



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

Writ Petition No.5520 of 2022

Kailash S/O. Motilalji Kakaraniya

Vs

Harishankar S/O Ratanlalji Agrawal And Others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.A. Mohta, Advocate for the Petitioner/s

Shri A.J. Gilda, Advocate for the respondent No.1

Shri V.G. Lohia, Advocate for the respondent Nos.2 and 3

CORAM : ANIL S. KILOR, J.

DATED : 18.10.2023

1. Heard.
2. The order below Exh.95 dated 27.06.2022 passed by the Jt. Civil Judge Senior Division, Achalpur, rejecting the application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure(CPC), is under challenge in this writ petition.
3. The petitioner/plaintiff filed the suit for possession, damages and mesne profit under following prayer:

“1) It is therefore, most humbly prayed that, a decree for delivery of vacant possession of the suit property may kindly be passed against the defendant.

2) A decree for damages for wrongful use and occupation and for notice charges to the extent of Rs.6,00,000/-(Rupees Six Lacs only) may kindly be passed against the defendant along with interest at the rate of 18 % per annum from the date of suit till actual realization of the amount.

3) *Enquiry into future mesne profits may kindly be held from the date of suit till actual delivery of possession of the suit property.*

4) *Any other relief, which this Hon'ble Court may deem fit and proper may kindly be granted in favour of the plaintiff and against the defendant."*

4. By way of amendment application, the plaintiff wants to amend the suit and thereby, add paragraph 7A, which reads thus:

"7A. The plaintiff submit that at the time of sale deed the defendant agreed that the defendant No.1 will vacate at the suit property within a period of six months however there after the defendant no.1 could not make alternate arrangement therefore, after period of six months when the plaintiff ask the defendant to vacate the suit property, the defendant no.1 requested the plaintiff that the defendant no.1 is in crisis and it will not be possible for the defendant to shift at other place and has given offer that the defendant will pay licence fee that is the occupation charges to the plaintiff at the rate of rupees 48000 per annum. That considering the relations, the plaintiff allowed the defendant No.1 to stay in the suit premises for further period. That therefore, the defendant No.1 had paid amount of rupees 48000 since from 1st of April 2002 to 31st of March 2005 every year as occupation charges. That, thereafter the defendant came in deep financial crisis, the defendant came to the plaintiff and requested that the defendant is not able to pay the occupation charges of rupees to the extent of 48,000 per month and requested for reducing the occupation charges to the extent of

36000 per year. That, considering the relations and the condition of the defendant no.1 the plaintiff accepted the offer of the defendant and therefore, the defendant had started paying occupation charges thereafter at the rate of rupees 36,000 per year. That thereafter in the month of January 2011 the plaintiff was in need of property therefore plaintiff orally terminated the licence i.e. permission and asked the defendant no.1 to deliver possession.”

5. From the prayer clause (2) of the suit, it is evident that the plaintiff is asking damages for wrongful use and occupation and for notice charges to the extent of six Lakhs. In the said backdrop, if it is the case of the petitioner that the defendants agreed to pay Rs.48,000/- per annum as occupation charges and subsequently, it was reduced to 36,000/- per annum, such pleadings ought to have been there in the pleadings at the first instance itself. However, no such pleadings were made and subsequently, after filling of the amendment application to the written statement, the plaintiff is trying to introduce some new story in relation to the occupation charges.

6. In the said backdrop, while rejecting the application for amendment, the learned trial Court has recorded the following observations:

“14. It is interesting to note that though, the plaintiff has prayed herein for incorporation of plea of license by filing the present application, the plaintiff has opposed the same plea of license raised by the defendant No.1 in his amendment application at Exh.87. Likewise, though defendant No.1 has

prayed for adding the pleas of a license, licensor and licensee relationship and bar of jurisdiction of the court at Exh.87, the plaintiff has opposed the same pleas raised by defendant No.1 at Exh.87. This is meant to say that though plaintiff and defendant No.1 are seeking similar amendments, they have opposed the applications of each other and prayed for rejecting each of their application. What should the court do in such circumstances. Nothing, but have to state that both the parties have filed their applications in causal manner neglecting towards their original pleadings.

15. *If the proposed amendment which is not material and necessary for the proper adjudication of the dispute between the parties, is allowed, it would represent entirely different case contrary to the relief originally based on the suit claims. A perusal of the sale-deed and the plaint clearly indicates that, defendant No.1 was kept in possession of the suit property only out of the humanitarian consideration. It does not tell any alternative plea. If that be so, how can plaintiff be allowed for alternative plea urged by him. Such plea cannot be allowed to be incorporated to withdraw the admission of defendants as to the payment of loan amount and to withdraw original pleas/reliefs of the plaintiff. The plaintiff has failed to show that the cause of action for new plea is also the same cause of action which is shown for original reliefs. Plaintiff has raised inconsistency and contradictory pleas. Since, the plea of loan set-up by the defendant No.1 and he was residing in the suit property only out of humanitarian ground, the proposed amendment sought would not be necessary for determination of the controversy between the parties. The issues framed at Exh.51 would show that, the plaintiff has claimed the damages*

and mesne profits for unlawful/wrongful possession. Therefore, a plea of license raised by way of proposed amendment would not be necessary to determine the controversy between the parties as per the issues framed by the court. Plaintiff has already denied amended written statement of defendant No.1 by filing the replication and thus it cannot be said the plaintiff is entitled to raise inconsistent or mutually destructive pleas by filing application. Hence, with due respect to ratio laid down in the aforesaid cited authorities and considering the aforesaid discussion, I inclined to reject the application.”

7. Thus, considering the reasons recorded by the learned trial Court and coupled with the above referred findings recorded by this Court, I am of the opinion that no perversity or illegality has been committed by the learned trial Court in rejecting the application for amendment.

8. In that view of the matter, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]