

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3440 OF 2020

M/s. Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha, Nagpur through its President, Uday S/o Deoraoji Tekade, Aged about 53 years,
C/o Purva Vidhrabha Mahila Parishad, House No.176, Ward No.72, At North Ambazari Road, Sitabuldi,
Nagpur – 440 010

.. Petitioner

Versus

Purva Vidarbha Mahila Parishad through its President, House No.176, Ward No.72, At North Ambazari Road, Sitabuldi,
Nagpur – 440 010

.. Respondent

WRIT PETITION NO. 3635 OF 2020

Vaishnavi Sai Shri Mahalaxmi Jagdamba shikshan Sanstha, Nagpur through its President, Uday Deoraoji Tekade, House No.176, ward No.72, at North Ambazari Road, Sitabuldi, Nagpur – 440010

.. Petitioner

Versus

Purva Vidarbha Mahila Parishad through its President Neelima Shukla, Nagpur House no.176, ward No.72, at North Ambazari Road, Sitabuldi,
Nagpur – 440010

.. Respondent

Mr. R. L. Khapre, Senior Advocate along with Mr. D. R. Khapre, Advocate for petitioner.

Mr. A. C. Dharmadhikari, Advocate for respondent.

CORAM : **MANISH PITALE, J.**

RESERVED ON : **02/07/2021**

PRONOUNCED ON : **22/07/2021**

JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) **Rule.** Rule returnable forthwith. Heard finally with the consent of the learned counsel for the rival parties.

(3) These two writ petitions have been filed by the original plaintiff. By Writ Petition No.3440 of 2020, the petitioner has challenged concurrent orders passed by the Small Causes Court and the District Court, rejecting prayer for grant of temporary injunction during pendency of the suit. Writ Petition No.3635 of 2020 has been

filed by the petitioner challenging an order rejecting an application for amendment of plaint. According to the petitioner, in the facts and circumstances of the present case, the amendment of the plaint deserves to be allowed and that an order of temporary injunction also needs to be passed in favour of the petitioner.

(4) On 31/12/2018, the petitioner filed the suit for declaration and permanent injunction against the respondent. The petitioner placed on record a leave and license agreement executed between the parties and by relying upon the same, prayed for a decree for restraining the respondent from demolishing the suit building and/or raising a new construction, apart from claiming that the respondent was not entitled to dispossess the petitioner. On the same day, the petitioner also moved an application for grant of temporary injunction, seeking an order to restrain the respondent from demolishing the building in question during the pendency of the suit. The petitioner stated that since it was running a college in the said building, wherein about 600 students were pursuing various courses, a case for grant of temporary injunction was made out.

(5) On 16/01/2019, the respondent filed its written statement to the plaint, as well as reply to the application for grant of temporary injunction. The respondent stated that the Small Causes Court before whom the suit had been filed, had no jurisdiction in the matter, considering that the reliefs claimed were beyond the ambit of the leave and license agreement. On 14/11/2019, the petitioner moved an application for amendment of plaint, seeking to incorporate paragraph 6A to 6H in the plaint. By way of the proposed amendment, the petitioner sought to introduce relationship of landlord – tenant between the respondent and the petitioner.

(6) On 30/12/2019, the Small Causes Court rejected the application for amendment of plaint on the ground that allowing the amendment would amount to changing the very nature of the suit. Aggrieved by the said order, the petitioner filed Writ Petition No.3635 of 2020. On 23/07/2020, the Small Causes Court rejected the application for temporary injunction filed on behalf of the petitioner. The Court rendered finding to the effect that the petitioner had failed to make out prima facie case in its favour. The Court distinguished between a document of leave and licence from a lease agreement to

reach the said finding. Aggrieved by the said order, the petitioner filed an appeal before the District Court. By the judgment and order dated 09/09/2020, the Court of Adhoc District Judge – 2, Nagpur, dismissed the appeal, agreeing with the findings rendered by the Small Causes Court. The petitioner filed Writ Petition No.3440 of 2020 to challenge the said concurrent orders passed against it.

