



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.273 OF 2025

M/s Novel Cuisines Private Limited, a company incorporated under the Companies Act, 1956

Having its Registered office at Gaylord Restaurant, Mayfair Building, V. N. Road, Church Gate, Mumbai – 400020

through its authorized signatory Mr. Anil Anthony Afonso, S/o Anthony Afonso Age 54 years, businessman, R/o H. no. 340, Old Goa steel yard, Opp. Petrol Pump, Old Goa, Tiswadi, Goa

... Petitioner

Versus

1. M/s ABC Enterprises A Partnership Firm Through its partner Mr. Tahir Isani, S/O. Vasanali Isani, Age 62 years, businessman, Having office at 1st Floor, Manek Chambers Above Angleys Sports, Opp. Municipal Garden, Panjim, Goa — 403001
Email:abcgoa@rediffmail.com

2. Mr. Tahir Isani, S/O. Vasanali Isani, Age 62 years, businessman Partner, M/s. ABC Enterprises, R/o Manek, Altinho, Mapusa.

... Respondents.

Mr. Pranay Kamat, Advocate for Petitioner.

Mr. Preetam Talaulikar, Advocate with **Ms. Sara Desai, Advocate** for Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

Reserved on: 8th SEPTEMBER 2026.

Pronounced on: 24th SEPTEMBER 2026.

ORDER:

1. The Petitioner impugns Order dated 07.04.2025 passed by Learned Adhoc Civil Judge, Senior Division 'B' Court, Mercas, Goa, thereby partly allowing Petitioner's application at Exhibit D-4 under Order 39 Rule 10 and Order XV-A of Code of Civil Procedure, 1908.

2. The Petitioner is the original Plaintiff in the Suit. The Suit has been instituted against Defendants for relief of declaration, eviction, recovery of compensation and permanent injunction in relation to Shops no.15 and 16 situated on the ground floor of building named 'Magnum Centre' M.G. Road, Panaji. The Petitioner executed a Lease Deed dated 31.07.2017 with Respondent No.1 for leasing out the suit Shops as per Terms and Conditions of the Lease Deed for a period of six years commencing from 16.10.2017 and expiring on 15.10.2020. The Lease for initial three years was agreed at the rate of Rs.1,60,000/-

(Rupees One Lakh Sixty Thousand only) per month and Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) per month from 16.10.2020 till 15.10.2023. The Respondent was to pay Service Tax and GST as applicable, which was to be paid each month along with the rent. Clause No.5.4 of the Agreement specifies that rent shall be increased at the end of every three years from the commencement date by 15% over the last paid rent, as described in detail in Schedule C of the Lease Deed.

3. Before expiry of the lease period, Petitioner had given a Notice to the Respondent regarding termination of the lease and his intention not to renew the same. However, Respondent replied of having some agreement for purchase of the premises with the Petitioner, which was denied. On 20.07.2023, again the Petitioner informed the Respondent regarding termination of the lease and requested to vacate the premises by 15.10.2023 by clearing all dues including arrears of rent, water, and electricity charges. On 13.10.2023, Respondent showed inability to hand over possession of the suit Shops on 15.10.2023 and sought extension of time to vacate and hand over physical possession. On 28.12.2023, Respondent submitted Affidavit-cum-Undertaking-cum-Declaration admitting, affirming and declaring his intention to vacate the shops on or before 31.03.2024, to which Petitioner agreed and extended time for vacating up to 31.03.2024. Respondent paid rent at

the rate of Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) for the period from 16.10.2023 till 15.01.2024. Thereafter, Respondent stopped paying the rent and kept on requesting for extension of time. However, he did not vacate the premises. The Petitioner was compelled to file Special Civil Suit No.42/2024/B before Civil Judge Senior Division at Panaji for the reliefs claimed, along with application under Order 39 Rule 10 and Order XV-A of Code of Civil Procedure, 1908, seeking deposit of compensation and injunction. The trial Court allowed the application thereby directing Respondent to deposit Rs.12,28,000/- (Rupees Twelve Lakh Twenty Eight Thousand only) within 75 days of passing the order and thereafter, continue to deposit in succeeding months Rs.1,84,000/- till final disposal of the suit. Hence, this Writ Petition.

4. Mr. Pranay Kamat, Learned Advocate appearing for the Petitioner, submits that the Petitioner had filed an application in terms of Order XV-A of Code of Civil Procedure, 1908 as inserted by Bombay Amendment. The Lease Agreement between the parties clearly stipulates a 15% increase in rent at the end of every three years from commencement date. Therefore, on expiry of lease period on 15.10.2023, the Respondent was under obligation to pay the last agreed rent along with 15% increase with the GST amount. However, the

impugned Order merely directs Respondent to pay the monthly rent of Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) till final disposal of the Suit which is consistent with the agreed terms between the parties. In support of his contention, he relied upon the observation of Supreme Court in case of ***Atul J. Doshi and Others v/s. Pramukh Properties and Developers Private Limited***¹ to contend that in absence of the dispute as regards to the Agreement and its Clauses, it was necessary to direct payment of licence fee as agreed with proportionate increase, arrears and regular payment of licence fee must be paid by the licensee in the same Terms.

5. Per contra, Mr Preetam Talaulikar, Learned Advocate appearing for the Respondent supports the impugned Order. He submits that any additional payment over agreed rent/licence fee or any compensation or any claim for compensation are the subject matters to be decided at the stage of final disposal of the Suit. The trial Court is, therefore, justified in directing Respondents to continue to deposit rent amount as lastly paid.

