

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1110 OF 2020

M/s. Scarlet Agencies
Through POA Rajendra Anerao

...Petitioner

Versus

M/s. The Federal Bank Limited

...Respondent

Mr. Mayur Faria, for the Petitioner.

Ms. Ratna Bhargavan a/w Hetvi Mota i/b R. Bhargavan & Associates, for
the Respondent.

CORAM : MADHAV J. JAMDAR, J.

DATE : 21st July 2022

P.C. :

1. The Petitioner is original Plaintiff who has filed L. C. Suit No. 118 of 2017 in the Small Causes Court, Mumbai. The Petitioner is challenging order dated 18.09.2019 passed by learned Judge, Small Causes Court, Mumbai below Exh.20 in said Suit. The said application was filed by the Petitioner seeking amendment in the Plaint. By the said amendment the Petitioner wants to add prayer seeking that the Respondents be directed to vacate the suit premises.

2. Before considering the rival submissions, it is necessary to set

out contentions raised in the Plaint.

3. In the Plaint in paragraph 37, the Plaintiff has averred as follows:-

“37. The Plaintiff states that the Defendant has not only arbitrarily marked lien on the accounts of the Plaintiff by wrongfully deducting an amount towards advance rent deposit but also that the Defendant has not surrendered the said licensed property against their false claim of surrender. **The Defendant has not handed over quite, peaceful and vacant possession to the Plaintiff and have further modified** the licensed property of the Plaintiff without any due consent or authority and in furtherance in breach of terms and conditions of the said agreement. Hereto annexed and marked is the notice dated 15.11.2016. Hereto annexed and marked as Exhibit J is the said notice dated 15.11.2016.”

(Emphasis supplied)

4. In paragraph 42, the Plaintiff has stated about the cause of action as follows:

“42. **The Plaintiff states the Defendant falsely claims to vacant and/or surrender the said premises to the Plaintiff. The Plaintiff states that the Defendant has never given the keys of the said licensed property to the**

Plaintiff nor the Plaintiff has acknowledge any such surrender by the Defendant. Therefore, the Defendant be directed to pay the due compensation as agreed in the said agreement along with interest at the rate of 18% until the date of realization. Furthermore, be directed to pay future compensation regularly as agreed upon by the Defendant. Thus, the Defendant is in default of compensation since September 2016 and hence, the Defendant be directed to pay a principle compensation of Rs. 11,35,162/- alongwith interest accrued on it being an amount of Rs. 49,743/- until 31st March 2017 along with future interest at the rate of 18% per annum until the date of realization of payments.”

5. The Plaintiff has prayed inter alia following prayers:

“a) That the Hon’ble Court be pleased to order and decree the Defendant to pay to the Plaintiff a sum of Rs. 32, 69, 154/- in view of above and as per the particulars of claim as annexed hereto as Exhibit K along with the interest at the rate 18% per annum or at such other rate the Hon’ble Court be deem fit and proper from the date of Suit till the date of payment and /or realization and the cost of the Suit.

b) That the Hon’ble Court be please to direct, order, decree the Defendant to pay to the Plaintiff compensation as agreed under the agreement dated 07.02.1995 of Rs. 11,35,162/- alongwith interest accrued on it being an

amount of Rs. 49,743/- until 31st March 2017 alongside with future interest at the rate of 18% per annum until the date of realization of payments and **until the date of termination and peaceful and vacant surrender of the said licensed property.**

c) That the Hon'ble Court be please to direct, order, decree the Defendant to pay the Advance Rent Security Deposit of Rs. 348,900/- along with interest at the rate of 18% per annum till the date of realization of payment to the Plaintiff as agreed under the agreement dated 07.02.1995 **until the finality of the Leave and License is agreement determined and until peaceful and vacant surrender of the said licensed property."**

(Emphasis supplied)

6. The Plaintiff filed Application seeking amendment of the Plaint. By amendment the Plaintiff is seeking to add prayer clause (i), which is as follows:

“(i) That the Defendant, his servants, agents and representatives be ordered and decreed to vacate and handover to the Plaintiff quit and peaceful possession of the Suit property / premises at Mezzanine Floor, Shop No. 1A, 32, Bombay Samachar Marg, Rajabahadur Mansion, Fort, Mumbai-400023.”

7. The said amendment Application has been dismissed by the learned Judge, Small Causes Court, Mumbai by passing impugned order below Exh. 20 in L.C. Suit No. 118 of 2017, on the ground that the said suit was titled as L.C. Suit. The prayer in the plaint is in respect of recovery of money and not for recovery of immovable property. Learned Judge has observed that the Plaintiff wants to change the nature of the suit for recovery of money to recovery of immovable property, which is not permissible.

8. Mr. Faria, learned counsel appearing for the Petitioner submitted that the various averments made in the plaint clearly show that the Respondent is in possession of the property. He submits that, in fact the prayer clauses (b) and (c) contemplates that the suit is also for recovery of possession. He states that, the averments in the Plaint and the prayer clauses are to be read together and it is clear that the Suit is also for seeking possession. He states by the impugned amendment what is sought to be done is to clarify the averments and the prayer clauses.

9. On the other hand, Mrs. Ratna Bhargavan, learned counsel appearing for the Respondent submitted that the Suit is only for recovery of

money and not for recovery of possession and therefore, allowing such amendment will allow changing the nature of the Suit. She submits that, the possession is already handed over to the Petitioner in the year 2016 and therefore, such amendment Application is not tenable.

10. It is admitted position that issues are yet to be framed. I have perused the averments in the Plaint as well as prayer clauses although there is no clarity in the pleadings and the prayer clauses but it can be gathered from the various averments raised in the plaint and the Prayer Clauses that, it is the Petitioner's case that, the possession has not yet been handed over and therefore, he is seeking possession. In fact by the amendment what is sought to be done is to clearly state the prayers by removing the ambiguity.

11. The learned counsel appearing for the Respondent has emphasised on the aspect that the suit has been numbered as L.C. Suit. However numbering the suit as L. C. Suit is totally irrelevant as the same is administrative act on the part of the office of the Court. The fact that the Suit is titled as L.C Suit will not decide whether the suit is simplicitor for recovery of money or for recovery of money as well as for recovery of immovable property.

12. The averments in the plaint and the prayer clause (c) clearly shows that what is sought is both i.e. recovery of money as well as for the possession of the property. In any case, by amendment what is sought to be done is to clarify the same.

13. The reasoning given by the learned Judge in para 7 that the fact averred by the defendant in their reply, that it has vacated the suit premises on 29.10.2016 is not denied by the Plaintiff by filing rejoinder amounts to entering into the merits of the amendment. It is settled legal position that, Court while dealing with the amendment Application should not enter into the merits of the case.

14. In view of the above discussion, the impugned order passed below Exh. 20 in L.C. Suit No. 118 of 2017 by learned Judge, Small Cause Court, Mumbai is quashed and set aside. The said Application below Exh. 20 in L.C. Suit No. 118 of 2017 is allowed. Amendment to be carried out within a period of four weeks from today and the amended copy be served on the learned counsel appearing for the defendant within one week thereafter.

15. The Writ Petition is disposed in aforesaid terms with no order as to costs.

(MADHAV J. JAMDAR, J.)