

IN THE HIGH Court OF BOMBAY AT GOA.
APPEAL FROM ORDER NO. 58 OF 2016.

Shri Rajaram M. Caisukar,
37 years of age,
son of late Mohan R. Caisukar
r/o. H. No. 28-B-3,
Zambeche Bhatt, Karaswada,
Tivim I.E. Post Office,
bardez- Goa. 403 507.

..... Appellant

V/s.

1 St. Joseph Chapel,
Ansabhat, Mapusa Goa,
Represented herein by
its President of the Managing Committee
Mr. Agnelo Braganza,
Having office at Ansabhat,
Mapusa- Goa.

2 Senior Town Planner,
Town & Country Planning Department,
Mapusa, Bardez – Goa.

3 State of Goa,
Through Chief Secretary,
Secretariat, Alto Porvorim,
Bardez-Goa.

..... Respondents.

Shri A.D. Bhobe, Advocate for the Appellant.

Shri V. Menezes, Advocate for the respondent no.1.

CORAM : NUTAN D.SARDESSAI, J.

RESERVED ON : 17th July,2018

PRONOUNCED ON : 23rd July,2018

JUDGMENT:

Heard.

2. Admit.

3. Shri V. Menezes, learned Advocate waives service on behalf of the respondent no.1.

4. This is the plaintiff's appeal challenging the order dated 24/11/2015 passed by the learned Adhoc District Judge, Panaji pursuant to which she had dismissed his application for temporary injunction with costs arising in a suit filed for the relief of permanent injunction and declaration. Shri A.D. Bhobe, learned Advocate for the appellant contended that the respondent no.1 was the owner of the property bearing chalta No.124 of P.T. Sheet No.137 City Survey of Mapusa with distinct boundaries and being "the suit property" for brevity's sake. The suit property was an open/vacant space of land and by a Deed of Lease dated 15/12/1974 executed by the respondent no.1 with his late father, a portion of the suit property was demised in favour of his late father on lease basis for the purpose of keeping the handcart. The said Deed of Lease was neither terminated nor expired by efflux of time. In the year 1982 with the consent of the respondent no.1, his late father continued his business in the name and style of "Mohan Auto Garage" being "the said garage" for brevity's sake.

5. The plaintiff was carrying out the repairs of the electrical parts of the motor vehicles and /or electrical components

of motor vehicles for which the motor vehicles were required to be brought in the suit property. He was in occupation of 381 sq.mts. of the land in respect of which initially the rent was ₹40/- per month in 1974, later on increased to ₹50/- per month and thereafter increased from time to time to ₹75/- per month to ₹100/- per month , then ₹150/- per month, thereafter ₹300/- per month and ultimately ₹1,000/- per month. He had the necessary license to run the establishment. The respondent no.1 started making demands for exorbitant rent from the plaintiff in 2011 but he relented to avoid any controversy. The demand for enhanced rent was apparently a ruse adopted to pressurize the plaintiff to execute an agreement with intention to deprive the statutory rights.

6. The respondents also did not accept the rent which were sent by him. Besides, he had learnt that the respondent no.1 had applied for a license to construct a compound wall around the suit property and which was only to seek his eviction from the suit plot. The plea in defence was that he had no right in the suit property and that his right was restricted only to the area of the handcart in his possession. It was also their case that there was no basis in his case of the lease of the entire plot. The plaintiff had rent receipts to substantiate his case apart from the

photographs to show that the open space was used by him. The Trial Court by the impugned order had misconstrued his case and therefore it was a fit case to set aside the order. Moreover the respondent no.1 had during the pendency of the appeal altered the status quo of the property by constructing the compound wall around the suit property despite the notice to them on 10/09/2016 that an application for injunction was being circulated before the learned Judge on 16/09/2016. The respondent no.1 had still gone ahead and carried out the construction around the suit plot thereby altering the status quo during the pendency and hence the plaintiff was entitled to a temporary mandatory injunction for a demolition of the compound wall which was erected during the pendency of the appeal and despite the notice of the urgent circulation of the application for injunction.

