IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4590 OF 2016

Jani Estate Developers Pvt. Ltd. … Petitioner

V/s.

M/s. Latifs Cafetaria & Ors. … Respondents

WITH
WRIT PETITION NO.1571 OF 2019

M/s. Latif's Cafeteria Through Zoher Soyeb Latif and Ors. … Petitioners

V/s.

M/s. Latifs Cafetaria & Ors. … Respondents

Ms. Shirin Merchant, Advocate for the Petitioner in WP/4590 of 2016 & Respondent in WP/1571 of 2019.

Adv. Venkatesh Shastry for Petitioner in WP/1571/2019 & for Respondent in WP/4590 of 2016.

CORAM : RAJESH S. PATIL, J.

DATED : 27 FEBRUARY 2024

P.C.:

WRIT PETITION NO.4590 OF 2016

1. This Writ Petition is filed by the original landlord challenging the impugned Order dated 2 March 2016, passed by the District Court at Pune.

2. The Petitioner herein is the landlord being a company called

as Jani Estate Developers Private Limited who had filed a suit for eviction against the defendant in the year 1999, on the ground of "*bona fide requirement*", *'non user,'* and '*permanent 'additions and alterations'* under the Bombay Rent Act. The ground of "*bona fide requirement*" as sought in the 1999 suit is averred in Paragraph No.7(A). The said Paragraph No.7(A) read as under :-

> (A) "That the Plaintiff herein requires the suit premises reasonably and bona fide for it's own use and occupation. The Plaintiff is a Company, the Plaintiff is carrying on the business of developers, Promoters, Contractors and Builders. That the Plaintiff has no premises of its own in Pune nor does it possess any premises which could be used by it as a matter of right. The Managing Director of the Plaintiff Company namely Mr. Mushtaq Zakaria Arab has one small room admeasuring 10ft. X 12 ft. on the ground floor at No.4, General Thimayya Road, Pune 411 001 as a monthly tenant of Shri. Dara Bharucha. The said room is without any facility of an attached bathroom or a w.c. and the same is being presently shared temporarily with the Managing Director of the Plaintiff Company for the business of the Plaintiff. The Plaintiff for the business of the Plaintiff. The Plaintiff therefore, reasonably and bona fide require the suit premises for its own business. All transactions in estate developer's office are strictly private in nature and therefore, cannot be disclosed to others. The Plaintiff's business is suffering for want of privacy and for want of sufficient accommodation. The plaintiff can only accommodate the Director's chair and three other chairs are for the clients and there is no room for waiting. The Plaintiff is operating a small computer on the loft, which has a height of 6 ft. at the center and 4 ft. at the two sides which is insufficient. The Plaintiff submits that there is always a hanging sword of being evicted at the hands of the Landlord. The Plaintiff's therefore, desperately require the suit premises reasonably and bonafide for its own use and occupation for the purpose of its business. As against this, the Defendants have commercial premises at No.5, Napier Road, which they have let out to M/s. Vardhaman Associates for a huge rental income. Without prejudice to the contention of the Plaintiff that the Defendant No.2 is not a tenant, however, if Defendant No.2 claims the tenancy in the suit premises, it is submitted that the Defendant No.2 is running a snack bar under the name and style of Latif's Snack Bar in a portion of the suit property which is not a part of the suit premises nor is it the subject of the suit. However, the Defendant No.1 is not doing any business at all in

> the suit premises described in para No.1 above. It is clear that the Defendants do not require the suit premises and the Plaintiff does not have premises of its own in Pune for conducting its business activity and in view of the expansion of its business activity, the Plaintiff is unable to conduct its business in a small space of 10' X 12'. That the Plaintiff Company was formed in the year 1995 and the business has expanded. For the purpose of Plaintiff's business, which it is carrying on namely, the business of Developers, Promoters, Contractors and Builders, there is no place for the clients to sit, and there is no privacy whatsoever as clients get put off when others are within the hearing distance of the transactions being discussed. The Plaintiff therefore reasonably and bona fide require the suit premises for its own use and occupation for the purpose of its business. For the reasons stated hereinabove, no hardship would be caused to the Defendants if a decree of eviction is passed against them. However, greater hardship and irreparable loss will be caused to the Plaintiff if it is refused."