(7) This Court directed both the writ petitions to be heard together. On 22/12/2020, this Court issued notice in Writ Petition No.3635 of 2020, whereby the order of Small Causes Court rejecting the application for amendment was challenged. On the same day, this Court issued notice for final disposal in Writ Petition No.3440 of 2020. This Court recorded the contentions raised on behalf of the petitioner that even if the agreement in question was titled as a leave and license agreement, in substance it was a lease agreement. On this basis, this Court granted interim relief of status-quo, subject to the condition that the petitioner shall deposit amount of Rs.10,75,000/- [Rupees Ten Lakhs Seventy Five Thousand only] before the Small Causes Court as arrears of license fees, which the respondent was granted liberty to withdraw and further a condition was imposed that

during the pendency of the writ petition, the petitioner would continue to deposit license fee of Rs.43000/- per month before the 10th day of each month. Both the writ petitions were taken up for hearing after replies were filed by the Respondent.

(8) Mr. R. L. Khapre, learned Senior Counsel, appeared for the petitioner along with Mr. D. R. Khapre, Advocate. Learned Senior Counsel submitted that both the writ petitions deserved to be allowed, because the Small Causes Court, as well as the District Court had committed errors while holding in favour of the respondent on the question of temporary injunction and amendment of plaint. On the question of grant of temporary injunction, the learned Senior Counsel submitted that the three parameters for grant of temporary injunction i.e. strong prima facie case, balance of convenience and grave and irreparable loss, were satisfied by the petitioner in the facts and circumstances of the present case. It was submitted that the Small Causes Court, as well as the District Court erred in refusing temporary injunction, merely because the document in question was titled as leave and license agreement. It was submitted that the Courts below ought to have looked at the substance of the agreement and on a

proper appreciation of the document, it was evident that even prima facie it was a lease agreement.

(9) Much emphasis was placed on the assertion that the petitioner being a registered Society and an Educational Institution was in possession of the suit building since the year 2008. It was submitted that leave and license agreements of 11 months were executed between the parties and that the petitioner had been running a college in the said building wherein large number of students were pursuing various courses. It was submitted that the leave and license agreement for the period between 07/06/2018 to 06/05/2019, was also an agreement for a period of 11 months. By inviting attention to various clauses of the said agreement, it was claimed that the petitioner was in exclusive possession of the same, thereby indicating that the document was in substance a lease agreement. On this basis, it was submitted that the Courts below had committed a grave error in holding that the petitioner had failed to make out a prima facie case. By emphasizing that large number of students would be put to inconvenience, if the petitioner had to suddenly leave the building in question, it was submitted that balance of convenience was in favour

of the petitioner and that it would suffer grave and irreparable loss, if temporary injunction was not granted.

(10) The learned Senior Counsel placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Associated Hotels of India Ltd. vs. R. N. Kapoor¹, Corporation of Calicut vs. K.Sreenivasan², C. M. Beena and another vs. P N. Ramchandra Rao³, and Bharat Petroleum Corporation Limited (BPCL) vs. Chembur Service Station⁴.**

(11) On the question of amendment of plaint, the learned Senior Counsel for the petitioner submitted that the Courts below failed to appreciate the settled position of law that a plaintiff was entitled to raise inconsistent pleas and that therefore, the amendment application in the present case deserved to be allowed. It was submitted that a plaintiff could certainly raise pleas in the alternative, which appeared to be inconsistent with each other and that an amendment application seeking to raise inconsistent plea could not be rejected on that ground.

1 AIR 1959 SC 1262

2 (2002) 5 SCC 361

3 AIR 2004 SC 2103

4 (2011) 3 SCC 710

(12) The learned Senior Counsel also placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Firm Shriniwas Ram Kumar vs. Mahabir Prasad and ors.**⁵, **Panchdeo Narain Srivastava vs. Km.Jyoti Sahay and another**⁶ **G. Nagamma and another vs. Siromanamma and another**⁷, **Praful Manohar Rele vs. Krishnabai Narayan Ghosalkar**⁸ and judgment of this Court in the case of **Mudra Salt and Chemical Industries vs. Collector, Thane and others.**⁹