7. Shri A. D. Bhole, learned Advocate for the appellant contended without prejudice that even assuming at the highest that no mandatory injunction could be granted, the construction was still contrary to the license which showed that three metres access was to be kept to the gate unlike the respondent no.1 having kept an opening of barely 1.5 metres. The appellant / plaintiff was entitled to an access to the suit plot apart from the vehicles and customers. The construction plan of the respondent

no.1 showed the provision of gate of the width of 3 metres while the actual width of the gate was barely 1.2 to 1.5 metres and his garage was within the compound wall. The respondent no.1 had also not initiated any eviction proceedings. The respondent no.1 had altered the status quo during the pendency of the appeal and therefore considering the constraints of time, it was not open to the respondent no.1 to contend that the plaint was not amended. He was therefore entitled to the reliefs as prayed for in the appeal.

8. Shri V. Menezes, learned Advocate for the respondent no.1 contended at the outset that the nomenclature was not relevant but the intention of the said "Deed of Lease" was relevant. The plaintiff had not identified the land which was granted to his late father in terms of clause (1) of the Deed. A reading of clause (2) clearly revealed that the handcart was mobile i.e. it was taken in and out of the property and therefore the plea on the plaintiff's behalf of a lease of the suit property was amply belied. He also adverted to the other clauses of the Deed and submitted that in any event the Rent Control Act did not apply to the open space. He relied in **Mohd. Mehtab Khan and others v/s. Khushnuma Ibrahim Khan and other** [2013 (9) SCC 221] and raised a point whether the plaintiff could still press for the relief of mandatory injunction without amending the pleadings. It was his further

contention that even assuming a different view was possible, it was not reason enough to interfere with the findings of the Trial Court by applying the principle in **Wander Ltd. And another v/s. Antox India Pvt. Ltd.** [1990 (Supp) SCC 727]. He further referred to the judgment in **Dorab Cawasji Warden V/s. Coomi Sorab Warden** [1990(2) SCC 117] to show that the relief of mandatory injunction at the interlocutory stage was not available and **Mrs. M. N. Clubwala and another v/s. Sida Hussain Saheb** [AIR 1965 SC 610] in the matter of distinction between a lease and a license. The impugned judgment did not justify any interference and therefore there was no reason to interfere with the order under challenge. This is besides the fact that the appellant was not at all entitled to the mandatory injunction at the interlocutory stage and in an appeal without there being any pleadings or amendment in the plaint.

9. Shri A.D. Bhole, learned Counsel for the appellant in reply adverted to the pleadings in the plaint and submitted that the entire open space was used by the plaintiff which would meet the case of the respondent no.1 that no area was spelt out which was in occupation of the plaintiff under the said Deed. There were bare denial in the Written statement which did not tantamount to a denial of the plaintiff's case. There was also no

iota of pleadings on the license. The plaintiff had amply pleaded his right of prescription to the suit plot. The impugned order was perverse, capricious and not in consonance with the terms of the Deed. He relied in **Goa Industrial Development Corporation v/s. M/s. Sadhana Builders Pvt. Ltd.** [Appeal from Order No.5 and 25 of 2014] and lastly concluded his arguments by invoking Section 151 of C.P.C. to buttress his contention that the Court in exercise of its inherent powers could prevent an abuse of the process of the court by the defendant by securing the plaintiff with an appropriate relief, even though no amendment was carried out till date.

10. The plaintiff had carved a case that by the Deed of Lease dated 15/12/1974 executed by his late father with the respondent no.1, a portion of the property was demised unto his late father on lease basis for the purpose of keeping the handcart. Pursuant to the said Lease Deed, he was required to pay a rental of ₹40/- per month and the Lease Deed was initially for 12 months which would automatically stand renewed for equal periods. It was incumbent on the lessee i.e. his late father not to transfer and sub-lease a part of the whole of the suit property. The other term was that he was not permitted to use the space or any part thereof other than that which was leased. Admittedly, the Lease

Deed was not terminated by the respondent no.1 even when the plaintiff went to Court seeking the relief as claimed in the suit. It was otherwise also not the case of the respondent no.1 that the lease had expired by efflux of time. It was further the plaintiff's case that on account of the equipment, the material and the machinery required for the purpose of repairs of wiring, armature, winding of autos and the other electrical repairs of motor vehicles, his late father with the consent of the respondent no.1 had erected a gada and continued his business in the name and style of "Mohan Auto Garage" and for which motor vehicles were also brought in the suit property for repairs thereby occupying the entire open space of the suit property in front of the said garage for the purpose of parking of the vehicles. On that basis the plaintiff carved a case that his late father was in exclusive and continuous possession of the open space in the suit property.

