IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12914 OF 2025

Benninger India Pvt Ltd
A Company incorporated under the provisions of
the Companies Act 1986,
Having its Office and Factory premises at:
Gat No. 782, Village Nighoje, Taluka Khed,
District Pune ...Petitioner

Versus

1. First Space Infra LLP
A Limited Liability Partnership
Firm registered under the provisions
of the Limited Liability Partnership
Act, 2008, Having its registered office
at 15th Floor, Regency House, Near
Telephone Exchange, Opposite
Vishnu Darshan, Ulhasnagar,
Thane – 410 501.

2. Yashoda Ganpat Yelavande
Age: 86 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

3. Vikas Ganpat Yelavande,
Age: 50 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

4. Baban Ganpat Yelavande,
Age: 56 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune. …Respondents

WITH

WRIT PETITION NO. 12035 OF 2025

Benninger India Pvt Ltd
A Company incorporated under the provisions of
the Companies Act 1986,
Having its Office and Factory premises at:
Gat No. 782, Village Nighoje, Taluka Khed,
District Pune ...Petitioner

Versus

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A Limited Liability Partnership
Firm registered under the provisions
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Age: 50 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

4. Baban Ganpat Yelavande,
Age: 56 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune. …Respondents

WITH

WRIT PETITION (STAMP) NO. 16617 OF 2026

Benninger India Pvt Ltd

A Company incorporated under the provisions of
the Companies Act 1986,
Having its Office and Factory premises at:
Gat No. 782, Village Nighoje, Taluka Khed,
District Pune ...Petitioner

Versus

1. First Space Infra LLP
A Limited Liability Partnership
Firm registered under the provisions
of the Limited Liability Partnership
Act, 2008, Having its registered office
at 15th Floor, Regency House, Near
Telephone Exchange, Opposite
Vishnu Darshan, Ulhasnagar,
Thane – 410 501.

2. Yashoda Ganpat Yelavande
Age: 86 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

3. Vikas Ganpat Yelavande,
Age: 50 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

4. Baban Ganpat Yelavande,
Age: 56 years, Occupation: Agriculture
Address:At Post Village Nighoje
Taluka Khed, District Pune.

5. Vijaypal Kishorilal Sharma,
Age: 57 years, Proprietor of Sairaj
Infrastructure, having Address at
Gat No. 357/16/3,
Waghajainagar, Ambettan Road,
Chakan, Pune 410 501. …Respondents

Mr. Girish Godbole, Senior Advocate, with Ketki Gadkari, S Ghosh, Jagdish Gorane, Amirban Sen, Vidhi Sharma and Tanvi Darji, i/b Indus Law, for the Petitioner in all Petitions.

Mr. Ramesh D Soni, with Pratik Kothari, for Respondent No.1 in WP/12035/2025.
Mr. Mayur Khandeparkar, with Pratik Kothari, Harsh Agarwal, Sukhada Limaye and Amit S Kusalkar, i/b Ram and Co, for Respondent No.1 in WP/12914/2025.
Mr Pratik Kothari, with Harsh Agarwal, Sukhada Limaye and Amit Kusalkar, i/b Ram & Co, for Respondent No.1 in WPST/16617/2026.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 28th JULY 2026
PRONOUNCED ON : 19th AUGUST 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. As all three Petitions between the same parties arise out of same set of facts, these Petitions are decided by this common judgment.

3. Shorn of unnecessary details the background facts leading to these Petitions can be stated in brief as under:

3.1 Respondent Nos. 2 to 4 are the holders of an immovable property bearing Gat No. 782, admeasuring 4H 98R ("the larger property") situated at village Nighoje, Taluka Khed, District Pune. Respondent Nos. 2 to 4 executed a registered Lease Agreement in favour of Respondent No.1 in respect of the land admeasuring 2 H 80 R ("the leased property") on 18th March 2017. Under the terms of the said Lease Deed, the Respondent No.1 was entitled to sub-lease the leased property and also construct industrial sheds on the leased property.

