

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.17 OF 2021**

Mr Amin Shaikh,
43 years of age, married,
businessman, Indian National,
and residing at H. No.4/67A,
Mollem Bhat, Saliegao,
Bardez, Goa – 403511.

..... Petitioner

V e r s u s

1. Mr. Neeraj Gupta,
44 years of age, married,
in business, residing at
H.No.785, Shantam, Alto
Betim, Bardez, Goa-403521.
Bardez, Goa – 403521.

2. Mr Shobit Gupta,
44 years of age, married,
in business, residing at
H. No.785, Shantam,
Alto Betim,
Bardez, Goa – 403521.

..... Respondents.

Mr. Santosh Bharne, Advocate for the Petitioner.
Mr. Y. V. Nadkarni, Advocate for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.

DATE: 25th January 2021.

Pronounced on: 2nd February, 2021.

ORDER:

The petitioner is the lessee, and the respondents are the lessors. Both parties entered into an agreement of lease on 1st June 2015. As the lease was for five years, it had to end by 31st May 2020.

2. On 31st July 2019, however, the respondents terminated the lease on the grounds of non-payment of rent. They required the petitioner to vacate the building. In that context, on 14th August 2019, the petitioner filed

Regular Civil Suit No.208/2019/A before the Civil Judge, Senior Division, at Mapusa. The suit contained the following reliefs:

a) For a Decree/Order declaring that the termination of the lease by the defendant no.1 in the manner done in the notice of termination dated 31/7/2019 is contrary to the covenants, terms and conditions of the deed of lease dated 30/5/2015 and as null and void.

b) For a Decree/Order of permanent injunction restraining the defendants, ... interfering with the Bar & Restaurant business carried out by the plaintiff in the demised premises or from disturbing the peaceful possession of the plaintiff in the enjoyment of the demised premises or dispossessing the plaintiff from the demised premises, *for the entire reminder tenure of the lease ending 31/5/2020, without following due process of law.*

c) That pending the hearing and final disposal of the above suit for an order of temporary injunction restraining the defendants ... dispossessing the plaintiff from the demised premises, *for the entire reminder tenure of the lease ending 31/5/2020, without following due process of law.*

d) For ad interim ex parte relief in terms of prayer (c) above.

e) For such other and further relief's as the circumstances of the case may require.

(italics supplied)

3. On 16th August 2019, the trial Court ordered *status quo*, and it has still been in force.

4. As we have already noticed, the lease had to expire on 31st May 2020. And it did. Before the lease had expired, the petitioner pleaded in the suit that his possession should not be disturbed until the lease expired. After 31st May 2020, once the lease had expired, the respondents issued a notice to the petitioner on 17th June 2020, asking him to vacate the premises. Then, on 26th June 2020, the petitioner replied. In that reply, the petitioner has pleaded, what he terms, 'subsequent events' and insisted that the respondents owed him Rs.15.00 lakhs. And until they repaid the amount, the petitioner must be allowed to continue in possession, 'as has been orally agreed'.

5. Later, the petitioner has filed two amendment applications to incorporate, as part of the pleadings in the suit, certain aspects: (a) the respondents' notice to quit on the expiry of the lease; (b) the petitioner's

entitlement to continue in possession until the petitioners have repaid the amounts. Besides that, through the second application, the petitioner wanted to amend the interlocutory application, too. The trial court has substantially allowed both the applications.

6. That said, the trial Court reckoned that the petitioner should not be allowed to delete his specific assertion that he should continue until the lease had expired. The trial Court felt it would amount to allowing the petitioner to withdraw an admission.

Two Orders but One Writ Petition:

7. Though the petitioner has filed one writ petition, that concerns two distinct orders in two applications. The orders in those applications may have been rendered through a device known as 'common order', but, for all practical purposes, the common order contains two orders conveniently rendered compendiously. So, I reckon there ought to be two separate petitions of challenge, even under Article 227 of the Constitution of India. Faced with this technicality, the petitioner's counsel wanted to proceed with the first amendment application and further wanted to file a fresh writ petition concerning the second one: the amendment to the interlocutory application.