11. The respondent no.1 had categorically denied the right of the plaintiff to the suit property and that the Lease Deed was restricted only to the movable handcart and by virtue of the Lease, the late father of the plaintiff was permitted to have the handcart parked during the working hours and which had to be removed after working hours and no right of permanent fixture was created by virtue of the said Lease Deed. The respondent

barely denied the plaintiff's case that the suit property was used for parking the vehicles and alleged that these pleadings were made to use up the suit property. There was no specific denial of the plea of the plaintiff that his father was in exclusive, open and continuous possession of the suit property. If at all the case of the respondent is to be accepted that the plaintiff's late father was permitted only to keep his handcart in the suit property, it does not account for a revision of rent periodically and to the extent of ₹1,000/- per month which has not been denied by the respondents. Besides, contrary to the contention of Shri Menezes, learned Advocate for the respondent no.1, the appellant / plaintiff had produced the rent receipts issued by the respondent no.1 over a period of time amply substantiating his case that there was a Lease Agreement between them and not a mere license in respect of the use of the premises and showing steady increase in the rent over a period of time.

12. The learned Trial Court on a reading and consideration of the terms of the Lease Deed had drawn an inference that the Lease Deed prohibited the late father of the plaintiff to use the open land of the suit property. A reading of clause 6 of the Lease Deed indicates that the lessee i.e. the late father of the plaintiff was strictly forbidden to use his space or any part thereof or

permit any other party to use the occupied space for a purpose other than that for which it was leased. The learned Trial Court had totally misconstrued the clause of the Lease Deed to infer that the late father of the plaintiff was prevented from using the open land of the suit property and/ or what was allowed to be used was only the portion of suit property to keep the handcart to run his business. The learned Trial Court erred in its conclusion that the rent receipts produced on record pertained only to the rent for the handcart and not for the open land despite the fact that there was a steady increase in the rent over a period of time and it could not be conceived that the plaintiff would carry out the repairs of the electrical parts of motor vehicles and /or electrical components of motor vehicles without the vehicles being brought to the suit plot.

13. Moreover, the Trial Court also failed to take into account the conduct of the respondent no.1 who had procured the license to erect the wall to the suit plot which tantamounted to a forcible ouster of the plaintiff from the suit plot and yet concluded that no prima facie case was made out by the plaintiff. The Trial Court was clearly in error to hold that the plaintiff would not suffer any irreparable loss or injury if the relief or injunction was not granted in his favour and ultimately to withhold the relief of

injunction.

14. It is a matter of record that the respondent no.1 obtained a license to erect a compound wall around the suit plot and had kept an opening for the gate which was barely 1.5 mts. in width contrary to that provided in the plan of the width of 3mts. The malafides of the respondent no.1 to carry out the construction of the compound wall around their property is writ large inasmuch as despite the notice to the respondent no.1 of the urgent circulation of the matter before this Court, the construction of the compound wall was hastily carried out even to the extent of closing the access by erecting a gate of the width of barely 1.5 mts. The appellant alleged that by erecting the compound wall the respondent no.1 were attempting to prevent the appellant from conducting his business from the suit garage. Moreover, it was also not disputed that the handcart of the appellant was within the suit property of which the gate was closed by the respondent no.1 after erecting the compound wall around the suit plot.

15. The conduct of the respondent no.1 has been far from equitable and in the entire process their action smacks of malafides to seek the ouster of the appellant from the suit plot.