3.2 The Respondent No.1 constructed an industrial structure admeasuing 1,31,851 sq ft comprising of office building admeasuring 11,008.06 sq ft on the leased land ("the subject structures")

3.3 The Respondent No.1 entered into a registered Lease Deed dated 30th May 2017 with the Petitioner in respect of the leased property. The term of lease was five years; commencing from 1st June 2017. Simultaneously, the Respondent No.1 entered into a registered Leave and Licence Agreement of even date, in respect of the subject structures. (The leased property and the subject structure are hereinafter collectively referred to as 'the subject premises'). The licence was also for five yeas; commencing from 1st June 2017.

3.4 Apart from usual terms of licence, the Leave and Licence Agreement, *inter alia,* contained a Buy-back Agreement. It was agreed between Petitioner-licensee and the Respondent No.1-licensor that, the licensee will be entitled at its discretion to buy all the constructed facilities including industrial shed, office building, canteen etc, (the subject structures) on as is where is basis for an agreed consideration of Rs.21,00,00,000/- at the end of the term of licence or at any date after execution of the said Leave and Licence Agreement, with proportionate increase in the consideration to be paid for early exercise of the option to purchase.

3.5 The term of sub-lease and licence expired on 30th April 2022, by efflux of time. Disputes arose between the Petitioner and Respondent No.1.

3.6 Petitioner claimed that it had exercised the option to purchase the subject structure in accordance with Buy-back Agreement and there was refusal on the part of Respondent No.1 to perform its part of the contract. Petitioner thus instituted a suit being Commercial Suit No. 2 of 2022 before the District Court at Khed against Respondent Nos. 2 to 4 seeking a decree of specific performance of the contract contained in the Leave and Licence Agreement and the consequential reliefs, including injunction to restrain the Respondents from causing obstruction to the possession of Petitioner over the subject premises.

3.7 The Respondent No.1, on its part, instituted the suit, i.e. Commercial Suit No. 1 of 2024, before the District Court seeking recovery of possession of the leased property and the subject structures, *mesne profits* and compensation for the purported illegal and unauthorised use and occupation of the leased property and the subject structures.

3.8 In Commercial Suit No. 2 of 2022 instituted by the Petitioner, the Petitioner filed an Application seeking permission to deposit the agreed consideration of Rs.24,00,00,000/- to show its bona fide and readiness and willingness to perform its part of the contract. By an order dated

12th April 2024, the Trial Court permitted the Petitioner to deposit the said amount of Rs.24,00,00,000/-.

3.9 The Petitioner filed an application for rejection of the plaint in Commercial Suit No. 1 of 2024, contending *inter alia* that the dispute was essentially between the licensor and licensee. Since the suit was for recovery of possession of the subject premises, only the Court of Small Causes has the subject matter jurisdiction. Secondly, the dispute in question was not a commercial dispute within the contemplation of the Commercial Courts Act, 2015.

3.10 The application was resisted by the Respondent No. 1-Plaintiff.

3.11 By an order dated 9th May 2025, the learned District Judge rejected the application observing, *inter alia,* that the dispute was a commercial dispute within the meaning of Section 2(1)(c) of the Commercial Courts Act, 2015. Even otherwise, the provisions of Section 3 of the Maharashtra Rent Control Act were not attracted to the facts of the case as the share capital of the Petitioner was more than one crore.

3.12 The aforesaid order is assailed by the Petitioner in Writ Petition No. 12035 of 2025.

3.13 The Respondent No.1 filed an Application in Commercial Suit No. 1 of 2024 instituted for the eviction of the Petitioner, seeking a direction to the Petitioner to deposit the lease rent and licence fee, purportedly under the provisions contained in Order XV-A of the Code of Civil

Procedure, 1908 (Bombay Amendment). The said Application was resisted by the Petitioner.

3.14 The substance of the resistance was that under the Buy-back Agreement, the Petitioner was entitled to purchase the subject structures at its discretion and since the Petitioner had exercised the option, the licensor and licensee relationship came to an end and the possession of Petitioner became traceable to the said Agreement for Sale. Thus, Petitioner was not liable to pay the lease rent and the licence fees.

