

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 641 OF 2017**

Mr. Freddy Fernandes,
80 years of age,
Son of late C. A. Fernandes,
R/o 872/37, Faridabad,
Capital Region,
Haryana.

..... Petitioner.

Versus

Mrs. Sheila Dhody,
Major of age,
r/o H. No. 217,
Casa Brittona,
Bardez – Goa.

..... Respondent.

Mr. Ashwin D. Bhobe, Advocate for the Petitioner.

Mr. Shivan Desai, Advocate for Respondent.

Coram:- C. V. BHADANG, J.

Date:- 11th December, 2017.

Oral Order:

On 22/7/2017, a notice for final disposal was issued in this case.

I have accordingly heard the learned counsel for the parties and the petition is being disposed off finally.

2. The challenge in this petition under Article 227 of the Constitution of India is to the Order dated 24/4/2017 passed below Exhibit

D-30 whereby an application filed by the petitioner/plaintiff under Order XV -A of the Code of Civil Procedure, 1908 (Code, for short) has been dismissed.

3. The brief facts are that the petitioner has filed a suit against the respondent for declaration, Eviction, Damages and Consequential reliefs. The case made out in the plaint is that the subject premises were given on licence to the respondent vide Deed of Licence/Instrument of Licence dated 29/8/2007 on an agreed licence fee, of Rs.6000/- per month for the first three years and thereafter for Rs.6900/- per month. The petitioner has inter alia sought for damages and a direction to the respondent to pay compensation for illegal user of the said house/property from 10/9/2008 till delivery of possession.

4. The defence of the respondent is that, the respondent had agreed to purchase the suit property and the licence agreement was executed to ensure the eviction of the mundkar from the property.

5. The learned trial Court has dismissed the application Exhibit D-30 inter alia on the ground that the licence has already been terminated and as such, there is no subsisting agreement between the parties. It is further found

that the subject matter of the agreement is not in existence, as according to the petitioner, the heritage house which was standing in the property was demolished and a new house has been constructed by the respondent. Thus in the opinion of the trial court, the only remedy for the petitioner is to seek compensation which is already claimed.

6. On hearing the learned counsel for the parties, I do not find that the impugned order can be sustained. The termination of the licence has no bearing on the applicability of Order XV -A of C.P.C. Admittedly the respondent is in possession of the property. At this stage there is an instrument of licence which shows that for the initial three years, the agreed licence fee was Rs.6000/- per month and Rs.6900/- for the subsequent period.

7. The learned counsel for the respondent submitted that unless and until the suit is for arrears of rent or licence fee and mesne profits, a direction under Order XV -A of C.P.C. cannot be issued. The learned counsel for the petitioner has disputed this aspect. In any event this issue will have to be gone into at the trial of the suit.

8. In my considered view the contention cannot be accepted. Apart from Order XV -A, the Court can direct such deposit/payment even in the

exercise of inherent powers u/s 151 of the Code, as has been held by this Court way back in **Sangeeta Prints Vs. Hemal Prints & Others 1986 (2) Bom. C. R. 519** and in a recent decision of this Court in the case of **M/s. Dazzler Confectionery Co. Pvt. Ltd. Vs. M/s. Sat Kabir Logistic Pvt. Ltd. W.P. No. 363 of 2017** decided on 10/10/2017. It is not the case of the respondent that the licence fee has not been paid subsequent to 1/9/2007. Considering the overall circumstances, I find that the petitioner is entitled to an order directing the respondent to pay the arrears of licence fees as claimed.

9. The learned counsel for the respondent points out that as per Clause 3 of the Lease Agreement, the respondent has paid an amount of Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) to Mrs. Alison D'Silva who was the caretaker and that amount was to be treated as the deposit. In such circumstances, I find that it would be appropriate to direct the respondent to deposit the arrears excluding the amount of Rs.2,50,000/-, as above. In the circumstances, the following order is passed:

Order:

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The respondent is directed to deposit arrears of licence fee at the rate of Rs.6000/- per month from 1/9/2007 till 31/8/2010 and at the rate of Rs.6900/-

per month from 1/9/2010 till date, after excluding the amount of Rs.2,50,000/-.

(iv) The arrears shall be deposited within a period of eight weeks from today.

(v) The respondent shall continue to deposit an amount of Rs.6,900/- per month for the subsequent period on or before 5th day of each English calendar month, pending disposal of the suit.

(vi) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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