The contention on behalf of the respondent no.1 that the appellant / plaintiff had not carried out the necessary amendment in their pleadings and yet sought the relief of mandatory injunction howsoever appealing cannot negate the rights which accrued in favour of the appellant during the pendency of the appeal. The respondent no.1 had virtually taken the law in their hands and under the garb of the construction license had enveloped the entire suit plot within the compound wall as to virtually oust the plaintiff from accessing even the handcart which is within the suit plot. The plaintiffs had clearly spelt out in their rejoinder that due to time constraint it was not possible to incorporate the illegal acts committed by the respondent no.1. The respondent no.1 raised the plea of fait accompli to frustrate the application of the appellant.

16. In **Goa Industrial Development Corporation** (supra), the learned Single Judge of this Court while dealing with the Appeal from Order observed that it was expected of the officials of the defendant no.1 to at least inform the learned Judge before embarking into a situation to change the status quo as existing as on the date of the filing of the suit, during the pendency of the hearing of the temporary injunction application, taking advantage that the interim injunction was in operation for a

limited period. This conduct of the defendant no.1 in putting up such construction cannot be condoned. The Apex Court has clearly held that the Court can grant mandatory injunction to bring the situation as on the date of the filing of the suit. In the present case, as on such date the access was very much open and available to the plaintiff.

17. In **Wander Limited** (supra), the Hon'ble Apex Court held that there was no reason for this Court to interfere with the impugned order unless it was shown that it was fraught with illegality, perversity and/or arbitrariness. Merely because a different view was possible, there was no reason to interfere with the impugned order.

18. **Mohd. Mehtab Khan** (supra), was an appeal challenging the order of the High Court which granted the interim relief which was earlier denied by the Trial Court in a suit filed under Section 6 of the Specific Relief Act, 1963 and claiming a direction to be put back in possession of the suit property at the behest of the plaintiff. The Apex Court held that where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory

injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, did not indicate that the view taken was not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case called for a different conclusion. Such an exercise was not the correct parameter for the exercise of jurisdiction while hearing an appeal against a discretionary order. While it was not said that the Appellate Court was wrong in its conclusion what was sought to be emphasized was that as long as the view of the Trial Court was a possible view, the Appellate Court should not have interfered with the same following the virtually settled principles of law as laid down by this Court in **Wander Ltd. v. Antox India (P) Ltd.** [1990 Supp SCC 727].

19. In **Mohd. Mehtab Khan** (supra), the Apex Court observed at paragraph 18 that the interim relief granted to the plaintiffs by the Appellate Bench of the High Court in the present case was a mandatory direction to handover possession to the plaintiffs. Grant of mandatory interim relief requires the highest degree of satisfaction of the Court; much higher than a case

involving the grant of prohibitory injunction. It is, indeed, a rare power, the governing principles whereof would hardly require a reiteration inasmuch as the same have been evolved by this Court in **Dorab Cawasji Warden vs. Coomi Sorab Warden and Others**[(1990) 2 SCC 117]. It quoted paragraphs 16 and 17 of the judgment in **Dorab Cawasji Warden** (supra):

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. (2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one

seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

and observed at paragraph 20 as below:

“20. In a situation where the learned Trial Court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a

discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the view of the Trial Court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in *Wander Ltd. vs. Antox India (P) Ltd.*”

20. In **Park Street Properties** (supra), the owner of the suit premises, a Company, had let out the suit premises to the appellant, with the right to sublet the same. The appellant head lessee sub-let the suit premises for running franchise or business dealing with McDonald's family restaurant and in pursuance of the same, a sub-tenancy of the suit premises was created in favour of the respondents on the basis of an unregistered agreement dated 07/08/2008 at a rent and on terms and conditions agreed therein. In terms of Clause 6 of the sub-tenancy agreement, the landlord was entitled to terminate the tenancy in case there was a breach of the terms of the agreement or in case of non-payment of rent for three consecutive months and the tenants failed to remedy the same within a period of thirty days of the receipt of the notice. The sub-tenancy commenced from 01/08/2006. On 30/10/2008, the appellant sub-lessor /head lessee issued a notice under Section 106 of the Transfer of Property Act terminating the monthly sub-

tenancy of the respondents in respect of the tenanted premises upon the expiry of 15 days from the date of receipt of the said notice and filed suit for recovery of khas possession of mesne profits of the suit premises on their failure to vacate the premises.