3.15 By an order dated 8th September 2025, the learned District Judge repelled the objections raised on behalf of the Petitioner. The learned District Judge was of the view that at the interim stage, it could not be presumed that the Commercial Suit No. 2 of 2022, instituted by the Petitioner for specific performance of the contract for sale would be decreed. The relief of specific performance was discretionary in nature. There was no dispute about the execution of the Leave and Licence Agreement and the expiry of the term of licence on 30th April 2022. Thus, after the expiry of the term of licence, the Petitioner was liable to pay the lease rent and licence fee at the agreed rent. Thus, by invoking the power under Order XV-A of the Code, the learned District Judge passed the impugned order and thereby directed the Petitioner to pay the arrears of lease rent at the rate of Rs.8,18,901/- per month and licence fees at the rate of Rs. 45,87,098/- per month, in respect of the property described in paragraph 1a and 1b, respectively, from 1st May 2022 till the date of the said order and continue to pay the lease rent and licence fee at the above rates till the disposal of the suit.

3.16 The said order dated 8th September 2025 is assailed by the Petitioner in Writ Petition No. 12914 of 2025.

3.17 After the learned District Judge passed the order dated 8th September 2025 in Commercial Suit No. 1 of 2024, the Petitioner filed an application in Commercial Suit No. 2 of 2022 seeking deposit of the lease rent only.

3.18 By an order dated 6th May 2026, the learned District Judge rejected the said application, opining that, the Court had already passed an order in Commercial Suit No. 1 of 2024 directing the Petitioner to deposit the lease rent as well as the licence fee and, therefore, there was no propriety in entertaining an application seeking permission to deposit the lease rent only. The order that may be passed on the said application (Exhibit-62) in Commercial Suit No. 2 of 2022 would overlap the order that has already been passed in Commercial Suit No. 1 of 2024. This order is assailed in Writ Petition (St) No. 16617 of 2026.

4. I have heard Mr. G.S. Godbole, the learned Senior Advocate, for the Petitioner in all Petitions, Mr. Ramesh D Soni, the learned Counsel for Respondent No.1 in Writ Petition No. 12035 of 2025, Mr. Mayur

Khandeparkar, the learned Counsel for Respondent No.1 in Writ Petition No. 12914 of 2025 and Mr. Pratik Kothari, the learned Counsel for Respondent No.1. in Writ Petition (Stamp) No. 16617 of 2026, at some length. The learned Counsel took the Court through the pleadings and the material on record.

WRIT PETITION NO. 12035 OF 2025:

5. Mr. Godbole, the learned Senior Advocate for the Petitioner, made an endeavor to urge that the view of the trial Court that the dispute in question is a commercial dispute is completely erroneous. A faint attempt was made by Mr. Godbole to drive home the point that the dispute in question cannot be said to be arising out of, "agreements relating to immovable property used exclusively in trade or commerce", covered by sub-clause (vii) of clause (c) of Section 2(1) of the Commercial Courts Act, 2015.

6. Mr. Soni, the learned Counsel for the Respondent No. 1- Plaintiff in Commercial Suit No. 1 of 2024, would urge that not only the facts of the case but even the pleadings of the Petitioner in the plaint in Commercial Suit No. 2 of 2022 belie the case of the Petitioner.

7. An elaborate evaluation would be wholly superfluous. In the considered view of this Court, the dispute in question is clearly governed by sub-clause (vii) of clause (c) of sub-section (1) of Section 2 of the Commercial Courts Act, 2015.

8. Plainly, the Respondent No. 1-Plaintiff is seeking recovery of possession of the subject premises on the ground that after the expiry of the term of sub-lease and licence, the possession of the Petitioner has become unlawful. The dispute has its genesis in the Lease and Leave and Licence Agreement executed by and between the parties on 30th May 2017. Incontrovertibly, the property which was given on licence consists of industrial structures and office building. The industrial structures comprise factory shed, glass blasting room, MSEB room, DG and air compressor room, canteen, toilets, scrap yard, etc. Under the Leave and Licence Agreement, the licensor was to allow the licensee to carry on its business within the licenced premises.

9. In the plaint, in Commercial Suit No. 1 of 2024, there are averments to the effect that the Petitioner was in need of the premises for its industrial and commercial use and the subject premises was given on leave and licence basis to the Petitioner for commercial use. It would be contextually relevant to note that, in the plaint in Commercial Suit No. 2 of 2022, instituted by the Petitioner for specific performance of the contract as well, the Petitioner has asserted that the Petitioner was in need of a premises for its industrial and commercial use, and based on the assurances and promises of the Defendants, the Petitioner entered into the Lease Agreement and Leave and Licence Agreement.