(13) On the other hand, Mr. A. C. Dharmadhikari, learned counsel appearing for the respondent in both the writ petitions submitted that the Courts below had correctly held against the petitioner on the question of temporary injunction as well as the prayer for amendment of plaint. The learned counsel submitted that the distinction between leave and license agreement on the one hand and a lease agreement of the other was correctly appreciated by the Courts below, while holding that the petitioner had failed to make out a prima facie case. By inviting attention to the clauses of the agreement, it was submitted that the relationship between the

5 AIR 1951 SC 177

6 AIR 1983 SC 462

7 (1996) 2 SCC 25

8 (2014) 11 SCC 316

9 2001(3) Mh.L.J.151

petitioner and the respondent was clearly covered under Section 52 of the Indian Easements Act, 1882, which defines 'license', as opposed to Section 105 of the Transfer of Property Act (T. P. Act), which defines 'lease'.

(14) The learned counsel also relied upon the aforementioned judgments in **Associated Hotels of India Ltd. Vs R.N. Kapoor** (supra) and **C. M. Beena and another vs. P. N. Ramchandra Rao** (supra), wherein the Hon'ble Supreme Court had laid down and reiterated the test to determine as to whether a relationship could be said to be that of 'licensor-licensee' or 'lessor-lessee'. It was submitted that when a bare reading of the clauses of the agreement demonstrated that the petitioner was granted permission to use the building in question for a limited period of time on specific conditions, the possession of the building continued with the respondent, as the licensor and therefore, there was no substance in the contentions raised on behalf of the petitioner.

(15) The learned counsel for the respondent relied upon judgments of this Court in the case of **New Shivam Co-op. Hsg. Society**

Ltd. vs. Raj Publicity, Bandra (W)¹⁰ and **Maganlal Radia vs. State of Maharashtra**¹¹. On the question of amendment of plaint, the learned counsel for the respondent submitted that there could be no quarrel with the proposition laid down in the judgments upon which the learned senior counsel for the petitioner placed reliance, but in the present case, the petitioner by way of amendment was not seeking to raise an alternative and inconsistent plea. Instead, the petitioner was seeking to project a completely new case and to change the very nature of the suit, which was impermissible. It was submitted that once the petitioner had proceeded to seek relief on the basis of the leave and license agreement placed on record along with the plaint, it could not be permitted to take a somersault to claim that there was a landlord and tenant relationship between the parties. It was submitted that the application for amendment was itself mala-fide, for the reason that when the respondent demonstrated in its written statement, as far back as on 16/01/2019, that the suit filed by the petitioner was not maintainable before the Small Causes Court, as the reliefs sought were beyond the ambit of the leave and license agreement, the petitioner moved the application for amendment of plaint on 14/11/2019 to

¹⁰ 2019 (6) Bom CR 543

¹¹ 1971 Mh.L.J. 57

propose amendments that sought to change the very nature of the suit. According to the learned counsel for the respondent, the amendment was certainly not for assisting the Court in deciding the real question in controversy between the parties and an attempt was being made to change the very nature of the suit, thereby demonstrating that the Small Causes Court did not commit any error in rejecting the application for amendment.

(16) The learned counsel for the respondent placed reliance on judgments of the Hon'ble Supreme Court in the case of **Revajeetu Builders and Developers vs. Narayanswamy and sons and others**¹² and **Gautam Sarup vs. Leela Jetly and others**¹³.

(17) Having heard the learned counsel for the rival parties, this Court is called upon to decide two questions in these writ petitions, firstly as to whether the petitioner is entitled for an order of temporary injunction during pendency of the suit and secondly, whether the application for amendment of plaint ought to have been granted.

¹² (2009) 10 SCC 84

¹³ (2008) 7 SCC 85

(18) On the first question, it is necessary to first examine whether the petitioner (original plaintiff) has at all made out a prima facie case in its favour. In order to ascertain whether a strong prima facie case is made out by the petitioner, it is necessary to examine the material placed on record along with the plaint, particularly the document governing the relationship between the parties. In this case, the said document is the leave and license agreement dated 07/06/2018. But, before the said document can be analyzed for reaching prima facie finding on the question of relationship between the parties, it would be necessary to refer to the position of law in that regard.

