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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.472 OF 2024
WITH
WRIT PETITION NO.413 OF 2024

WRIT PETITION NO.472 OF 2024

ARDEE FOUNDATION,
Through its Chairperson:
Mrs. Shefali Varma,
daughter of late Ashok Varma,
45 years, having office at:
Dr. Gopal Das Bhawan,
28, Barakhamba Road,
New Delhi, 110001

... Petitioner.

Versus

1. HECTOR JOSE NEVES MASCARENHAS,
son of late Mr. Timothy Mascarenhas,
68 years of age,
r/o H. No. 780/1.
Flat no. S-2 Wind Chimes Building
Alto-Porvorim, Bardez Goa 403521
Through his duly constituted Attorney:
MR. RAHUL JONATHAN MASCARENHAS

2. FATIMA LELIA MASCARENHAS,
[since deceased] through LR's

2(a). Arun Hector Mascarehnas,
45 years of age,

2(b). Stephanie Fay Mascarenhas,

Wife of Arun Hector Mascarenhas,
54 years of age,
Both residents of, 1441, Areca Palm Drive
Gulf Beach, Florida - United States of
America – 332563

2(c). Monisha Mascarehns,
49 years of age,

2(d). Fabian Troy Pinto,
Husband of Monisha Mascarenhas,
56 years of age,
Both residents of, 109-1423
Mississauga Valley
Boulevard, Ontario, Canada, L5A4A5.

2(e). Rahul Mascarehns,
43 years of age,

2(f). Chiara Jihan Do Rosario Monteiro
Clovis Da Costa,
Wife of Rahul Mascarenhas,
43 years of age,
Both residents of, C1/D1,
Adroit Origin, 7th Cross Street, Shastri
Nagar, Adyar - Chennai 600020

3. EDMUND RONALD RIBEIRO
s/o late James Wilfred Ribeiro, aged 60,
r/o of Dubai, United Arab Emirates
Through his duly constituted attorney:
SAMUEL JAMES RIBEIRO
R/o H. No. 147 (601) Fernand Vaddo,
Porvorim, Bardez Goa.

... Respondents.

Mr. Shivan Desai and Ms. A. Thorat, Advocates for the
Petitioners.

Mr. S.S. Kantak, Senior Advocate with Mr. Nikhil Pai, Ms. Neha Kholkar and Mr. A. Nagi, Advocates for the Respondents.

**WITH
WRIT PETITION NO.413 OF 2024**

1. MR. HECTOR JOSE NEVES MASCARENHAS,
son of late Mr. Timothy Mascarenhas,
aged 63 years, Indian National,
resident of H. No. 780/1.
Flat no. S-2 Wind Chimes Building
Alto-Porvorim, Pin Code 403521 Bardez-Goa
Through his duly constituted Attorney
Mr. Rahul Jonathan Mascarenhas.

2. MRS. FATIMA LELIA MASCARENHAS,
[since deceased] through Legal Heirs

2(a). Arun Hector Mascarehns,
45 years of age,

2(b). Stephanie Fay Mascarenhas,
Wife of Arun Hector Mascarenhas,
54 years of age,
Both residents of, 1441, Areca Palm Drive Gulf
Beach, Florida - United States of America –
332563

2(c). Monisha Mascarehns,
49 years of age,

2(d). Fabian Troy Pinto,
Husband of Monisha Mascarenhas,
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Both residents of, 109-1423
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2(e). Rahul Mascarehnas,
43 years of age,

2(f). Chiara Jihan Do Rosario Monteiro
Clovis Da Costa,
Wife of Rahul Mascarenhas,
43 years of age,
Both residents of, C1/D1,
Adroit Origin, 7th Cross Street, Shastri Nagar,
Adyar - Chennai 600020

... Petitioners.

Versus

1. ARDEE FOUNDATION,
a trust constituted under the
Indian Trust Act vide trust deed
24th April 1997, having its registered
address at Dr. Gopaldas Bhawan,
28, Barakhamba road, New Delhi
acting through its authorized
representative Mrs. Kripa Desai.