21. In **Park Street Properties** (supra), the respondents contested the suit contending that by necessary implication the parties had agreed to not terminate the lease of the premises before 30 years and for that reason, a clause was incorporated for enhancement of monthly rent @15% after the expiry of every 3 years. The respondents further urged that the appellant had permitted them to invest a substantial sum of money for further repairs and renovation of the tenanted premises suitably for their business. Thus, the appellant sub-lessor/head lessee, by its declaration, acts and omissions had intentionally caused and permitted the respondents to believe that they will not terminate the sub-lease of the respondents in respect of the tenanted premises before the expiry of the franchise agreement for running the McDonald's family restaurant from the tenanted premises. It was therefore urged by the respondents that the notice of termination of lease was bad and not in accordance with law.

22. In **Park Street Properties** (supra), the Trial Court

took a view that when the unregistered memorandum of sub-lease agreement was inadmissible in evidence, none of its terms could be admitted in evidence for the purpose of proving an important clause i.e. Clause 6, contained therein. It held that reliance on Clause 6 of the memorandum of agreement dated 07/08/2006 cannot be termed as using the document for a collateral purpose, inasmuch as proving and/or reliance on Clause 6 is an important term of the agreement which cannot be proved by admission of an unregistered lease deed into evidence. The High Court in appeal allowed the appeal which was set aside by the Apex Court restoring that of the Trial Court upholding the termination of the lease. This judgment with respect is clearly distinguishable in the facts of the present case. Although the appellant's father had entered into a tenancy agreement with the respondents in 1974, it was continued till more than 4 decades later and even at the time when the parties went to trial, the respondents had not terminated the agreement although a plea was taken at their instance that what was leased to the appellant's father was only a portion to place the handcart/kiosk to enable him to carry out the repairs of the motor vehicles and no part of the land was leased out in his favour. The Agreement though unregistered makes interesting reading and to which i would allude a short while later while discussing the merits of the case.

22. In **Mrs. M.N. Clubwala** (supra), the Hon'ble Apex Court held that although the license is revocable at the will of the grantor the provision in the license that the licensee would be entitled to a notice before being required to vacate is not inconsistent with a license. The mere necessity of giving a notice to the licensee requiring him to vacate the licensed premises would not indicate that the transaction was a lease. Whether an agreement creates between the parties the relationship of landlord and tenant or merely that of licensor and licensee, the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all the relevant provisions in the agreement. In the absence, however, of a formal document the intention of the parties must be inferred from the circumstances and conduct of the parties. Similarly where the terms of the document are not clear the surrounding circumstances and the conduct of the parties have to be borne in mind for ascertaining the real relationship between the parties. The fact that the premises are in exclusive possession of a person would not make him a lessee. If, however, exclusive possession to which a person is entitled under an agreement with a landlord is coupled with an interest in the property, the agreement would be construed not as a mere license but as a lease. This judgment would assumes significance to appreciate the contention of Shri

A.D. Bhobe, learned Advocate for the appellant and Shri V. Menezes, learned Advocate for the respondent No.1 qua the construction of the agreement and whether it was a lease or a mere license as per their rival contentions.

23. The document styled as a Deed of Lease indicates in clear terms that the respondent No.1 through its Managing Committee had entered into the Lease Deed with the father of the appellant pursuant to which he was authorised to take on lease a small portion of the land just to keep a handcart in front of their property and on payment of rent of ₹40/- per month. The terms of the lease provided for its automatic renewal for an equal period in the future and in the event the lessee did not desire to renew the deed he would have to give 30 days notice to the lessors before its expiry and give peaceful possession of the **occupied land** in their favour. The deed also provided for the occupied space being exclusively let for repairs of wiring and armatures, winding of auto etc. and to a condition that he should not change the nature of his business for which the occupied space or land is let for without prior sanction of the lessor. He was otherwise strictly forbidden to use the space or any part thereof or permit any other party to use the said occupied space for the purpose other than for which it was leased.