10. The test enunciated by the Supreme Court in the case of ***Ambalal Sarabhai Enterprises Limited vs. K.S. Infraspace LLP and Another***[1], that for the applicability of sub-clause (vii) of clause (c) of Section 2(1) of the Commercial Courts Act, 2015, the immovable property should be "actually used" for the purpose of trade and commerce seems to be fulfilled in the case at hand. Not only the subject premises was used for trade and commerce at the time the parties entered into the contracts, but the Petitioner entered into the agreements in question only for the reason that the subject premises met its requirement of industrial and commercial use. The learned District Judge was thus fully justified in holding that the dispute in Commercial Suit No. 1 of 2024 was a commercial dispute and, therefore, there was no bar to the suit warranting the rejection of the plaint.

11. Writ Petition No.12035 of 2025 thus deserves to be dismissed.

WRIT PETITION NO. 12914 OF 2025:

12. Mr. G.S. Godbole, the learned Senior Advocate, for the Petitioner canvassed multi-pronged submissions. First and foremost, Mr. Godbole would urge, with the exercise of the option to purchase the subject structures and even the deposit of the agreed consideration, the licensor and licensee relationship between Respondent No.1 and the Petitioner, came to an end. The Petitioner's possession, post the expiry of the term of the licence and exercise of option to purchase the subject structures,

1 (2020) 15 SCC 585.

is in the capacity of the promisee who is put in possession of the subject premises in part performances of the contract. This crucial factor was completely missed by the learned District Judge.

13. Secondly, laying emphasis on the Buy-back clause in the Leave and Licence Agreement, Mr. Godbole would submit that, the option to purchase was at the discretion of the licensee - the Petitioner only. Consequently, once the Petitioner exercised the said option, in accordance with the terms of the Buy-back Agreement, Respondent No.1 had no option but to execute the conveyance. Terms of the Buy-back Agreement, according to Mr. Godbole, make the performance of the contract to sell the subject structure, in a sense, obligatory on the Plaintiff, and from this standpoint, Mr. Godbole would urge, the learned District Judge was clearly in error in holding that the relief of specific performance was discretionary in nature.

14. Thirdly, the Petitioner's obligation was only to exercise the option and pay the agreed consideration. Both the conditions have been fulfilled as the Petitioner did exercise the option to purchase and has deposited the entire agreed consideration in the suit instituted for specific performance. Therefore, having deposited the entire consideration of Rs. 24,00,00,000/-, the Petitioner could not have been again directed to deposit licence fee in respect of the subject structures as if the licensor and licensee relationship subsisted. In a situation of the present nature, according to Mr. Godbole, provisions contained in Order XV -A of the Code have no application.

15. Mr. Godbole further submitted that, under the terms of the Leave and Licence Agreement it is the obligation of the sub-lessee to pay the lease rent in respect of the leased premises and the Petitioner does not assail that part of the impugned order. The Petitioner is willing to deposit the lease rent. However, the impugned order to the extent it directs the payment of licence fee during the pendency of the suit operates onerously, especially in the context of the deposit of the entire consideration of Rs.24,00,00,000/-. It was further submitted that, in the event the Plaintiff succeeds and the Trial Court finds that the Petitioner's occupation of the subject premises was unlawful, the Court can pass a decree for *mesne profit* and also award compensation but, at this stage, the Trial Court could not have directed the payment of the licence fee.

16. Mr. Khandeparkar, the learned Counsel for Respondent No.1, supported the impugned order. It was submitted that the Petitioner-sub-lessee/licensee cannot be permitted to take refuge under the deposit of the purported agreed consideration of Rs.24,00,00,000/-. Laying emphasis on the fact that the said amount of Rs.24,00,00,000/- was deposited by the Petitioner voluntarily, Mr. Khandeparkar would submit that the lessor/licensor cannot be left in the lurch while the Petitioner continues to unauthorisedly use, occupy and exploit the subject premises awaiting the adjudication of the suit for specific performance. There are substantial defences to the suit for the specific performance and the lessor/licensor cannot be presented a *fait accompli*.