¹ 2025 DGLS (SC) 1668

6. Having considered submissions advanced by Learned Advocate appearing for respective parties, it is apposite to refer Clause XV-A of Civil Procedure Code (Bombay Amendment) which 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 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.

437 [(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 from the premises for the purpose of this rule.]” (1-10-1983) — See Maharashtra Government Gazette, 15-9-1983; Pt. 4, Ka, p. 406. Goa Gazette, 12-10-1987, Extra., S. 1, No. 28, p. 380 (1-4-1987). Sub-rule (3) and Explanation were inserted by Maharashtra Government Gazette, 11-1-1990, Pt. IV, Ka, p. 28.”

7. In present case, there is no dispute as regards the relationship as Lessor and Lessee between the Petitioner and Respondents. There is no dispute regarding the Clauses of Lease Deed. The Clauses pertaining to rent appearing in the Agreement read thus:

“5. RENT

5.1 The monthly rent, including maintenance charges & excluding service tax payable in respect of the Premises by the LESSEE to the LESSOR during the subsistence of this Deed of lease shall be Rs.1,60,000/- (Rupees One Lac Sixty Thousand Only) per month, subject to tax deduction at source as per the provisions of the Income Tax Act, 1961 (“Rent), for the scheduled premises, for which appropriate Certificate/s shall be handed over to the Lessor by the Lessee. The LESSEE shall bear the Service Tax /GST as applicable. The Service Tax /GST shall be paid to the LESSOR each month along with the rent. The detailed invoice shall be submitted by the LESSOR to the LESSEE. The Service tax/GST details (for e.g. Service tax number, GST number etc.) shall be provided by the LESSOR to the LESSEE.

5.2 The LESSEE shall be liable to pay Rent from 16" October 2017 ie. after the expiry of rent-free period of 60 (sixty) days as mentioned above or on business commencement whichever is earlier. The rent is calculated on 1st day of each English calendar month, unless otherwise the LESSEE is deprived of possession and enjoyment of the leased premises.

5.3 The LESSEE shall pay the Rent to the LESSOR by Cheques/Bank Transfer on or before the 10th day of each English calendar succeeding month, unless otherwise agreed to between by the LESSOR and LESSEE, in writing. The Lessee hereby undertakes that all the said cheques on presentation for encashment on

their due dates, shall be duly encashed and neither the payment thereof shall be stopped and nor they will be returned unpaid for want of funds.

5.4 The Rent shall be increased at the end of every 3 (Three) years from the Commencement date by 15% over last paid rent, as described in detail in Schedule C below.”

8. A plain reading of aforesaid Clauses shows that the Lease Agreement was for a period of six years. The rent was fixed at the rate of Rs.1,60,000/- in addition to GST for first three years, and then it was to be increased by 15% on expiry of every third year from commencement date by 15% over the last paid rent. The last agreed rent for second term of three years was Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) plus GST. The impugned Order shows that the trial Court accepted the Petitioner's case as to the agreed terms of lease and eventually passed the impugned Order directing Respondents to pay the monthly rent of Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) before 10th of every month along with arrears of the rent for month of June 2024 to July 2024 and from August 2024 till passing of the order with further direction to continue to deposit the said sum of money every month till final disposal of the Suit.

9. However, as rightly contended by Learned Advocate appearing for the Petitioner, the trial Court failed to take cognisance of Clause No.5.4

in the Lease Deed, which stipulates an increase of 15% rent on expiry of the term of three years. In present case on expiry of term of six years, the last agreed rent was Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) plus GST. The lease period expired on 15.10.2023. Respondent was under obligation to pay the rent amount with 15% increase over Rs.1,84,000/- (Rupees One Lakh Eighty Four Thousand only) along with GST as applicable.

10. The Supreme Court in the case of **Atul J. Doshi** (supra), while dealing with the application under Order XV-A of Civil Procedure Code (Bombay Amendment), observed that the intended object to bring amendment inserting Order XV-A of Civil Procedure Code is to secure the interest of landlords with respect to premises gratuitously occupied by the licensee even after termination of lease or licence, as the case may be, without payment of rent or licence fee. To eradicate such prejudice against landlord in a suit for eviction, which may take some time to be finally adjudicated, the order for payment of rent or licence fee may be directed. Therefore, once the conditions for exercise of discretion under Order XV-A of Civil Procedure Code (Bombay Amendment) as to filing of suit for eviction with or without prayer for arrears of rent or licence fee and future mesne profit, it is obligatory on the part of the Defendant to deposit the arrears upto the date of order by the Court and in case of

default made by licensee or licensor, the defence can be struck off following procedure as prescribed in Rule 2. In light of the aforesaid exposition of law, the Petitioner was entitled for the last agreed rent along with appropriate increase and the GST amount as per terms of the lease between the parties particularly in the wake of fact there is no dispute as regards to such terms and conditions.

11. In result, Writ Petition deserved to be partly allowed. Hence, Order.

ORDER

- (i) Writ Petition is partly allowed.
- (ii) The impugned Order dated 07.05.2025 passed by Learned Civil Judge Senior Division at Panaji in Special Civil Suit No.42/2024/B below Exhibit D-4 is modified.
- (iii). The Respondent Defendant shall deposit the arrears of rent and continue to deposit rent with 15% increase over the last rent of Rs.1,84,000/- (Rupees One Lakh Eight Four Thousand only) from 15.10.2023, in addition to GST as prescribed under Terms of the Lease.
- (iv) The rest part of the impugned Order shall mutatis mutandis apply with aforesaid modification.

S. G. CHAPALGAONKAR, J.