2. Mr. EDMUND RONALD RIBEIRO
son of late Mr. James Wilfred Ribeiro,
aged 60, resident of Dubai,
United Arab Emirates acting through
his duly constituted attorney
Mr. Samuel James Ribeiro
residing at H No. 147 (601)
Fernand Vaddo, Porvorim, Bardez Goa.

... Respondents.

Mr. S.S. Kantak, Senior Advocate with Mr. Nikhil Pai, Ms.
Neha Kholkar and Mr. A. Nagi, Advocates for the
Petitioners.

Mr. Shivan Desai and Ms. A. Thorat, Advocates for the
Respondents.

CORAM: DR. NEELA GOKHALE, J.
RESERVED ON: 26th March, 2026
PRONOUNCED ON: 1st April, 2026

JUDGMENT:

1. **Rule.** Rule made returnable forthwith, and with consent of the parties, the Petitions are taken up for final hearing.

2. The Petitioners and Respondent No. 2 in Writ Petition No. 413 of 2024 (hereinafter referred as 'landlords') are the owners of a property, comprising of a bungalow named as "MAE DE DEUS" situated at Sangolda Village, within the Village Panchayat of Sangolda, Taluka and Sub-District of Bardez, District: North Goa, Goa (hereinafter referred as 'said property'). The Respondent No. 1 is the Trust, which has tenanted the said property. The Petitioner in Writ Petition No. 472 of 2024 is the said Trust, i.e. the tenant of the said property and the Respondents in the said Writ Petition are the Owners/Landlord. The Trust is primarily engaged in establishing and running educational institutions, schools, etc., under the brand name "Ardee".

3. The Petitioners in both the petitions assail an Order dated 27th December 2023 passed by Civil Judge Senior Division,

Mapusa, Goa (hereinafter referred as 'Civil Court') in RCS No. 36/2019/B/C, by which the tenant was directed to deposit Rs. 3,00,000/- per month towards rent from August 2018 upto the lock-in period, in terms of the sLease Deed dated 01st February 2018, within a period of 90 days from the dated of the Order.

4. Both these Petitions assail the same Order, on same facts, hence, both the Petitions are being disposed off by the present common Judgment and Order. For convenience, the parties are referred to as the 'Landlords' and 'Tenant'

5. The thrust of the challenge of both the parties relates to the interpretation of Order XV-A of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') (High Court of Bombay Amendment). The landlord, while canvassing that the Civil Court has no discretion in determining the quantum of the amount to be deposited by the tenant towards arrears of rent, asserts that the Court is bound to direct the tenant to deposit the entire arrears of rent and continue to deposit such rent, till the decision of the suit. On the other hand, it is the case of the tenant that he is required to deposit such amount that the Court directs towards arrears of rent and continue to deposit such amount till the disposal of the suit. This, according to the tenant, implies that the Court is vested with the discretion to determine the quantum of amount to be deposited by the tenant towards arrears of rent, till

the disposal of the suit. The tenant says that the discretion must be exercised by taking into account the peculiar facts and circumstances of each case. Be that as it may, the dispute between the parties is basically a challenge to the balance of equities between the parties.

6. The brief facts leading to the present petitions are as follows:

6.1. The landlords are the owners of the said property, and the tenant is the educational Trust, which has rented the said property, with an object of establishing a school in the said property. Admittedly, protracted discussions took place among the parties, leading to the execution of the Lease Deed dated 01st February 2018, by and between the parties and registered with the Sub-Registrar of Bardez. The tenure of the lease was for a period of 18 years, on depositing an amount of Rs. 18,00,000/- as a refundable security. It was made clear to the owners that the only purpose of renting the said property was for running a school.

6.2. According to the Lease Deed, the tenant was entitled to a rent-free fit out period of 6 months, expiring on 31st July 2018. The possession of the said property was handed over to the tenant on 01st February 2018.

