

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 474 OF 2018**

Josinho Alfonso,
s/o late Luis C. Alfonso,
aged 70 years,
R/O Flat B No.G-2, Ground floor,
Akshadeep Co-op. Housing Society,
“B” Building, Fatorda,
Margao, Goa.

... Petitioner

V e r s u s

Vidhya Ganpati Prabhu,
W/o Ganpati Vasant Prabhu,
aged 57 years, occupation, service,
R/O 662/B, Prabhu Niketan,
Behind Police Quarters,
Chicalim, Goa – 403 711.

..... Respondent.

Shri J. A. Lobo, Advocate for the Petitioner.

Shri A. Nachinolkar, Advocate for the Respondent.

CORAM: C. V. BHADANG, J.

DATE: 9th August, 2018.

ORAL ORDER:

The petitioner, who is the original defendant in Regular Civil Suit No.338/2016/G before the learned Junior Civil Judge at Margao is challenging the order dated 23/2/2018 below application (Exhibit D-21). By the impugned order, the learned trial court has dismissed the application for amendment of the written statement filed by the petitioner.

2. The respondent/plaintiff has filed the aforesaid suit for eviction, possession and for recovery of arrears of licence fees from the petitioner. The case made out in the plaint is that the suit premises were given to the petitioner on a licence.

3. The petitioner filed written statement on 6/2/2017. The petitioner filed an application (Exhibit D-32) for amendment of the written statement in the following terms :

(a) In para 2 of the written statement on line 4, before commencement of sentence and before the word **“Plaintiff”** ADD **“It is denied being false that”**.

(b) In para 2 of the written statement on line 10, before commencement of sentence and before the words **“It was”** ADD **“It is denied being false that”**

(c) In para 3 of the written statement on line 5, before commencement of sentence and before the word **“Defendant”** ADD **“It is denied being false that”**

(d) In para 5 of the Written statement on line 4 before commencement of sentence and before the word **“Defendant”** ADD **“It is denied being false that”**.

4. The respondent opposed the application inter alia on the ground that by the proposed amendment the petitioner is seeking to withdraw the admissions, which is not permissible.

5. The learned trial court by the impugned order has found that by the proposed amendment the petitioner wants to withdraw or “deny”, the admissions already made, which cannot be allowed and has dismissed the application.

6. I have heard Shri Lobo, the learned counsel for the petitioner and Shri Nachinolkar, the learned counsel for the respondent. Perused record.

7. It is submitted by Shri Lobo, the learned counsel for the petitioner that it was only on account of inadvertence that the words “**It is denied**” remained to be incorporated in paras 2, 3 and 5 of the written statement. It is submitted that this cannot be a case where the petitioner is trying to withdraw the admissions. It is submitted that the court can always permit errors arising of an accidental slip or omissions, to be corrected.

8. Shri Nachinolkar, the learned counsel for the respondents has supported the impugned order. It is submitted that reading of the written statement as a whole would clearly indicate that there was an admission about the petitioner occupying the suit premises on a licence. It is pointed out that the case made out by the respondent is that there was an oral lease and

on the contrary, it is the case of the petitioner in para 21 of the written statement that he is occupying the suit premises as a tenant. Admittedly there is no written document either of lease or licence and therefore the averments already made in the written statement, assume significance.

9. I have carefully considered the rival circumstances and the submissions made.

10. It would be necessary to reproduce paras 2, 3, and 5 of the written statement, which read thus:

2. The contents of para 2 are denied, as the same are false and misleading. It is denied that the defendant had approached the plaintiff with a request to allow him to reside in the said flat, as he desperately needed a place to reside. Plaintiff had even agreed to give her said flat to the defendant purely on licence basis for a period of eleven months. It is denied that the plaintiff and the defendant had agreed that in lieu of occupying her said flat defendant shall be liable to pay to her a sum of Rs.3200/- (Rupees Three thousand two hundred only), as licence fees per month and society's charges of Rs.500/- p.m. It was also expressly agreed that in the event defendant continues to reside even after expiry of eleven months then the defendants shall be liable to pay 5% increase at every renewal on the then prevailing licence fees.

3. The contents of para 3 are denied, as the same are false

and misleading. It is denied that the defendant who was undertaking mining contracts and mining related business accepted the terms and conditions put forth by the plaintiff and started residing in the said flat since February, 2002 along with his family members. Defendant has been very regular and punctual in paying the licence fees every month in cash to the plaintiff. It is denied that he also used to pay sum of Rs.500/- p.m. to the plaintiff towards society charges.

5. The contents of para 5 are denied, as the same are false and misleading. It is denied that the defendant continued to pay the licence fees and society's charges to the plaintiff regularly up to the month of February 2011. Defendant had for last time paid the licence fees of Rs.7,546/- per month for the month of February 2011 besides the society's charges. However, the plaintiff have never issued rent receipts to the defendants and the defendants have never demanded the rent receipts from the plaintiff in writing, as the relation between the plaintiff and the defendant was so cordial, as that of family.

(Emphasis supplied)

11. At this stage it is not possible to accept that there was inadvertence at two places in para 2 and at one place each in paras 3 and 5 (highlighted portion) failure to incorporate the words "It is denied". Prima facie it appears that the petitioner also claims in para 5 that he had for the last time paid the licence fee of Rs.7546/- per month for the month of February 2017 besides the society charges. It would also be significant to note para 6 of the written

statement, as under:

6. The contents of para 6 are denied, as the same are false and misleading. It is denied that the defendants stopped payment of licence fee from the month of March 2011 onwards so also did not even pay society's charges. It is denied that since April 2011, plaintiff has been requesting the defendants to pay the licence fees and Society's charges. It is also denied that the defendant has been promising the plaintiff that he will pay the entire arrears at one stretch. Plaintiff at the request of defendant again renewed the licence for another 11 months that is from 1st April 2011 to February 2012 as the defendant informed the plaintiff that he is facing financial crises because of collapse of mining business and that he has to receive substantial money from the market.”

(Emphasis supplied)

12. Thus at this stage it is not possible to accept that it is a case of inadvertence. In that view of the matter, I do not find that any case for interference is made out in this case. However, reserving liberty to the petitioner to challenge the impugned order, in an appeal challenging the final decree passed in the suit, in the event it is adverse to the petitioner, the petition is dismissed.

C. V. BHADANG, J.

Ap/