17. Mr. Khandeparkar submitted that, no fault can be found with the impugned order which directs the deposit of the lease rent and the license fee in accordance with the terms of the contract between the parties. The provisions contained in Order XV -A are clearly attracted to the facts of the case at hand, urged Mr. Khandeparkar.

18. Before appreciating the aforesaid rival submissions, it may be apposite to note the material terms of the Lease Agreement and the Leave and Licence Agreement, dated 30th May 2017, which bear upon the determination of the controversy at hand. The sub-lease of the leased property was for a term of five years, with gradual increase in the lease rent. For the fifth year the lease rent was agreed to be paid at the rate of Rs.8,18,901/- per month. It would be relevant to note that, the Plaintiff-Licensor was, in turn, required to pay the lease rent to Defendant Nos. 2 to 4, the head lessors. The Leave and Licence Agreement also provides for gradually increased licence fee. For the fifth year the licence fee was agreed to be paid at the rate of Rs.45,87,098/- per month. There is not much controversy over these stipulations in the Lease Agreement and Leave and Licence Agreement.

19. At the heart of the controversy is the implication of the Buy-back Agreement. It reads as under:

> "3) BUY-BACK AGREEMENT
>
> It has been agreed between the LICENSEE AND LICENSOR that LICENSEE will be entitled at its discretion to buy all the constructed facilities including Industrial Shed, Office Building, Canteen etc, on as is where is basis for an agreed consideration of INR 21 Crores (All Inclusive Price of Rupees 21 Crores only), at the end of 5 years i.e., on or after 1st May 2022, or at any date after signing of this Leave and Licensee Agreement.
>
> LICENSEE will also be entitled to buy back the said premises before the end of 5 years at a premium of INR 1.25 Crores per year of pre-ponement of buy-back agreement:
>
> i.e. buy-back price on 1st May 2021 will be INR 22.25 Crores, on 1st May 2020 will be INR 23.5 Crores, on 1st May 2019 will be INR 24.75 Crores, on 1st May 2018 will be 26 Crores.
>
> No additional taxes will be payable by the LICENSEE on the above amount. LICENSEE will pay Stamp Duty and Government Charges for registration of the buy-back agreement of the constructed property on Gat No. 782, LICENSOR will be liable to pay the tax to be deducted at source as per new IT provisons.
>
> After the acquisition of the entire constructed property on Gat No. 782 by the LICENSEE, LICENSOR will cease to get any licence fee as per this agreement.
>
> LICENSOR will also pay back the entire deposit amount paid to him by LICENSEE as per Clause No. 7 below.
>
> After buy-back, LICENSEE will transfer electricity bill, property tax etc in LICENSEE'S name at the appropriate Govt and local bodies and LICENSOR will assist with this process.

After expiry of 20 years lease agreement between LICENSOR and Landowner, one of the following three options will be invoked:

1) Lease agreement between LICENSOR and Landowner will be continued at terms mutually agreed between them. In this case, the LICENSEE will continue to use the premises by paying the License Fee for the leased land at 20% premium over the fee paid by LICENSOR to Landowner.

2) LICENSEE will sell the constructed property to LICENSOR at mutually agreed price.

3) In case Lease agreement LICENSOR and Landowner is not continued, or price in above option is not agreed, LICENSEE will vacate the premises by moving all possible assets."

20. The dispute between the parties revolves around the question as to whether the Petitioner-licensee has exercised the buy-back option and is entitled to the specific performance of the aforesaid contract. The thrust of the submission on behalf of the Petitioner was that the Petitioner having exercised the option to purchase the subject structures, the licensor-licencee relationship came to an end and thus the Petitioner is not liable to pay the licence fee. Emphasis was laid on the stipulations in the Buy-back Agreement that the licence will be entitled to, at its discretion, to purchase the subject structures and after the acquisition of the subject structures, the licensor will cease to get any licence fee as per the said Agreement. It was submitted that, the jural relationship between the parties altered after the expiry of the term of licence and the parties were thereafter governed by the terms of the Buy-back Agreement alone.