The rent payable was Rs. 3,00,000/- per month with 10% increase every two years from the date of commencement of the Lease Term. The lock-in period was of three years, during which period, neither party was entitled to terminate the Lease Deed. In case of termination by either party during the lock in period, the party violating the terms, was liable to pay the opposite party, an amount equivalent to the balance rent for the lock-in period.

- 6.3.** The tenant commenced the work of fit outs to make the said property viable to be utilized as a school. After inspecting the said property, the contractors and assessors of the tenant prepared a Stability Certificate & Report on Non-Destructive Testing dated 18th May 2018, which reported the said property as unviable for carrying out fit outs and the entire building as structurally unsound. The Report concluded that the said property did not meet the applicable building bye-laws and was unsafe for habitation.
- 6.4.** Aggrieved by the same, the tenant sent Legal Notice dated 09th June 2018, i.e., within the lock in period, to the landlords and the Broker, one Mr. Roland Cajitan J. Rodrigue, terminating the Lease Deed. In

the said Notice, the tenant stated that it will hand over vacant physical possession of the said property to the landlords only when they refund Rs. 18,00,000/- deposited with them as security along with 18% interest from the date of payment, till the date of refund of the said amount; pay Rs. 30,00,000/- for loss of revenue, as it had to refund the advance school fees collected for the batch commencing from August 2018, due to the misrepresentation made by the landlords; and pay Rs. 25,00,000/- for loss of reputation, to the tenant. The tenant also claimed refund of Rs. 2,70,000/- from the Broker and outstanding fee of Rs. 31,000/- for the Broker's two children, which was waived towards adjustment of brokerage fees. The landlords and the Broker replied to the said Notice vide Notices dated 12th July 2018 and 20th July 2018, respectively, refusing to accept the termination of lease deed.

- 6.5.** Thereafter, the landlords instituted a suit bearing RCS No. 36/2019/B/C before the Civil Court on 08th January 2019 against the tenant for the recovery of lease rents and in the alternative, prayed for a declaration that the termination notice is illegal and sought a direction to the tenant to pay Rs. 15,00,000

to them with interest at the rate of 15% per annum till the payment was made. They also claimed future rents in the suit.

- 6.6. Thereafter, on 26th April 2019, the landlords filed an application under Order XV-A of the CPC in the suit, seeking directions to the tenant to deposit the accumulated monthly rent of Rs. 27,00,000/- for the period of August 2018 to April 2019. The tenant filed its Written Statement to the suit and Reply to the Order XV-A application on 24th September 2019.
- 6.7. The tenant filed an application dated 01st November 2019 under Order VII Rule 11(d) of the CPC for rejection of the plaint filed by the landlords on the ground that the suit is beyond the jurisdiction of the Civil Court as the nature of transaction between the parties is commercial. By order dated 29th February 2020, the same was rejected.
- 6.8. The landlords, on 20th June 2022, filed an application under Order VI Rule 17 of the CPC for amendment of their plaint and prayer clause. The application was allowed by order dated 03rd October 2023, and the plaint was amended to include the prayer for eviction of the tenant.

6.9. On 27th December 2023, the application made by the landlords under Order XV-A of the CPC was allowed by the Civil Court and the tenant was directed to deposit Rs. 3,00,000/- per month from August 2018 during the lock-in period.

6.10. Being aggrieved by the decision of the Civil Court, directing the Trust to deposit the arrears of rent in full, from August 2018 till the end of the lock-in period, the tenant filed Writ Petition 472 of 2024. Similarly, the landlords aggrieved by the decision of the Civil Court in directing the tenant to pay the rent amount from August 2018 only till the end of the lock-in period, instead of directing the payment to be made till the actual possession of the premises is handed over to the landlord, have filed the Writ Petition No. 413 of 2024. The landlords have also sought a direction to the tenant to deposit the entire rent arising from the Lease Deed dated 01st February 2018, along with a biennial increase of 10% till the date of the filing of the petition.