(19) In the case of **Associated Hotels of India Ltd. Vs R.N. Kapoor** (supra), the Hon'ble supreme Court has held that there is a marked distinction between lease and license. It is noted that while 'lease' is defined in Section 105 of the T. P. Act, 'License' is defined in Section 52 of the Indian Easements Act. After observing that if a document gives only a right to use the property in a particular way on certain terms, while it remains in possession and control of the owner thereof, it will be a license and that the legal possession continues to

be that of the owner of the property, the Hon'ble Supreme Court has held as follows: -

“ The following propositions may, therefore, be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties – whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”

(20) In the case of **C. M. Beena and another vs. P. N. Ramchandra Rao** (supra), the Hon'ble Supreme Court has referred to the aforementioned judgment in the case of **Associated Hotels India Ltd. Vs R.N. Kapoor** (supra) and reiterated the aforesaid proposition. It has been further held in the said judgment as follows: -

“9. A few principles are well settled. User of the terms like 'lease' or 'licence', 'lessor' or 'licensor', 'rent' or 'licence fee' are not by themselves decisive of the nature of the right created by the document. An effort should be made to find out whether the deed confers a right to possess exclusively coupled with transfer of a right to enjoy the property or what has been parted with is merely a right to use the property while the possession is retained by the owner. The conduct of the parties before and after the creation of relationship is of relevance for finding out their intention.”

(21) While holding so, the Hon'ble Supreme Court has further laid down that merely because an agreement contains a clause that no tenancy is created, that by itself will not preclude the instrument from being a lease. In other words, the substance of the document is to be appreciated rather than its form.

(22) The said judgments were referred to and relied upon by the learned counsel for both the parties. The same principles have been reiterated in judgments on which the learned counsel for the petitioner has placed reliance i.e. **Corporation of Calicut vs. K.Shreenivasan**(supra) and **BPCL vs. Chemboor Service Station**(supra).

(23) Before considering the leave and license agreement, relevant to the present case for reaching prima facie findings regarding the relationship between the parties, it would be appropriate to refer to the definitions of the terms 'Lease' and 'License'. Lease is defined in Section 105 of the T. P. Act as follows: -

***"105. Lease defined** – A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such*

terms.

***Lessor, lessee, premium and rent defined.** - The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”*

(24) License is defined in Section 52 of the Indian Easements Act, 1882 which reads as follows: -

***“52. “License” defined.** - Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.”*

(25) In a recent judgment concerning the said terms, in the context of question of grant of injunction, in the case of **New Shivam Co-op. Hsg. Society Ltd. vs. Raj Publicity, Bandra (W)** (supra), this Court has referred to Section 63 of the Indian Easements Act and held as follows: -

***“50.** From the above statutory extract, it is clear that a licensee, on revocation of license, is entitled to a reasonable time to leave the property. It does not contemplate eviction by due process. And, in fact, that waiting period is the due process, so to speak. The reason for this proposition, even de hors the statutory support, is not far to seek: a license creates no interest in the property; the seisin remains with the owner. In other words, the licensee only may use the immovable property, with no actual*

transfer of the very property.”

(26) In this context, it would be appropriate to refer to Sections 63 and 64 of the Indian Easements Act, which reads as follows:

“Section 63. Licensee’s rights on revocation. - Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Section 64. Licensee’s rights on eviction. - Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.”

(27) Hence, it becomes clear that if the relationship between the parties is that of licensor or licensee, once the license is revoked, all that the licensee can claim is reasonable time to leave the property under Section 63 of the Indian Easements Act and if the licensee is evicted by the grantor before he has fully enjoyed the license, under Section 64 thereof, he is entitled to recover compensation. These aspects assume significance while considering the nature of relief that can be claimed by the petitioner in the present

case.