21. The aforesaid submission in a sense proceed on an assumption that the suit for the specific performance of the contract is bound to be decreed. Specific performance is an equitable relief. Its genesis is in equity. In the suit for specific performance of contract, instituted by the Petitioner, a number of issues would warrant adjudication. The proof of existence of a subsisting legal and valid contract, the enforceability of such contract, the readiness and willingness on the part of the Plaintiff to perform its part of the contract, was there a breach on the part of the Plaintiff, was there a such conduct as would disentitle the Plaintiff from seeking specific performance of the contract and whether, in the attendant facts and circumstances of the case, the Court ought to grant a decree for specific performance of the contract are the material questions which the Court may be required to adjudicate.

22. Even if one were to proceed on the premise that the existence of the contract is indubitable, yet, the determination on the other aspects cannot be said to be a matter of forgone conclusion. From this standpoint, in the considered view of this Court, the learned District Judge was justified in observing that in the ultimate analysis, the decree for specific performance is in the discretion of the Court and at this stage it cannot be presumed that the Petitioner would succeed in the suit.

23. At this juncture, the nature and object of the provisions contained in Order XV-A is required to be noticed. Order XV-A of Code, Bombay Amendment, reads 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 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 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 for the purpose of this Rule.

24. The text of Rule (1) of Order XV-A makes it abundantly clear that, few prerequisites need to be fulfilled before the power therein can be resorted to. First, there ought to be a Suit by lessor or licensor against the lessee or licencee for eviction of the latter. Second, the prayer for eviction in such Suit may be with or without the prayer of rent or licence fee and future mesne profits. Third, the Defendant in such a Suit is obligated to deposit such amount as the Court may direct on account of arrears up to the date of the order. Fourth, the Defendant is also obligated to continue to deposit in each succeeding month the rent or licence fee claimed in the Suit as the Court may direct. Fifth, unless otherwise directed, the Defendant is obligated to continue to deposit such amount till the decision of the Suit.

25. Rule (2) of Order XV-A deals with the striking off the defence of the Defendant who commits default in making the deposits as ordered by the Court.

26. The object of Order XV-A, which came to be inserted by the

Bombay High Court amendment, with effect from 1st October 1983, as is evident, appears to be to secure the interest of the landlord as the occupation of the Suit premises by the lessee or licencee after the termination of the lease or licence, as the case may be, without payment of any rent or licence fee would cause grave prejudice to the landlord. Often the Suits for eviction await adjudication years together. A determination of mesne profits after long lapse of time from the termination of tenancy and the institution of the suit for eviction, is not a solace for the landlord. Conversely, the lessee or licencee who continues to occupy the suit premises should not be permitted to use the same without payment of the rent or licence fee.

27. The validity of the Order XV-A came up for consideration before the Bombay High Court immediately, in the case of **Shyam Liladhar Paul Vs Ghanshyamdas Tharumal & Anr.**[2] In the said case, the validity of Order XV-A was assailed on the ground that it was not a procedural power and thus outside the rule making power of the High Court under Section 122 of the Code. A learned Single Judge of this Court negatived the challenge. In the process, the object of introduction of Order XV-A was expounded as under:

> "3. … … …
> <u>The purpose of rule is very clear. It had been the experience that in a suit between the landlord and the tenant after the tenancy was determined by the</u>

2 1984 SCC OnLine Bom 253.

landlord, no payment was made by the tenant at the agreed rate and it was only when the decree for mesne profits was passed that the landlord could get the compensation or money for use and occupation by the tenant of his premises after the decision in the suit and after the enquiry into the mesne profits was completed. It is in order to mitigate the agony of the landlord in not receiving the payment for use and occupation by the tenant at least at the agreed rate of rent for a long period till the decision of the suit, that the power to pass an interlocutory order in the nature of Order XV-A Rule 1 was conferred upon the Court, so that till the tenant is using the premises of the landlord, he should continue to pay him the rent at the agreed rate. Otherwise due to the procedural delays caused in the final adjudication of the suit, the interest of the landlord was adversely affected. The power to direct the tenant to deposit the arrears of rent and to direct him to continue to make the payment to the landlord at the agreed rate is, therefore, a procedural power conferred upon the Court to do justice looking to the nature of the lis."

