

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 43 OF 2017**

Smt. Sitabai Rama Kamat Ghanekar, Age 87 years, widow of Rama B. Kamat Ghanekar, Resident of 2nd Floor, "Ashirwad Building", 18th June Road, St. Inez, Panaji, Goa, represented by her duly Constituted Attorney, Shobha Jayant Kamat Tarkar, wife of Jayant Padmanabh Kamat Tarkar, Age 62 years, resident of A-006, House of Lords, Miramar, Panaji, Goa.

.... Petitioner

Versus

Shri Prabhakar Dattatraya Bhide, Major, businessman, resident of House No. 236, Khornwada, Ribandar, Ilhas, Goa.

.... Respondent

Shri S. Lotlikar, Senior Advocate with Ms. Aditi Naik, Advocate for the Petitioner.

Shri Gaurish Agni with Shri Eeshan Usapkar, Advocates for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 21st MARCH, 2017

ORAL JUDGMENT:

Rule made returnable forthwith. The learned Counsel for the respondent, waives service. Heard finally by consent of parties.

2. The petitioner/plaintiff is challenging the order dated 21.06.2016, passed by the learned Trial Court, by which an application under Order XII, Rule 6 of the Code of Civil Procedure, 1908 (CPC, for short), seeking a decree on admission, has been dismissed.

3. The learned Trial Court has considered the decision of the Hon'ble Supreme Court in the case of **Payal Vision Ltd. Vs. Radhika Choudhary, 2012(11) SCC 405** and particularly, in the context of Clause 13 of the agreement has found that the license was terminable at the option of the licensee/defendant. It is also found that disputed questions of facts are involved, on account of which the application filed by the petitioner was dismissed.

4. I have heard Shri Lotlikar, the learned Senior Counsel for the petitioner and Shri Agni, the learned Counsel for the respondent.

5. On behalf of the petitioner, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **M/s Park Street Properties (Pvt) Ltd. Vs. Dipak Kumar Singh &**

Another, 2016 ALL SCR 2080, in order to submit that in the absence of a registered document, the tenancy would be deemed to be from month to month, the termination of which is governed by Section 106 of the Transfer of Property Act. It is submitted that a clause in the agreement, of the nature of Clause 13, cannot be read to mean that the lessor cannot terminate the license by taking recourse to Section 106 of the Transfer of Property Act. It is next submitted that Clause No. 13 can operate during the subsistence of the agreement and not after it expires.

6. It is not in dispute that the judgment in the case of **M/s Park Street Properties (Pvt) Ltd.** (supra), was not brought to the notice of the Trial Court. In such circumstances, I find that it would be appropriate that the learned Trial Court reconsiders the application in accordance with law.

7. The learned Counsel for the respondent, on instructions, in all fairness, states that this Court may pass appropriate order in the matter.

8. In the result, the following order is passed:

ORDER

- (a) The petition is partly allowed.
- (b) The impugned order dated 21.06.2016, is hereby set aside.
- (c) The application (Exhibit-D/18) filed by the petitioner, under Order XII, Rule 6 of CPC, is remitted back to the Trial Court for deciding it afresh in accordance with law.
- (d) The learned Trial Court shall decide the application as expeditiously as possible and preferably within a period of three months from the date of the receipt of the order.
- (e) Rival contentions of the parties are left open.
- (f) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.