(28) A perusal of the agreement between the parties in the present case, would show that it is titled as a leave and license agreement for the period between 07/06/2018 and 06/05/2019. The respondent is referred to as the 'licensor' and the petitioner as the 'licensee'. It is stated that the petitioner approached the respondent for temporary use and occupation of built-up structure and that by the said agreement, the respondent allowed the use and occupation of the said structure to the petitioner for the aforesaid period. It was stated in the document that the petitioner as the licensee was required to pay a sum of Rs.43000/- per month to the respondent as the licensor. The agreement then stated in the relevant clauses as follows: -

"5. It is expressly understood and agreed that use and occupation of the said premises by the Licensee under this Agreement should be only for 11 months commencing from 07.06.2018 under the permission of Leave and License granted by the Licensor to the Licensee and Licensee shall have no right whatsoever in the said premises as a tenant. The possession of the premises Leave and License granted by the Licensor to the Licensee and Licensee shall have no right whatsoever in the said premises as a tenant. The possession of the premises shall be that of owner exclusively for ever.

6. The Leave and License hereby granted to the Licensee is

exclusively for the use and occupation by the Licensee for their bonafide, lawful academic purpose. Under the permission of the Leave and License of the Licensor, the Licensee shall have no right whatsoever to create any sub-licensee of adjustment in favour of any person.

XXXX

11. The Licensee hereby agrees to faithfully observe and perform all the terms and conditions of this Agreement, it being clearly understood that in the event of Licensee committing breach, infringement of any of the terms and conditions thereof, the Licensor shall have the right and shall be entitled to terminate this Agreement and revoke the Leave and License hereby granted even before the expiry of the stipulated period of this Agreement by giving a notice in advance and the Licensee shall immediately vacates the said premises on the date of expiry of notice and deliver up vacant and peaceful possession of the said premises along with fittings and fixtures in good and proper condition given earlier without prejudice to the Licensor's right to recover damages or compensation.

12. The licensee or licensor shall have the option of giving one month notice to terminate the agreement at any time before the expiry of the licence provided however, that if the license is not so terminated before the expiry or completion of the said _____, the licensee shall have further one option to renew the leave and license agreement for further period of 11 months on the same terms and conditions."

(29) Applying the test enunciated by the Hon'ble Supreme Court in the case of **Associated Hotels of India Ltd Vs R.N. Kapoor** (supra) and followed thereafter, in number of judgments of Hon'ble Supreme Court and this Court, it becomes clear that merely because the title of the agreement is 'leave and license agreement', it would not mean that the petitioner necessarily has to be treated even

prima facie as a 'licensee'. The substance of the agreement and the logical fall out of clauses of the said agreement need to be appreciated in the proper perspective to reach prima facie findings, upon which the Court can come to a conclusion as to whether the petitioner deserves to be granted temporary injunction, during pendency of the suit. If the petitioner fails to make out even a prima facie case to support its contention that the said agreement in substance is a lease agreement, the orders passed by the Courts below cannot be interfered with. A perusal of the said agreement, particularly, the above quoted clauses indicate that the petitioner was granted right to use the said building for a specific period between 07/06/2018 and 06/05/2019, and that the petitioner was to use the said building for the specific purpose of running an Educational Institution.

(30) Much emphasis was placed by the learned Senior Counsel for the petitioner on the word 'exclusively' used in above quoted clause (6) of the agreement, to claim that the petitioner was and continued to be in exclusive possession of the premises, thereby showing that in substance it was a lease agreement. But, reading clause (6) in its entirety, this Court finds that prima facie the petitioner

was granted exclusive use and occupation of the building in question for lawful academic purposes and that the relationship between the parties even prima facie comes out to be that of licensor and licensee. The lawful possession of the building in question, prima facie continued to be that of the respondent, with the petitioner only having a right to use the same on specific terms and conditions. The petitioner was fully aware about the terms and conditions, including the term that the leave and license could be revoked before the expiry of the stipulated period by giving an advance notice.

