of license fee up to 31.03.2019; along with a direction to pay *mesne* profits at the rate of Rs. 10,000/- per day in terms of the Agreement or at such other rate, and praying to restrain the respondent from alienating or

3 L.E.& C. Suit No. 113 of 2019.

creating third party rights along with other ancillary reliefs.

5) Upon notice and entering appearance, the respondent filed a Suit[4] on 25.10.2021 after about two and a half years before the Trial Court seeking relief to declare it as tenant of the premises.

6) On filing the said Suit, the appellants filed an Application under Order XXXIX Rules 1 and 2 of CPC, in their suit for recovery of possession, to restrain the respondent from alienation or to part with possession of the premises, and also to grant *mesne* profits at the rate of Rs.10,000/- per day.

7) The Trial Court, relying on Order XV-A of CPC (Bombay Amendment), directed payment of liquidated damages at the rate of Rs. 10,000/- per day, in terms of the Agreement. On filing an appeal by the respondent, it was dismissed by the Appellate Court, upholding the order and findings as recorded by the Trial Court.

8) Being aggrieved with the orders of the Trial Court and the Appellate Court, the respondent invoked the jurisdiction under Article 227 of the Constitution of

4 R.A.D. Suit No. 44 of 2022.

India, wherein the High Court *vide* the impugned judgement did not interfere with the order of grant of injunction, however, set aside the direction to pay Rs. 10,000/- per day as liquidated damages. Challenging the same, the present appeal has been filed.

9) Learned counsel for the appellants fairly submits that the terms of the Agreement are not in dispute and despite lapse of the license period, the premise was neither vacated nor the license fee was paid with proportionate increase, hence, the suit seeking recovery of possession along with ancillary reliefs was filed. It is further submitted that while setting aside the order of liquidated damages, the High Court has interpreted Order XV-A of CPC (Bombay Amendment) without looking at the object to bring such a provision. While the respondent was a licensee only till 31.10.2016, as per the Agreement, future *mesne* profits could have been granted. When the Trial Court and the Appellate Court have allowed such benefit by exercising their due discretion, interference by the High Court in the petition under Article 227 of the Constitution of India was not warranted.

10) Further, while setting aside the order of paying liquidated damages of Rs. 10,000/- per day, the High Court failed to direct payment of rent/license fee with proportionate increase, even though it was incumbent, to protect striking off of his defense in a suit for eviction/recovery of possession. In view of the said submission, it is urged that the order passed by the High Court warrants interference.

11) *Per contra*, learned counsel representing the respondent submits that passing of an order directing liquidated damages in an Application under Order XXXIX Rules 1 and 2 of CPC by the Trial Court at the interim stage without evidence, and affirmed by the Appellate Court, amounts to exercise of jurisdiction, contrary to the spirit of the provisions. As such, the High Court has rightly set aside the direction for grant of liquidated damages.

12) In reference to Order XV-A of CPC (Bombay Amendment), it is submitted that the Court while passing an order of deposit of arrears of rent till the date of passing the order, as per Clause (1), can only direct for depositing rent or license fee as prayed for in the

suit in the succeeding month. Therefore, the grant of liquidated damages by the Trial Court and the Appellate Court is not within jurisdiction, that too at the initial stage without any inquiry on the issue.

13) After hearing and considering the submissions made before us regarding the prayer of restraining the respondent from alienating or creating third-party rights, as directed by the Trial Court, Appellate Court and High Court, the parties are in agreement, and with their consent, the said issue is not required to be dealt with.

14) In view of the foregoing, the only issue which survives for consideration is whether in a suit for eviction based on a licensor-licensee relationship, the Trial Court and Appellate Court were justified in awarding *mesne* profits/liquidated damages under the Agreement as an interim measure, pursuant to an application under Order XXXIX Rules 1 and 2 of CPC, or whether the High Court has rightly set aside the same?

15) In order to appreciate the controversy, certain clauses of the Agreement are relevant, and are therefore reproduced for ready reference as under:

"1. The LICENSOR hereby grants to the LICENSEE and the LICENSEE hereby accepts from the illegible to occupy and use the said premises. The LICENSE will be for a period of 36 (thirty-six) months commencing from 1st November, 2013 and expiring on 31st October, 2016 both days inclusive.

2. The licensee a for its occupation and use of the said premises shall pay as per the following details:

MONTHS	PERIOD	MONTHLY RENT
1st 12 Months	1st November 2013 to 31st October 2014	Rs.80,000/- per month
2nd 12 Months	1st November 2014 to 31st October 2015	Rs.85,600/- per month
3rd 12 Months	1st November 2015 to 31st October 2016	Rs.91,600/- per month

16. The LICENSEE shall not at any time put any claim of tenancy or sub-tenancy of any other right of title into or in respect of the said premises under any law presently in force and any laws which may be enacted hereafter and the Agreement shall not be construed to create any such right whatsoever in favour of the LICENSEE.

