

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 211 OF 2022

Nizam Shamshuddin Ladji & anr. ... Petitioners

Versus

Maharashtra V.K. S. Seva Society Ltd., Thr.
Chairperson, Neela @ Renuka Rajendra Desai ... Respondents

Mr. A. D. Bhobe, Advocate with *Ms. S. Shaikh, Advocate for the Petitioners.*

Mr. J. J. Mulgaonkar, Advocate for the Respondents.

CORAM: G. S. KULKARNI, J
DATED: 15th September 2022

P.C.

1. Heard learned Counsel for the parties.
2. This petition, assails an order dated 27.04.2022 passed by the learned District Judge-I at Mapusa, whereby the respondent's appeal against an order dated 05.06.2018, passed by the learned Trial Judge, dismissing an application for temporary injunction in the Civil Suit in question filed by the respondent has been partly allowed in the following terms :

"This appeal is partly allowed. Consequently, the impugned Order dismissing the application for temporary injunction is quashed and set aside and the defendants are directed to vacate the said shop within a period of one month from

today to enable the plaintiff to take possession of the same during pendency of the suit. The defendants are also directed to remove all their belongings, equipment, stock and material from the shop within a period of one month from today. The amount to be paid to the plaintiff by the defendants is to be decided on merits after trial is conducted."

3. The dispute between the parties had arisen under an agreement dated 01.01.2012, which was regarded by the respondent-plaintiff as a leave and licence agreement for a period between 01.02.2012 till 31.01.2015. It is the case of the respondent-plaintiff that the agreement had expired by efflux of time and as the petitioner was not vacating the premises despite the agreement having come to an end, the suit in question came to be filed. In the suit the respondent-plaintiff filed an application for temporary injunction. The learned trial Judge dismissed the temporary injunction application, against which the appeal in question was filed on which the impugned order as noted above has been passed.

4. When the proceedings were taken up for hearing today, considering the fact that the petitioner has continued to be in possession of the suit premises, the parties are agreeable to the course of action as pointed out by the respondent-plaintiff in the reply/affidavit filed in the present proceedings, which is to the effect that an amount of Rs.15,66,488/- being the licence fees up to 30.06.2022 is due and payable by the petitioner-defendant to the respondent-plaintiff. Mr. A. D. Bhobe, learned Counsel for the petitioners would contend that such amount as calculated by the respondent-plaintiff includes the penal rent of Rs.500/- per day

calculated considering that the petitioner is not vacating the premises. It is his contention that as per the agreement, compensation at the rate of Rs.11,000/- per month is payable, and going by such rate the amount of licence fees which would be payable is Rs.9,61,147/-. He submits that his clients will not have any objection to deposit the said amount before the Trial Court. It is also agreeable to the parties that the respondent-plaintiff would be permitted to withdraw the said amount being deposited by the petitioner-defendant without prejudice to his rights and contentions of the respondent-plaintiff in the pending suit. Also the deposit of such amount shall be subject to the rights and contentions of the petitioner.

5. Considering such arrangement as arrived between the parties to operate pending the suit, that compensation for user of the premises is being paid by the petitioner-defendant and the proceedings of the suit are at a stage that the issues are already framed, keeping open all contentions of the parties which are interalia, whether the intention of the parties was not to have a leave and licence agreement but to lease the premises, it would be appropriate to dispose of the present proceedings permitting such arrangement to continue till final disposal of the suit.

6. It is clarified that till the final disposal of the suit, the petitioners/defendant shall continue to be in occupation of the premises on the condition that the petitioners shall continue to deposit the licence fees at the rate of Rs.11,000/- per month as per the agreement, however, with a liberty to the respondent-plaintiff to make an application before the Trial Court for enhancement of the said licence fees if so desired, as it is the contention on behalf of the respondent-plaintiff that the petitioners would be liable to pay at the present commercial rate. Needless to observe that in the event the

petitioners–defendants default in the payment of the compensation the impugned order shall operate and the respondent –plaintiff shall be entitled to enforce the same in a manner known to law.

7. Keeping such contentions open and all contentions of the parties on merits of the suit the petition is disposed of in the above terms. No costs.

8. The amount of Rs.9,61,147/- to be deposited by the petitioners–defendants within six weeks from today. Subject to deposit of such amount, the interim protection of the respondent–plaintiff not taking any coercive action to seek possession of the premises, shall continue to operate.

G. S. KULKARNI, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2022.09.21 18:42:37 +05'30'