8. Now, I will focus on the submissions advanced by the respective learned counsel for the parties on both sides.

Submissions:

Petitioner:

9. Shri Bharne, the learned counsel for the petitioner, has submitted that the petitioner has pleaded only the subsequent events. And whatever happened earlier stands pleaded in the original plaint. Now the amendment, he adds, is only an elaboration of those pleas taken in the plaint, besides pleading the later events. According to him, the later developments subsume whatever has been pleaded in the original plaint. If the petitioner's initial assertion, under the then existing circumstances, about his right to continue in possession until the lease expired is allowed to remain on record, it will

lead to incongruity. Plainly put, the petitioner's right to continue in possession until he recovered the amount he had spent has nothing to do with the expiry of the lease; they are two distinct issues.

10. To elaborate, Shri Bharne has submitted that the trial court has allowed the petitioner to plead that he is entitled to continue in possession until the respondents have paid back Rs.15.00 lakhs either by adjusting as the rent or by the way repaying. Then, the petitioner's contrary contention, as initially pleaded, must be deleted: that he should be allowed to continue in possession until the expiry of the lease.

11. Shri Bharne has also submitted that once pleadings allow a particular relief to be sought, the trial Court should not look into the feasibility or correctness of that relief. On the contrary, it should allow full scope for the pleadings on either side and decide the matter on the merits. Shri Bharne has relied on (i) Rajesh Kumar Aggarwal and others Vs to support his contentions. K. K. Modi and ors , (2006) 4 SCC 385; (ii) M/s. M. Laxmi & Co. v. Dr. Anant R. Deshpande and anr. AIR 1973 SC 171.

Respondents:

12. In response, Shri Nadkarni, the learned counsel for the respondents, has submitted that the trial Court has taken a balanced view and allowed the petitioner to amend the plaint to the extent it does not contradict the petitioner's earlier assertions. In this context, he has pointed out that the lease agreement, which is a written instrument, has mandated that the petitioner should vacate once the lease expires. True, the petitioner has pleaded certain later developments and insisted on an oral agreement about the petitioner's continuing in possession beyond the lease period. But the alleged oral understanding already stands denied. Besides, that parole evidence cannot sustain itself in the face of documentary evidence: lease deed.

13. Shri Nadkarni, in the alternative, has submitted that if at all there remains a dispute about whether the respondents should repay Rs.15.00 lakhs to the petitioner, it is unconnected with the lease. Yet, without

prejudice, the respondents are willing to deposit the amount before the trial court. As the lease has already expired, the trial Court may, independently, rule on whether the petitioner is entitled to that amount. According to him, under the guise of the alleged repayment, the petitioner cannot be permitted to take undue advantage and squat over the property even after the expiry of the lease. The petitioner's vacating the building, and the repayment of the amount unconnected with the lease cannot go together.

13. In the end, Shri Nadkarni has also submitted that it is the petitioner's singular case that when the lease had been subsisting, it was cancelled for a fallacious reason and, therefore, the petitioner should be continued in possession until the leave expired.

14. He has to my mind fairly submitted that it is for the trial Court to weigh the counter assertions whether the petitioner is entitled to injunction despite the expiry of the lease, because of whatever has not been brought on record through the amendment or whether the original contract of the lease remains unaffected. Despite, the allegedly subsequent amendment, therefore, he has submitted that the trial court order is unexceptional and needs no interference. Shri Nadkarni has also pointed out that as the doctrine of relation back applies to the pleadings, when they have been amended, if at all the trial Court has allowed the petitioner's prayer to delete certain assertions, then that would have amounted to as if the petitioner had never taken that plea and that would wipe out an admission, which is impermissible.

Reply:

15. In response, Shri Bharne, the learned counsel for the petitioner has submitted that once an amendment is affected, based on subsequent events, the amendment does not relate back.

16. Heard Shri Bharne, the learned counsel for the petitioner and Shri Nadkarni, the learned counsel for the respondents.