(emphasis supplied)

28. In the case **Gautamchand B. Dige Vs Dhondiram D Gurav,**[3] the learned Chief Justice, observed that though his Lordship had serious doubts as to how far, in the absence of Order XV-A , the Court could direct deposit of arrears of rent and future mesne profits pending a suit for eviction of the tenant and recovery of mesne profits in exercise of its

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3 1985 Bombay Law Reporter 5.

powers either under Order XX Rule 12 or under Order XXXIX Rule 10 or under Section 151 of the Code, his Lordship did not think that it was necessary to enter into that discussion, having regard to the specific provision contained in Order XV-A where tenancy was admitted and the dispute was only as regards whether the tenancy was monthly tenancy or yearly tenancy. In such situation Order XV-A applied.

29. Rule (1) of Order XV-A uses the word, "may", consciously. This emphasizes the fact that the power to direct the Defendant or the tenant or lessee or licensee to pay the rent or licence fee is discretionary. It is well neigh settled that, whenever the legislature confers discretion in the Court, such discretion must be exercised in a judicious manner. The duty to exercise discretion in a judicious manner, after being informed of all the attendant circumstances, assumes even more significance while exercising the power under Rule of Order XV-A on account of the drastic consequence the failure to comply with the order of deposit entails, under Rule (2) of Order XV-A.

30. The failure to deposit the amount as directed by the Court under Rule (1) is at the pain of striking off the defence of the Defendant. Undoubtedly, Rule (2) of Order XV-A envisages an opportunity of hearing and again exercise of discretion by the Court in ordering striking off the defence. Yet, the necessity to exercise the judicious discretion in determining the questions as to whether a direction for deposit be made and, if so, at what rate, cannot be ever emphasized. Nor the Court can loose sight of the fact that, save in cases of indisputable rate of rent or licence fee, the determination at an interim stage often does not have the benefit of the evidence to equip the Court to decide the issue.

31. It would be contextually relevant to note that Rule (1) of Order XV-A came to be substituted by the Notification dated 11th January 1990. *Inter alia,* the expression, "In a Suit by a lessor or a licensor against a lessee or licencee as the case may be" came to be substituted for the expression "In a Suit by a lessor for eviction of a lessee". Rule making authority thus, found it necessary to empower the Court to direct a licencee as well to deposit the licence fee in a Suit instituted by the licensor for eviction, with or without arrears of licencee fee. The term licencee covers in its fold even a gratuitous licencee. If the landlord succeeds in demonstrating that the Defendant was a gratuitous licencee and licence has been duly terminated and, yet, such licencee continues to occupy the subject premises, as a matter of principle, the Court cannot be precluded from directing such licencee to deposit the amount towards licence fee as the Court may find appropriate in a given case.

32. Reverting to the facts of the case, as noted above, the initial jural relationship of lessor-licensor between the Plaintiff and Defendant No.1

in Commercial Suit No. 1 of 2024 is incontrovertible. Nor there is dispute between the parties over the quantum of the lease rent and licence fee which the Petitioner was required to pay. Therefore, the prerequisites for the exercise of the power under Order XV-A, as enumerated above, are satisfied in the case at hand.

33. The resistance on the part of the Petitioner was premised on the purported cessation of the initial jural relationship and creation of the new relationship of promisor and promisee, under the Buy-back Agreement only. As noted above, that is a matter for adjudication at the trial. An inference cannot be drawn at this stage that in view of the Buy-back Agreement and the purported exercise of option by the Petitioner, the jural relationship between the parties stood altered, as claimed by the Petitioner.

34. Mr. Godbole submitted with a degree of vehemence that the Petitioner has already deposited a sum of Rs. 24,00,00,000/-, the entire agreed consideration and thus performed his part of the contract to the fullest. Therefore, the learned District Judge was in error in not factoring in the said deposit while exercising the discretion to direct the Petitioner to pay the arrears of licence fee.

35. I am afraid to accede to this submission. It is well-recognized that in order to show readiness to perform the contract, the person seeking the specific performance need not have ready cash. Nor is it obligatory on such person to make deposit of the agreed/balance consideration in the Court. In the case at hand, as rightly pointed by Mr. Khandeparkar, the Petitioner had voluntarily deposited the consideration in Commercial Suit No. 2 of 2022. The deposit of the said amount cannot necessarily bring about the result of cessation of the liability to pay the licence fees for the occupation of the subject structures.