(31) In this context, the conduct of the parties also becomes the relevant. The documents on record show that on 28/11/2018, during the currency of the aforesaid leave and license agreement, the respondent sent a letter to the petitioner, as an advance notice to vacate the building by 31/12/2018, because the respondent intended to renovate the building from 01/01/2019. The response of the petitioner to the said letter assumes significance. On 19/12/2018, the Principal of the college being run in the building by the petitioner Trust, sent a letter to the respondent stating that since the academic session of the students undergoing education in the college was still

under way, extension of time to vacate may be granted to avoid academic loss to the students. This request without any demur or protest by the Principal of the college run by the petitioner is akin to asserting the right available to a licensee under Section 63 of the Indian Easements Act, once the license is revoked. On 28/12/2018, the Principal of the said college run by the petitioner trust in the building in question, again wrote to the respondent requesting for time till July, 2019 for vacating the building, looking to the loss that students may suffer.

(32) At this stage, without waiting for the response of the respondent to the said two requests for extension of time to vacate, immediately on 31/12/2018, the petitioner filed the aforesaid suit before the Small Causes Court. A perusal of the contents of the plaint would show that the petitioner specifically relied on the leave and license agreement and thereafter, made the following prayers before the Small Causes Court.

“12. Prayer : It is, therefore, most respectfully prayed that :

- 1. That, a decree for permanent injunction and perpetual injunction and Mandatory Injunction restraining the defendant*

from demolishing or raising any construction over the suit House No.176, Ward No.72, at North Ambazari Road, Sitabuldi, Nagpur – 440010 restraining the defendant from causing any construction over the suit land against the Municipal Corporation Act and Bye-Laws and Town and Country planning Act and rules and also directing the defendant to remove illegal and unauthorised construction over the suit land owned and possessed by the Defendant and also directing the demolition of the construction already raised on the set-back area of the suit land not owned by the defendant and also with the prayer to direct the defendant not to force the Plaintiff to evict from said premises, and

2. That, temporary injunction and perpetual injunction stay order be passed in favour of plaintiff and against the defendants with costs of the suit.

3. That, such other reliefs as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the plaintiff and against the defendants in the interest of justice.”

(33) In the application for temporary injunction, the petitioner made the following prayers: -

“Prayers :-

1. It is therefore, most respectfully prayed that the respondents be restrained from demolishing the building of the Plaintiff Institution or raising any new construction where 600 (approx) students are presently studying in the present academic session 2018-2019 in the interest of justice. Such other orders be also passed in favour of the applicant as deemed fit in facts and circumstances of the case.

2. That the defendant may be directed not to create third party interest or demolish the structure, new construction till the disposal of the main application/suit in the interest of justice.

3. That such other reliefs as deemed fit and proper in the interest

of justice.”

(34) The contents of the plaint and particularly, the nature of prayers made both in the plaint as well as the application for temporary injunction show that the petitioner not only specifically referred to and relied upon the leave and license agreement executed between the parties, but it clearly proceeded on the basis of the relationship apparent from the nature of the aforesaid document. The respondent filed its reply-cum-written statement on 16/01/2019, at the outset stating that the Small Causes Court had no jurisdiction to entertain the suit, for the reason that the reliefs sought were beyond the ambit of the leave and license agreement. About 11 months after the aforesaid written statement was filed, the petitioner moved the application for amendment before the Small Causes Court.

(35) It is in this backdrop, that the Small Causes Court passed the order dated 23/07/2020, rejecting the application for grant of temporary injunction. This Court has perused the aforesaid order of the Small Causes Court and it is found that the said Court correctly appreciated the contents of the aforesaid leave and license agreement placed on record and relied upon by the petitioner itself, to come to a

conclusion that relationship between the parties was prima facie that of licensor and licensee and once the license stood revoked, the nature of relief sought in the application for temporary injunction could not be granted.

(36) The Small Causes Court correctly found that when the petitioner failed to make out even a prima facie case in its favour, the aspects of irreparable loss paled into insignificance. A perusal of the judgment of and order dated 09/09/2020, passed by the Court of Adhoc District Judge – 2, Nagpur, also shows that the aspects necessary to be appreciated while deciding the question of temporary injunction, were correctly taken into consideration by the said Court while dismissing the appeal. The said Court referred to the definition of license under Section 52 of the Indian Easements Act and on the basis of the agreement placed on record, found that since the respondent continued to be in legal possession of the building, no case for grant of temporary injunction was made out.