Discussion:

Admitted Facts:

17. The petitioner is the lessee, and the respondents are the lessors. The deed of lease, signed on 1st June 2015, should hold good for the next five years: 31st May 2020. But ten months in advance, the lessors terminated the lease. In August 2014, the petitioner sued the respondents. The petitioner wanted the trial Court to ensure that he was not dispossessed when the lease was in force; that is, until 31st May 2020. Before that time, the dispossession should take place only through “due process of law”. In fact, the respondents terminated the lease on the grounds of the petitioner not paying the rent. The petitioner secured interim protection from the trial Court.

18. If we keep aside the termination of lease, pending the suit, the leased period ended by efflux of time. After 31st May 2020, the respondents put the petitioner on notice; they wanted him to vacate the building because, even by his own assertion, the leased ended. The petitioner replied. In that reply he pleaded a few things, which he claims to be later developments.

19. Most of what he pleaded relates to events that took place before the petitioner filed the suit. In sum, those events concern the respondents' desire to get into the restaurant business. Given the petitioner's experience with two restaurants under his management, they wanted him to help them—even to be part of their proposed venture. So the petitioner identified a suitable building and spent money on it to make it ready as a bar and restaurant. Of course, it is the first respondent who secured the lease on his name from the new building owner. Though the first respondent incurred “all the major expenses towards fittings, fixtures and furniture”, the plaintiff “from time to time incurred out of pocket expenditure of Rs.15,00,000/-”. The petitioner ran the first respondent's bar and restaurant, too, from March 2018 to June 2018, when the first respondent told him that he would like to retain for himself the new establishment. Willy-nilly, the petitioner agreed.

20. When the petitioner had asked about the money he had spent, the first respondent told the petitioner that “he would reimburse the amount”.

So the plaintiff moved out of the new business. Then, it was orally agreed that the amount the petitioner had spent would be adjusted in the rentals. In fact, barring the exchanges of notices, all these developments took place before the petitioner had filed the suit.

21. Nevertheless, the trial Court, as I have noted above, substantially allowed the amendment application. In that process, it has observed that “the plaintiff’s principal contention in the suit was premature termination of the lease deed by defendants by notice dated 31.7.2019”. It has also noted that “the plaintiff has admitted that he is entitled to hold possession over suit premises till 31.5.2020”. According to it, now “the plaintiff by proposed amendment want[s] to withdraw the admission”.

22. In the above context, the trial Court has concluded that if it allows the plaintiff to delete his particular plea—“for the entire remainder tenure of the lease ending 31.5.2020”—the effect is that the plaintiff gains the advantage of withdrawing an admission. And it will also change the nature of the suit.

23. To reconcile the trial Court’s view and the petitioner’s assertions, I may hold that the petitioner did plead that he should be allowed to possess the property until a particular point of time. Then, he has also pleaded about certain developments. He called them ‘subsequent developments’. It is for the trial Court to decide, at an appropriate stage whether all that the petitioner pleaded reflects the later development or only a part of it. Until then, it is safe to keep both the pleas open: those that have been introduced through amendment and those that have been originally pleaded. This dichotomy has become necessary because in the face of ‘no objection’ from the respondents, the trial Court has substantially allowed the amendment, save a sliver of it.

24. So, I dispose of the writ petition with these observations:

- (1) The impugned order, dated 4.12.2020, suffers from no legal infirmity. So, it calls for no legal interference.
- (2) That said, the order needs clarification.

- (3) The duration of the lease and the petitioner's right to possession beyond the lease period because of some other supervening event are two different things.
- (4) One does not contradict the other; they both can co-exist.
- (5) It is for the trial Court to examine whether the alleged 'oral agreement' about the petitioner's continued possession until the amount repaid is a 'subsequent event. And it is so, whether it affects the suit originally filed.
- (6) It is also for the trial Court to examine whether it can permit the respondents to deposit the disputed amount so that it can delink the possession issue and rule independently on the issue of repayment.
- (7) The parties are free to plead and press for appropriate relief in the light of the above clarifications.

DAMA SESHADRI NAIDU, J.

AP/-

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by MARIA AURA
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