7. By Order dated 09th May 2024 passed in Writ Petition No. 472 of 2024, this Court stayed the impugned Order, subject to deposit of 50% of the rent for three years. The said amount was

deposited by the tenant. In the meantime, the tenant, by way of an Affidavit dated 11th October 2025, affirmed that the landlords are free to take possession of the property as the tenant is not in possession and the keys of the property are also not in the custody of the tenant. Accordingly, the landlords have taken the possession of the suit property from 11th October 2025.

8. Heard Mr. S.S. Kantak, learned Senior Counsel, for the landlords and Mr. Shivan Desai, learned Counsel, for the tenant.

9. **Submissions of Mr. Kantak, learned Senior Counsel:**

- i. The Civil Court failed to take into account that the tenant was still in possession of the property and hence, the Court ought to have directed the tenant to deposit the rent every month till the possession was returned to the landlord. Similarly, the Civil Court ought to have directed the payment of rent with an increase of 10% every two years till the disposal of the suit or till the time the possession is returned to the landlord.
- ii. The Civil Court failed to appreciate that the lock-in period expired on 31st January 2021 and the tenant still held over the possession of the property, for which he is liable to pay rent.
- iii. Withholding the possession of the property has caused

severe monetary loss to the landlord. The Civil Court failed to appreciate that the tenant has enjoyed the property without paying any rent.

- iv. Mr. Kantak also contended that the Civil Court has no discretion to direct deposit of a lesser amount than the amount agreed as rent under Order XV-A of the CPC. He has placed reliance on the decision of the Supreme Court in the matter of *Atul J. Doshi & Ors. v/s Pramukh Properties and Developers Pvt. Ltd.*¹ and the decision of this Court, in the matter of *PTB Hospitality LLP, Through its Partners Shri Vijaysingh Raghuvirsingh Parihar and Anr. v/s Jayanti Danabhai Patel and Ors.*²

Mr. Kantak, thus, prayed that his petition be allowed and the petition of the tenant be dismissed.

10. Submissions of Mr. Desai:

- i. The Civil Court failed to appreciate the termination notice dated 09th June 2018 issued by the tenant, in respect of the Lease Deed, within six months of its execution. Mr. Desai submits that the landlords played a clear fraud on the tenant and misrepresented that the

¹2025 INSC 1345

²2024 SCC OnLine Bom 2428

structure, comprising of the property, was sound. It transpired that the structure was unviable and unstable. The assessor engaged by it gave a report stating that the building was unsafe for occupation and habitation. Thus, the tenant, from the outset, was unable to even install the fit outs in the premises and make the same viable to run a school in the said premises. Hence, according to Mr. Desai, the question of applicability of Order XV-A does not arise.

- ii. Mr. Desai further submitted that the object of Order XV-A was to benefit the landlord and mitigate the hardship caused to him on account of long pendency of eviction suits, during which the landlord is deprived of rent and *mesne* profits that may accrue. He submits that the object of the said provision is not to facilitate a landlord to enrich himself at the cost of the tenant, while misrepresenting the condition of the premises to the tenant, thus depriving the tenant of the enjoyment and use of the tenanted premises for the purpose for which they were originally rented.
- iii. Mr. Desai stressed that the notice of termination itself must be construed to mean that the tenant was always ready and willing to hand over vacant possession of the premises to the landlords, subject to the landlords

returning the security deposit to him. The tenant cannot be expected to surrender possession even without the return of its security deposit, despite the fact that the termination was caused on account of the misrepresentation by the landlords regarding the condition of the premises.

- iv. The Civil Court failed to appreciate that the tenant was compelled to return the fees to prospective students who had taken admission in the school, and hence, the tenant suffered financial loss as well as loss of reputation on account of the misrepresentation by the landlords.
- v. In any case, the possession now stands with the landlords from 11th October 2025, which fact is admitted by the landlords.
- vi. It is an admitted fact that, the tenant was deprived of the use and utilization of the property; the Trust was never able to start the school activities and has not earned a single *paisa* from the property; in fact, the Trust has suffered huge loss in shifting the school in a distant premises, compelling it to return the fees to the students. The Court ought to have considered the predicament of the tenant, which is an educational

institution, being unable to raise the huge amount to be deposited, without even receiving its own security deposit.