36. It is imperative to note that in a suit for specific performance, the Court is empowered to grant compensation in addition to the performance. If the Court decides that the specific performance ought not to be granted and yet finds that there is a breach of the contract, the Court can award compensation to the Defendant. Even in a case where the Court finds that specific performance ought to be granted but that is not sufficient to satisfy the justice of the case, it may also award compensation for breach of the contract apart from the specific performance. The Petitioner, therefore, cannot be said to be without remedies in the event the Petitioner succeeds in the suit for specific performance, even if the Petitioner is made to pay the licence fee till the Petitioner occupies the subject structures at the last agreed rate of the licence fee.

37. It must be noted that during the course of the arguments, the Petitioner was given an option to appropriate the amount of Rs.24,00,00,000/- along with the interest accrued thereon towards the arrears of the licence fee, as ordered to be paid by the impugned order, without in any manner diluting an inference of "readiness" emanating from the deposit of the said amount in Court.

38. Mr. Khandeparkar, the learned Counsel for Respondent No.1, on instructions, made a statement that Respondent No.1 will not question the "readiness" of the Petitioner to perform its part of the contract even if the said amount is appropriated towards the payment of the arrears of the licence fee and the licence fee which may fall due.

39. Suffice to note that, the Petitioner has demonstrated its "readiness" by making the deposit of Rs.24,00,00,000/- in the Court in Commercial Suit No. 2 of 2022. Even if the Petitioner now opts to appropriate the said amount towards the arrears of the licence fee, it would not impinge upon the "readiness" of the Petitioner to perform its part of the contract evidenced by the said deposit.

40. For the forgoing reasons, this Court is inclined to grant liberty to the Petitioner to elect to appropriate the said deposit towards the payment of the arrears of the licence fee, and clarify that such election would not impinge upon the "readiness" of the Petitioner.

41. Subject to the aforesaid clarification, the Petition deserves to be dismissed.

WRIT PETITION (STAMP) NO. 16617 OF 2026:

42. As noted above, Mr. Godbole, the learned Senior Advocate for the Petitioner, submitted that the Petitioner has no qualms over depositing the lease rent as that is the contractual obligation of the Petitioner under the Lease Agreement executed on 30th May 2017.

43. In view of the aforesaid submission and consideration in Writ Petition No. 12914 of 2025, no separate consideration is required in this petition. In any event, the learned District Judge was well within his rights in declining to pass a separate order permitting the deposit of the component of lease rent only, and that too in Commercial Suit No. 2 of 2022, in the face of an order already passed in Commercial Suit No. 1 of 2024 directing the Petitioner to deposit the lease rent as well as the licence fee.

44. This Court is, therefore, inclined to dispose of this petition in view of the dismissal of Writ Petition No. 12914 of 2025.

45. The conspectus of aforesaid consideration is that Writ Petition Nos. 12035 of 2025 and 12914 of 2025 deserve to be dismissed, and Writ Petition (St) No. 16617 of 2026 is liable to be disposed.

46. Hence, the following order:

: O R D E R :

(I) Writ Petition No. 12035 of 2025 stands dismissed.

(II) (i) Writ Petition No. 12914 of 2025 stands dismissed.

(ii) The Petitioner-Defendant No.1 in Commercial Suit No. 1 fo 2024 is at liberty to file a pursis before the Commercial Court in Commercial Suit NO. 2 of 2022 that the amount of Rs.24 Crores and the interest accrued thereon may be appropriated towards the lease rent and licence fee directed to be paid by the impugned order in Commercial Suit No. 1 of 2024

(iii) In the event the Petitioner makes such election the Defendants in Commercial Suit No. 2 of 2022 shall not be entitled to question the "readiness" of the Petitioner-Plaintiff in Commercial Suit No. 2 of 2022 to perform its part of the contract.

III In view of the dismissal of the Writ Petition No. 12914 of 2025, Writ Petition (Stamp) No. 16617 of 2026 stands disposed.

IV. Rule discharged.

V No costs.

[N. J. JAMADAR, J.]