18. The LICENSEE shall use the said premises for commercial purposes only and will not use the same for any other purpose or purposes. It is agreed by and between the parties hereto that the LICENSOR shall not be liable or responsible for any Government of semi-Government, dues, arrests, demands, claims and actions pertaining to the business required to be conducted by the LICENSEE *in the said premises.*

19. The LICENSEE shall vacate and give-vacant possession of the said premises to the LICENSOR on expiry of this agreement, in the events of the LICENSEE failing to abide by this agreement. In that event the LICENSEE shall be bound and liable to pay to the LICENSOR Rs.10,000/- (Rupees Ten Thousand only) per day as and by way of liquidated illegible such time the LICENSEE ceases to remain and carry on business in the said premises of any part thereof."

16) In this regard, reliance has been heavily placed by the learned counsel for both the sides on Order XV-A of CPC (Bombay Amendment). The said provision is relevant, and therefore, is reproduced 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 license 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 license fee claimed in the suit as continue to deposit in each succeeding month the rent or license 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 defense.

(2) Before passing an order for striking off the defense, the Court shall serve notice on the defendant or his advocate to show cause as to why the defense 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 defense.

(3) The amount deposited under this rule shall be paid to be 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.”

17) We have perused the object to bring the amendment inserting Order XV-A of CPC (Bombay Amendment) which was made applicable w.e.f. 01.10.1983. The intent behind it appears to be to secure the interest of the landlords with respect to the premises gratuitously occupied by the licensee even after termination of the lease or license, as the case may be, without payment of rent or license fee. To eradicate the said prejudice against

landlords in a suit for eviction, which may take some time to be finally adjudicated, the order for payment of rent or license fee may be directed.

18) On perusal of the aforesaid, it becomes clear that the following ingredients are necessary to apply the Order XV-A of CPC (Bombay Amendment) – **first**, lessor or licensor must file a suit for eviction; **second**, the said suit consists of a prayer with or without arrears of rent or license fee and future mesne profit; **third**, in such suit, there must be a direction on account of arears up to the date of order by the court; **fourth**, on such direction, the defendant shall deposit such amount as ordered within the time specified and continue to deposit in each succeeding month the rent or license fee, claimed till decision; **fifth**, in case of any default made by the lessee or licensee, the defense can be struck off following the procedure as prescribed in Rule 2; **sixth** the amount so deposited shall be paid to the plaintiff.

19) In this view, it can be inferred that the said amendment was brought with the well-intended object that

in a suit based on lessor-lessee or licensor-licensee relationship for eviction and arrears of rent, the Court, in exercise of its discretion, can direct the lessee or licensee, as the case may be, to pay arrears of regular rent or license fee, as the case may be and further payment of month to month rent or license fee, otherwise, the defense of the licensee can be struck off.

20) In our view, the said provision squarely applies to the present case. The Agreement dated 08.10.2013 is not in dispute. On perusal of its terms, Clause 1 makes it clear that the parties have executed the said agreement for a period of thirty-six months commencing from 01.11.2013 till its expiry i.e. 31.10.2016, both days inclusive. In Clause 2, the amount of payment of rent has been specified which indicates an increase of 7% annually. As per Clause 19, after expiry of the period of the Agreement i.e., on 31.10.2016, the licensee shall vacate and hand over the vacant possession of the premises to the licensor. In case of failure to abide by the said condition, the licensee shall be bound and liable to pay Rs. 10,000 per day by way of liquidated

damages, till such time the licensee ceases to remain and carry on business in the said premises or any part thereof.

21) In terms of the clauses of the Agreement, the respondent has admittedly paid the rent as specified in Clause 2 of the Agreement with proportionate increase, during the period in which the agreement was in vogue. After expiry of the period of license, when the premises was not vacated and license fee with proportionate increase was not paid, as such he has become a gratuitous licensee and the gratuitous licensee cannot take his defense in a suit filed by the licensor seeking eviction and arrears of rent until arrears and regular rent has been paid. However, in our view, it was the duty of the Court to exercise its discretion and pass an order with respect to arrears and regular rent in terms of Order XV-A of CPC (Bombay Amendment), as discussed above. Otherwise, the non-deposit of arrears and regular license fee may entail striking off the defense in terms of Clause 2 of Order XV-A of CPC (Bombay Amendment).