- vii. The Order impugned is otherwise bad in law and it be set aside.

ANALYSIS:

11. The undisputed facts of the case are that there was a Lease Deed executed on 01st February 2018. There was a rent-free fit out period of six months, i.e. the tenant was to start paying rent from 01st August 2018. There was also a lock-in period of three years, during which, none of the parties were permitted to terminate the contract. However, in case of such termination, there were consequences provided in the lease deed. Any party terminating the contract within the lock-in period was liable to pay rent for the balance lock-in period.

12. It is also an admitted position that the tenant terminated the contract on 09th June 2018, by issuing a legal notice communicating such termination on the ground that the landlords had misrepresented the structural stability of the premises. Thus, the tenant called upon the landlords to refund the deposit of Rs. 18,00,000/- and re-possess the premises. The

landlords replied to the notice, refusing to return the deposit to the tenant, while asserting that it was the responsibility of the tenant to first satisfy itself of the structural stability of the premises before execution of the Lease Deed. Thereafter, the landlords instituted the suit for recovery of rent from the last date of the fit out period till the end of the lock-in period. Alternatively, the landlords sought to declare the termination of the Lease Deed as illegal and claimed damages and future rent. So, giving rise to the dispute.

13. The material on record indicates that during the fit out period itself, a Stability Certificate and a Report on Non-Destructive Testing were submitted by a private structural lab engaged by the tenant. This report of assessment of the building certified that the building was unsafe for habitation and may be demolished and re-constructed. By a covenant in the Lease Deed, the tenant was restrained from demolishing the existing external structure of the residential house and the out-house. Admittedly, and known to the landlords as well, the tenant-Trust was to start a school for small children in the said premises. The tenant-Trust could not have taken a risk of housing children in the premises, which were labelled as 'unsafe for habitation'. The only action the tenant could take was to terminate the Lease Deed and seek return of the deposit.

14. It is at this stage, that the landlords refused to acknowledge the termination, refund the deposit and accept re-possession of the premises. This is the grievance of the tenant. Persisting with the challenge to the termination in the suit, the landlords eventually sought eviction of the tenant from the suit property by moving to amend the prayer clause in the suit, to add the prayer for eviction of the tenant from the suit premises. This amendment was sought on 20th June 2022. It is on this date that for the first time, the landlords expressed their desire to re-possess the property. The fact remains that neither party relented. Neither the tenant handed over possession of the premises to the landlords, nor did the landlords accept the possession by returning the security deposit. Consequently, both appear to have suffered financial hardship. The property remained unutilized as neither the tenant-Trust established its school, nor the landlords were able to rent out the same elsewhere.

15. The task before the court is to balance the equities between the parties. For the said purpose, it is necessary to discuss the applicable provisions of law. The landlords have filed an application under Order XV-A of the CPC (High Court of Bombay Amendment) for deposit of rent. The provision essentially provides for a consequence of non-compliance of a direction to the tenant to deposit arrears of rent. The Court, is thus, vested

with the jurisdiction to pass such order, directing the tenant to deposit arrears of rent. Consequence of non-compliance empowers the Court to strike off the defence of the tenant.

16. Order XV-A of the CPC (High Court of Bombay Amendment) reads thus:

“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 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 eviction shall include suit for mandatory injunction seeking removal of licensee from the premises for the purpose of this rule."

17. In various decisions, the Courts have inferred the object of the aforesaid provision. The said amendment was brought with the well-intended object of protecting the interests of a landlord, who suffers hardship of awaiting a final decision in a suit for eviction, before any amount towards the arrears of rent would be recovered. The Delhi High Court, in *Uberoisons (Machines) Ltd. v/s Samtel Colour Ltd.*³ answers two issues of impermissibility to occupy the premises without payment of rent on account of non-refund of security deposit, as well as the relevancy of factor of non-use of the premises by the tenant. Therefore, alleged non-use of the premises by the defendant would again not be a reason for non-deposit of license fees.