24. This deed dated 15/12/1974 has continued over a period of time since the last more than 4 decades with regular revision in the rents from time to time and the last escalation being ₹1000/- per month. Looking to the tenor of the document, it would be apparent that what was intended by the respondent No.1 was a lease and not a license of a portion of the property belonging to them in favour of the late father of the appellant. The continuance of such an arrangement under the said document would therefore constitute a lease pursuant to which right was granted in the father of the appellant no doubt qua a portion of the property to keep his handcart in front of their property. The continuance of such an arrangement for more than 4 decades would militate against the case of the respondent No.1 that it was a mere license and/or that it stood revoked on the demise of the appellant's father. The acquiescence of the respondent No.1 to such an arrangement does not support the contention of Shri Menezes, learned Advocate for the respondent No.1 that the document was not that of lease, that it was a license, not heritable and expired with the licensee and as otherwise he does not explain why it continued for more than 4 decades with periodic revision in rent payable to the respondent No.1.

25. Moreover, as per the said document, the father of the

appellant was permitted to carry out the repairs of wiring and armatures, winding of auto etc. and which by implication would require the appellant's father and later the appellant to bring the vehicle in the property and carry out such work. A reading of the said document does not in any manner buttress the contention of Shri Menezes, learned Advocate for the respondent No.1 that the appellant was permitted to bring in the handcart and use it during the day time for his business and to take it out of the property after sunset in the absence of any clause to that effect in the Deed of Lease. Furthermore, the theory of lease is all the more fortified from the rent receipts issued by the respondent No.1 in favour of the father of the appellant and subsequently in favour of the appellant from time to time. At the same time it cannot be heard on behalf of the appellant that he was entitled to the entire open space in front of the property of the respondent No.1 or rather in front of the handcart for his business purpose which would be completely in derogation of the rights of the respondent No.1 to enjoy their property. To that extent there is force in the contention of Shri Menezes, learned Advocate for the respondent No.1 that it is not available to the appellant to contend that the respondent No.1 has no right to be in possession of the suit property otherwise being its owner.

26. Nonetheless, the respondent No.1 is not entitled to alter the status quo which existed at the time of the suit and particularly when the appeal was mentioned for circulation before this Court taking advantage of the holidays in between so as to envelop the entire property within a compound wall and keep the appellant out even to the extent of the usage of his handcart for his stated business. To that extent the contention of Shri Menezes, learned Advocate for the respondent No.1 that the appellant is not entitled to the relief of mandatory injunction is misplaced when there was no rebuttal of the fact that the appellant had amended the pleadings to seek the relief of such a nature and which amendment would relate back to the date of the suit. Hence, considering the judgments relied upon and the equities in the case and more particularly that the respondent No.1 had changed the status pending the hearing of the appeal, the impugned order warrants an interference in appeal having come to a conclusion that the discretion exercised by the Trial Court was arbitrary, capricious and perverse even on the touchstone of the principles laid down in **Wander Limited** (supra) justifying interference in appeal. Considering the changed status of the suit property during the pendency of this Appeal from Order, a further direction is required and therefore i pass the following:

ORDER

1. The Appeal from Order is allowed and the impugned order dismissing the application for temporary injunction is quashed and set aside.
2. The respondent No.1 is directed to keep an opening of the width of 3 mts to permit the appellant to take one vehicle inside the suit property for carrying out the repair work under the Lease Deed and which he shall bring out at the end of the day. It is made clear that the appellant shall not have right to the remaining portion of the suit property except that in front of the handcart used by him for carrying out his works.
3. In these terms, the appeal stands disposed off.

NUTAN D. SARDESSAI,J.

mv

Learned Advocate for the respondent no.1 seeks stay of thirty days of the order passed by this Court since the appellant was never secured by any order of injunction during the proceedings before the Trial Court.

2. Shri A.D. Bhobe, learned Advocate for the appellant objects to the grant of stay as prejudice would be caused to him.

3. Considering the contention of Shri Menezes, learned Advocate for the respondent no.1 stay of the order passed by this Court is granted for thirty days. The Trial Court is directed to expedite the suit which is pending before the Fast Track Court, Panaji and to dispose off the same by 31/03/2019.

NUTAN D. SARDESSAI,J.

NH