22) As informed, it is seen from the record that the respondent has filed a suit seeking declaration as

tenant, directly contrary to Clause 16 of the Agreement, that too after a gap of two and a half years of filing the suit for eviction by the appellants. In the said suit, deposit of rent or license fee at the rate of Rs. 18,000 per month has been ordered. In the absence of non-denial of the Agreement and further non-denial of payment of license fee as specified in Clause 2 of the Agreement, fixing Rs. 18,000 per month by the Trial Court is completely misplaced and farce on the face of the document, which is not in dispute and complied for three years during its existence. For the sake of argument, in terms of Clause 19, in case the liquidated damages were required to be calculated at the time of disposal of the suit, but without deposit of arrears of rent and payment of regular rent, the licensee does not have any right to take his defense in the court in terms of Order XV-A of CPC (Bombay Amendment), in particular when a consequence of non-deposit of arears and regular rent or license fee has been specified.

23) In view of the above, we are not inclined to uphold the order of grant of liquidated damages of the Trial Court and Appellate Court passed on an application under

Order XXXIC Rules 1 and 2 at interim stage. At the same time, the High Court, by interfering with the said orders, was not justified in not directing payment of the arrears and regular rent or license fee in terms of Order XV-A of CPC (Bombay Amendment). In our view, since the Agreement and its clauses are not in dispute, and during its subsisting period of three years commencing from 01.11.2013 till 31.10.2016, the licensee has paid the license fee as agreed with proportionate increase, therefore, the arrears and the regular payment of the license fee must be paid by the licensee in the same terms. Therefore, on the question as posed, we are of the view that direction for payment of arrears and regular license fee deserves to be issued. In case of non-compliance of such direction, the licensee shall face the consequence as stipulated under Rule 2 of Order XV-15A (Bombay Amendment).

24) During the course of argument, learned counsel for the parties have submitted the calculation by adding the dues of the license fee along with proportionate increase in terms of the Agreement. The said calculation is reproduced for ready reference as under:

Increment Rental as per Agreement			
Increment Rent	7%		
Period	Number of months	Normal Rent per month	Total Outstanding Rent
May 2016-Oct 2016	6	91,600	5,49,600
Nov 2016-Oct 2017	12	98,012	11,76,144
Nov 2017-Oct 2018	12	1,04,873	12,58,474
Nov 2018-Oct 2019	12	1,12,214	13,46,567
Nov 2019-Oct 2020	12	1,20,069	14,40,827
Nov 2020-Oct 2021	12	1,28,474	15,41,685
Nov 2021-Oct 2022	12	1,37,467	16,49,603
Nov 2022-Oct 2023	12	1,47,090	17,65,075
Nov 2023-Oct 2024	12	1,57,386	18,88,630
Nov 2024-Oct 2025	12	1,68,403	20,20,834
Total			1,46,37,440

25) As per the above calculation, the arrears of license fee come to Rs. 1,46,37,440/- till 31.10.2025. Thereafter, applying the proportionate annual increase

of 7%, the respondent is required to pay the license fee on month-to-month basis. Learned counsel for the respondent, at this stage, prays for some time to clear the arrears as calculated above subject to adjustment of Rs. 18,000/- per month being deposited by it in the suit filed to declare him as a tenant. In our view, the prayer, as made, appears to be fair and reasonable, therefore, we grant two months' time for depositing the arrears and direct that the licensee shall continue to pay regular license fee with proportionate increase in terms of the clauses of the Agreement till disposal of the suit.

26) In view of the foregoing, the appeal stands allowed in part and to the extent indicated hereinabove. Consequently, the order of grant of injunction is hereby maintained with a further direction to the licensee to pay license fee as calculated in paragraph 25, after adjusting the amount paid in terms of the order passed in the suit for declaration of tenancy, within two months from the date of uploading of this order. The licensee shall further pay regular rent on month-to-month basis with proportionate 7% annual increase. On

refusal to comply such direction, the licensor is at liberty to take recourse as permissible under Rule 2 of Order XV-A of CPC (Bombay Amendment).

27) Since the suit filed by the appellant(s) seeking eviction and the suit filed by the respondent for declaration relate to the same property, therefore, we direct to the District Judge concerned to place both the suits in the same Court which shall be decided as early as possible but not later than one and half a year. We further make it clear that the adjudication of the issue of liquidated damages is left open and the same be decided after taking evidence of the parties at the time of disposal of the suits.

28) Pending application(s), if any, shall stand disposed of.

……………………………………………………………., J.
[J.K. MAHESHWARI]

……………………………………………………………., J.
[VIJAY BISHNOI]

New Delhi;
October 08, 2025.