18. Mr. Kantak has canvassed the proposition that, whatever the conditions, the fact remains that the tenant was in possession of the premises till October 2025, when admittedly the landlords took possession of the premises. However, he does not explain as to what propelled them to finally accept the possession. Similarly, Mr. Desai is also unable to explain as to what made the tenant, finally in October 2025, hand over possession

³(2003) 69 DRJ 523

without refund of the security deposit. It appears that a plain realization about the consequences of stubbornly refusing to take possession by the landlords and refusing to hand over possession without refund of security deposit by the tenant, dawned on them. In any case, the issues pertaining to the termination of Lease Deed to be legal or otherwise, resulting in award of compensation for wrongful termination, increase in rent, etc., will be decided by the Civil Court after adducing evidence.

19. At this stage, this Court is only seized with the issue regarding any infirmity in the Order passed by the Civil Court, impugned herein. The tenant clearly ran the risk of an Order directing it to deposit the arrears of rent, admittedly, when the Trust was not running the school. The issue of termination of Lease Deed remained unresolved, but the fact remains that the tenant held onto the suit premises till October 2025. In view of the same, the tenant is clearly liable to deposit some amount towards the arrears of rent from the last day of the fit out period till 11th October 2025, when admittedly the landlords took possession of the premises.

20. At the same time, there is, *prima facie*, some substance in the contention of the tenant that once the Lease Deed was terminated by the Trust in the fit out period itself, for want of

structural stability of the premises, to run its school, the landlords ought to have refunded the security deposit and accepted the possession. The right of recovery of damages always survived, and the landlords were at liberty to seek compensation/ damages for illegal termination of the Lease Deed, before a competent Court of law. They have also held onto the security deposit. The issue regarding the reasons for termination, being misrepresentation by the landlords, the premises being unsafe for habitation, will be decided by the Civil Court.

21. Considering the legal position and the facts in the present case as discussed herein-above, I am of the considered view that the interest of justice will be sub-served and the balance of hardship maintained, by directing the tenant-Trust to deposit half the amount of rent from the last date of the fit out period i.e., from 01st August 2018 till 11th October 2025 i.e., the day on which the landlords took possession of the premises. The tenant is also permitted to deduct the amount of security deposit of Rs. 18,00,000/- along with interest at the rate of 9% per annum from the date on which the same was paid to the landlords till date, and also adjust the amount of Rs. 36,00,000/-, which was deposited in the Civil Court, pursuant to Order dated 09th May 2024 passed by this Court. Hence, I pass the following order:

ORDER

- i. The tenant is directed to deposit half the arrears of rent computed at Rs. 1,50,000/- per month from 01st August 2018 till 11th October 2025 with the *Nazir* of the Civil Judge Senior Division, Mapusa, Goa, where the suit for eviction bearing RCS No. 36/2019/B/C is pending. The amount shall be invested in a fixed deposit, initially for one year, in a Nationalized Bank.
 - ii. The tenant is permitted to deduct from the aforesaid, an amount of Rs. 18,00,000/- along with interest at the rate of 9% per annum from 01st February 2018 till date. An amount of Rs. 36,00,000/-, which is deposited by the tenant in the Civil Court, pursuant to Order dated 09th May 2024 passed by this Court, will also be adjusted with the amount directed to be deposited towards half the arrears of rent as above.
 - iii. The Judgment and Order dated 27th December 2023 is modified to the above extent.
- 22.** The Writ Petitions are partly allowed. Rule is accordingly made partly absolute.
- 23.** It is made clear that the *prima facie* observations made in this order are only in connection with the application under

Order XV-A of CPC. As such, the Civil Court to decide the suit on its own merits, uninfluenced by the observations made in this order. Since the Petitioner No.1 landlord in Writ Petition No.413/2024, is a senior citizen, and the suit is pending since 2018, the Civil Court is requested to expedite the suit and preferably conclude the trial of the same within a period of one year from the date on which this order is placed before the Court.

DR. NEELA GOKHALE, J.