(37) This Court has taken into consideration the said leave and license agreement between the parties and upon applying

the position of law manifested in the aforementioned judgments of the Hon'ble Supreme Court and this Court, it is found that no exception can be made to the concurrent findings rendered by the two Courts below, while rejecting the application for temporary injunction filed on behalf of the petitioner. Therefore, it is found that Writ Petition No.3440 of 2020 deserves to be dismissed.

(38) As regards the second question pertaining to amendment of plaint, it is found that the Small Causes Court in the impugned order dated 30/12/2019, found that allowing the amendment would result in changing the very nature of the suit. In this regard it needs to be examined as to whether the learned Senior Counsel appearing for the petitioner is justified and in contending that in the present case by way of the proposed amendment, the petitioner simply desired to add a plea that was inconsistent to what was stated in the plaint and that as per settled law the plaintiff could certainly raise such inconsistent pleas.

(39) This Court has perused the judgments relied upon by the learned Senior Counsel appearing for the petitioner in this

regard. The Hon'ble Supreme Court in the cases of **Firm Shrinivas Ram Kumar**(supra), **Panchdeo Naraian**(supra), **G. Nagamma** (supra) and in the case of **Praful Rele**,(supra) as also this Court in the case of **Mudra Salt & Chem.**(supra), have held that alternate and inconsistent pleas can certainly be permitted to be raised in a plaint, as long as the cause of action or relief were not materially affected. Yet, it is also laid down that even when inconsistent pleas are permissible, a party cannot be permitted to amend the pleading so as to deny the other side the benefit of an admission contained in the earlier pleading. There can be no quarrel with the propositions laid down in the aforementioned judgments on which the learned Senior Counsel for the petitioner has placed reliance.

(40) At the same time, it cannot be forgotten that under Order 6 Rule 17 of the Civil Procedure Code, an amendment is to be granted at any stage so long as such amendment is necessary for the purpose of determining the real questions in controversy between the parties. Once the petitioner in the present case has specifically placed on record and referred to and relied upon the leave and license agreement in the plaint, the real question in controversy is the true

purport of the said document. A perusal of the extensive amendment sought to be made in the plaint in the present case by addition of paragraphs 6A to 6H would show that the entire nature of the suit is sought to be changed by the petitioner. The proposed amendment cannot be said to be an attempt to place on record an alternative or inconsistent plea, but, a wholly contradictory and new case, seeking to resile from a categorical position taken in the original pleading. Such proposed amendment when compared with the original pleading can be said to be mutually destructive of each other.

(41) It is also relevant that the application for amendment of plaint was moved after about 11 months of the written statement filed on behalf of the respondent, wherein a categorical stand was taken by the respondent that the suit was not maintainable before the Small Causes Court. The proposed amendment was nothing but an attempt to resile from the original pleading and it could not be termed to be bona-fide. In this context, the learned counsel for the respondent is justified in relying upon the judgments of the Hon'ble Supreme Court in the case of **Revajeetu Builders and developers**(supra) and **Gautam Sarup** (supra).

(42) This Court is also of the opinion that allowing an amendment of the aforesaid nature claimed on behalf of the petitioner, would amount to changing the very nature of the suit. The petitioner must sink or sail with the leave and license agreement placed on record along with the plaint, on the basis of which, pleas have been raised in the plaint and the above quoted prayers have been claimed. Hence, this Court finds that there can be no error attributable to the Small Causes Court in rejecting the application for amendment filed on behalf of the petitioner. Consequently, Writ Petition No.3635 of 2020, also deserves to be dismissed.

(43) In view of the above, Writ Petition Nos.3440 of 2020 and 3635 of 2020 are dismissed. Rule is discharged. No costs. Needless to say, the observations of this Court while dismissing Writ Petition No. 3440 of 2020, are limited for the purpose of deciding the question of temporary injunction.

[MANISH PITALE J.]