

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

928 WRIT PETITION NO. 12552 OF 2016

M/S BAJAJ ELECTRONICS THROUGH ITS PARTNER RAJESH
PRITAMDAS BAJAJ
VERSUS

M/S EMPIRE MALL PVT LTD MUMBAI AND ANOTHER

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Advocate for Petitioner : Bhandari Anand P.
Advocate for Respondent 2 : R.F. Totla h/f. R.R. Totla

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CORAM : T.V. NALAWADE, J.

DATED : 20th December, 2016.

ORDER :

1. The petition is filed to challenge the order made on Exh. 5 in Regular Civil Suit No. 753/2016, presently pending in the Court of Civil Judge, Junior Division, Aurangabad and also to challenge the decision given by the District Court in Misc. Civil Appeal No. 155/2016. Both the sides are heard.

2. The suit is filed by present petitioner for relief of injunction simplicitor. He has claimed the relief of injunction to prevent the respondents, owners and licensors, from obstructing his possession over the premises which is described as shop No. G-22 and G-23, totally admeasuring 1866 Sq. Ft.

3. It is the case of plaintiff that on 5.12.2014 the

possession of aforesaid premises was given by the defendants to him and he has been paying all the charges in respect of licence, common area maintenance charges etc. It is the case of plaintiff that in the notice dated 26.8.2016 when there was no reason, the defendant asked plaintiff to hand over the possession. It is contended that as there was allegations that there was outstanding amount of Rs. 3,07,278/-, that amount was immediately paid by the plaintiff to defendants. It is contended that the plaintiff has been ready and willing to sign the agreement of Leave and Licence, but due to non corporation of the defendants, agreement could not be signed and it is not yet registered. It is the case of plaintiff that as per the agreement between the parties, he is entitled to keep the possession atleast for the period of 36 months which is described as 'lock-in period' and before that the possession cannot be taken from plaintiff. As the defendants had given notice to vacate the premises and they were likely to take possession, relief of temporary injunction was prayed for by filing application at Exh. 5 in the suit.

4. Defendants filed reply and written statement and they denied the contention that there is agreement due to which the plaintiff can keep the possession as contended by the

plaintiff. It is contended that it is the plaintiff, who was at fault and who avoided the execution of document like Leave and Licence. It is contended that so many opportunities were given to plaintiff, but plaintiff did not show interest in execution and registration of the document. It is contended that plaintiff had gone to the extent of informing that he was sustaining heavy losses and he was thinking to wind up the business. It is contended that due to the difficulties informed, many concessions were given to plaintiff by defendants and the amount which was due was remitted, but after that also, plaintiff did not show interest in execution and registration of the document. It is contended that the actions of plaintiff were malafide and he was only getting the benefit by giving one or other excuse and he was avoiding to sign agreement. It is contended that due to this conduct and approach of plaintiff, notice dated 26.8.2016 was given and the plaintiff was asked to vacate the premises as he was simply licensor.

5. It appears that before the Trial Court defendants produced the record on the basis of which the agreement was to be made. Both the Courts below have held that there was oral licence and in view of the provisions of Indian Easement Act, 1882, relief of injunction cannot be given to the plaintiff as his

rights are brought to an end by the defendants.

6. The learned counsel for petitioners took this Court through various documents which include the proposed term sheet for 'Prozon Aurangabad', the draft of Leave and Licence Agreement which is prepared by the defendants along with the annexures like statements, correspondence by E-mail made by both the sides, copy of notice dated 26.8.2016 and one letter sent by defendant dated 5.9.2016.

7. The aforesaid record shows that even when plaintiff got possession on 5.12.2014, the document of Leave and Licence was not signed by the plaintiff. Plaintiff wants to rely on the proposed term sheet by contending that this is signed by both the sides. The submission that it can be treated as agreement cannot be accepted as it was the first proposal given by defendants to plaintiff. The correspondence shows that plaintiff wanted to reduce lock-in period to make it twelve months, but defendants were not ready to reduce that period. The correspondence shows that on every occasion, right from 31st July 2015, defendants were asking plaintiff to sign hard copy of agreement and return it for registration. It is not disputed that copy of agreement was already supplied to plaintiff by

defendants. The correspondence made by plaintiff shows that plaintiff had expressed that plaintiff was not making profit, he was incurring heavy losses and due to that he was facing all kinds of difficulties in meeting terms and conditions of the proposed agreement. It appears that due to the correspondence made by plaintiff, defendants had taken lenient view and offer was given to reduce licence fees, rent by 15%. It appears that plaintiff insisted for further reduction and accordingly, rent was reduced too much extent by the defendants. The correspondence shows that even after the aforesaid steps taken by the defendants, plaintiff did not put signature on the agreement and that can be seen from the correspondence dated 16.6.2016.

8. In the notice dated 26.8.2016 the aforesaid conduct and other defaults committed by plaintiff were brought to the notice of plaintiff and plaintiff was asked to hand over the possession within seven days from the date of receipt of notice. The outstanding dues were also informed like Rs. 3,07,278/- in this notice. One more notice dated 5.9.2016 was given and it was also for asking the plaintiff to hand over the possession immediately as according to the defendants possession of plaintiff has become illegal.

