

Shrikant Krishna Naik (deceased) through his ... Appellant
Lrs

Sricanta Roguvir Xete Shirodkar ...Respondent

Mr Sudin Usgaonkar, *Senior Advocate with Ms V Palyekar, Advocate for the Respondent.*

1. Heard.

3. The Defendant having entered a written statement, the court framed issues, the parties went to trial and the Trial Court by a judgment, order and decree dated 21st November 2000 directed the Defendant to deliver possession of the restaurant premises.

4. Between the parties there was an agreement dated 30th September 1984 and it is this agreement that is at the heart of the dispute. Mr Kantak for the Appellant has tendered an additional compilation and a copy of this agreement is at page 1 of that compilation. It is styled as a leave and licence agreement but the caption also says that it is leave and licence agreement for 'conducting business'. The opening words of the agreement make it clear that it is for conducting the business of shop no.14 in the Kadar Manzil at Margao. The second recital makes it clear that the owner i.e., the Plaintiffs, were fully seized and possessed of and in overall control of the administration of the Apasara Restaurant in these premises. That very recital also says that Defendant approached the Plaintiffs with a request to be allowed to conduct and run the business temporarily and it was to this representation that the Plaintiff agreed. Clause 1 of the agreement specifies that it is to run for a period of three years till 1st October 1984. Clause 2 provides for termination and says that the Plaintiff could, with one month's notice, upon breach, terminate the agreement and the Defendant would be required to deliver possession at the end of that notice period. In default, a provision was made for damages of Rs.1500/- per month till the possession was delivered.

5. Mr Kantak argues that under the agreement itself, all permissions and licences were obtained by the Defendant. He also

claims that since the agreement itself provides for 'exclusive possession' to the Defendant, the Defendant is therefore a licensee.

6. It is not possible to accept these submissions on a plain reading of the agreement. Clauses 4 to 6 require the Defendant to pay the taxes but these are clearly on behalf of the Plaintiffs as owners. In fact, Clause 6 says:

the owner shall authorize the conductor to make payments and accept receipts on his behalf in respect of electricity, water bills, municipal taxes etc. The bill of taxes of municipality shall be delivered to the owner as practicable as possible.

7. Clause 9 is also important as this prevented the Defendant from changing the name of the establishment from Apasara Restaurant. This was the name in which the Plaintiffs were carrying on this business, according to the very Agreement on which Mr Kantak relies.

8. Of vital importance is clause 11 which reads thus:

"11. The agreement shall not be deemed to create any right or interest to the conductor in respect of shop premises. The general control of the shop premises shall be with the owner and he will have an access at any time in the shop premises. The conductor will have no dealings with any person or authority or authorities."

9. Finally, clauses 14 and 15 provide for delivery of possession on the expiry of the termination of the contract in the manner mentioned above.

10. The First Appellate Court framed three points for determination and answered all three against the Defendant. It also negated — in my view completely correctly — the attempt by the Defendant to say that the conducting agreement was something other than what the document itself says. The Defendant attempted to say that the undertaking was signed in good faith but that the intention was always to create a licence. Trial Court decreed the suit on the basis that what that the transaction between the parties was for conducting the business and nothing else. The First Appellate Court correctly found that only because the Defendant was required to pay taxes, this did not in itself create either a licence or even a presumption of licence in favour of the Defendant. It went on to hold that where a document was proved and admitted and its contents and undertaking were also admitted, a party could not be permitted to give evidence contrary to the terms of that document. The discussion in paragraph 36 at page 24 is on point and is completely accurate.

11. In my view there is no merit in the Second Appeal. It is rejected. There will be no order as to costs.

G. S. PATEL, J