9. The aforesaid circumstances show that there was no written agreement as such. There was oral licence. On the basis of aforesaid correspondence, it can be inferred that under oral licence some fees was payable, but such inference is not possible in respect of lock-in period as it was only oral licence. Both the Courts below have rightly referred the provisions of Indian Easement Act, 1882 and the rights of the licensor given in sections 60, 61, 62 are discussed. Similarly, rights of licensee mentioned in sections 63 and 64 are also discussed. In such a case if the licensee feels that he has sustained losses and he is entitled to compensation, that claim will fall under section 64 of the Act and it can be said that compensation will be the relief available to the plaintiff, if plaintiff is able to prove that there has been some breach of terms and conditions of oral licence. When the law provides for payment of compensation, the Court is not expected to grant relief of injunction.

10. The learned counsel for petitioner placed reliance on the observations made by this Court in the case reported as **AIR 1959 BOMBAY 533 [M.F. De Souza Vs. Children's Education Uplift Society]**. In that case, the Court had formed opinion that the licence was irrevocable or that it was for the

fixed period and so, the licensor was not entitled to terminate the licence and revoke the licence at his sweet will and pleasure. The facts and circumstances of each and every case are always different. In the present matter, such inference is not possible.

11. The learned counsel for petitioner placed reliance on the observations made by the Apex Court in the case reported as **1989 (3) Bom.C.R. 364 [Krishna Ram Mahale (Dead) by his L.Rs. Vs. Shobha Venkat Rao (Mrs.)] (SUPREME COURT)**. The Apex Court has discussed the rights of the person in settled possession. In that case, the Apex Court observed that as the person was in settled possession, proper procedure was required to be followed for taking possession from him. There cannot be dispute over this proposition. Here this Court is considering the case of licence and there are specific provisions under Indian Easement Act with regard to rights of licensor. In such a case, there is no question of considering the claim of settled possession. So, the observation made by the Apex Court are not of no use to the petitioner.

12. On the other hand, the learned counsel for respondents, defendants submitted that grant of such relief is within discretion of the Court and when there is concurrent

finding, there is not much scope to this Court to interfere in the order made by the Trial Court which is confirmed by the First Appellate Court. To substantiate his contention, on the scope of jurisdiction given to this Court, the learned counsel for respondent placed reliance on the case reported as **(2010) 8 Supreme Court Cases 329 [Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil]**. In this case, the Apex Court has discussed difference between the scope of the two Articles 226 and 227 of the Constitution of India. The Apex Court has observed that when the scope of further proceeding is reduced by making amendment in Civil Procedure Code and particularly, section 115 of Civil Procedure Code, the High Court is not expected to use the jurisdiction given under Article 227 of the Constitution of India. Following observations are made at paragraph No. 65 :-

"65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority."

There cannot be dispute over the proposition made by the Apex Court in the case cited supra. When the findings are given by the

Courts below on the basis of facts and there is no infraction of any law, this Court is not expected to interfere in the decision given by the Trial Court which is confirmed by the First Appellate Court.

13. The learned counsel for respondents, defendants placed reliance on some observations made by the Allahabad High Court in the case reported as **AIR 1993 ALLAHABAD 138 [Ajab Singh Vs. Shital Puri (deceased by L.Rs.)]**. In this case, the law with regard to licence and its termination is discussed. The facts involved were totally different and the licensor had approached the Court for relief of mandatory injunction.

14. The learned counsel for respondents, defendants placed reliance on the observations made by the Apex Court in the case reported as **AIR 1995 SUPREME COURT 2372 [M/s. Gujarat bottling Co. Ltd. and Ors. Vs. Coca Cola Company and Ors.]**. The Apex Court has discussed the criteria which are required to be kept in mind while granting relief under Order 39, Rule 1 and 2 of Civil Procedure Code. It is observed that the conduct of the party should be such that it should be free from blame and only after that Court can give relief of injunction in

favour of such party. There cannot be dispute over this proposition.

15. The learned counsel for petitioner submitted that in view of section 55 of the Maharashtra Rent Control Act, the procedure which is given under the Rent Control Act ought to have been followed and it was necessary for defendants to go for registration. This Court holds that it is not necessary to consider even the claim of plaintiff that case falls under the provision of Rent Control Act. In any case, he is at fault. He did not sign the document and for the present purpose, it can be said that it was not the responsibility of the defendants to register it when the document was not submitted before the defendants after complying conditions and signing it by the plaintiff.

16. The relevant facts which are already quoted show that it is the plaintiff who has created the present situation. The blame cannot be put on the defendants. If the plaintiff was not able to make profits, the defendants are not expected to help the plaintiff at the cost of consideration to which defendants are entitled. There will be also question of enforceability of rights of the plaintiff in the matter like present one and the suit is filed

only for the relief of injunction. In view of these circumstances, this Court holds that it is not possible to interfere in the decision given by the Trial Court which is confirmed by the First Appellate Court.

17. In the result, the petition stands dismissed. The learned counsel for petitioner submitted that there was interim relief granted by the Trial Court in his favour and even the District Court has continued it and it was continued till 19.12.2016. He requested for continuation of interim relief. In view of the nature of rights claimed by plaintiff, this Court holds that such continuation of interim relief is not possible. It is refused.

[T.V. NALAWADE, J.]

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