3. The said suit for eviction filed by the plaintiff / landlord was dismissed on all the grounds as pressed for eviction including the ground of "*bona fide requirement*", by judgment and decree dated 9 June 2006.

4. Being aggrieved by the dismissal of the suit the landlord filed an appeal before the District Court being Civil Appeal No.541 of 2006. While the said appeal was pending before the District Court various applications were filed for amendment of the plaint so also for the amendment of the Written Statement.

5. On 18 September 2015 the plaintiff through its director filed an application under Order 6, Rule 17 of Civil Procedure Code, thereby seeking to delete the original Paragraph No.7(A) of the plaint and inserting a new Paragraph No.7(A).

6. The New Paragraph No.7(A) as proposed to be added by the plaintiff read as under:-

> "7(A) The Plaintiff states that after the decision of the original Suit in the Trial Court on 9th June, 2006 and during the pendency of the Civil Appeal No.541/ 2016 the Plaintiff has entered into a contract on 30th June, 2014 of Limited Liability Partnership for carrying on the business of Restaurant at the premises being left wing on the ground floor in House No.2434, East Street, Pune -411 001 which is adjacent to the Suit premises. The Plaintiff states and submits that since January, 2014 there has been considerable slack and downward trend in Real Estate Business and also in view of various legislations, the activity in the said business is far too truncated, with the result the business of the Plaintiff company has also been the victim of such unforeseen circumstances. The Plaintiff had to look for an alternative avenue and sphere for its business. The Plaintiff states and submits that one of the objects covered by the Articles of Association of the Plaintiff Company is to run Restaurant Business. The Plaintiff states and submits that the premises of which the Plaintiff got the possession on 28th July, 2011 is situate on East Street Pune which is a commercial hub and where there are lot of Restaurants as well. Hence the Plaintiff Company decided to enter in that business and accordingly as stated earlier, the Plaintiff Company entered into Limited Liability Partnership Agreement for carrying on the said business. The said business is now run therein ever since then i.e, on and from 30th July, 2014. The Plaintiff states that the said business which is now flourishing stands now established after running the same for about one year and the Plaintiff now is in desperate need of an additional premises for the expansion of its said Restaurant business and also because the fact that the present premises are very much insufficient to accommodate large crowd of customers which come in to take the benefit of the foods and snacks being served therein. Thus the Plaintiff most reasonably and bonafide requires the possession of Suit premises for the before mentioned bonafide requirement. Plaintiff states that if the Decree for eviction is not passed then the hardship and inconvenience that is being caused for want of additional premises will continue. On the other hand no hardship will be caused to be Defendants if the Decree of eviction is passed."

7. The said application for amendment sought by the plaintiff was rejected by the Appellate Court by the judgment and decree dated 2 March 2016. The District Court held that the proposed amendment is according to its view an introduction of a new case and if it is allowed after a lapse of time, the rights accrued to the

defendant will be affected. So also there is no justification in seeking the proposed amendment as it will certainly change the nature of the original proceedings. The proposed amendment is in respect of change in the ground of "*bona fide requirement*" hence, the application was rejected.

8. It is today submitted before me, that even today such an amendment can be allowed because the "*bona fide requirement*" was always present even in the original proceedings in the year 1999. It is also submitted before me that if today a new suit is filed for eviction on the ground of "*bona fide requirement*" there will be a used delay and the new suit will be treated as suit of 2024 which will take further a long time to be disposed of. Therefore the amendment should have been allowed.

9. Mr. Shastry appearing for the original defendant submitted that the plaintiff cannot be allowed to amend the original plaint in the Appellate stage when the suit itself is dismissed. He submitted that the proposed amendment will change the whole nature of the disposed of suit.

10. I have carefully considered the submissions made by both the counsel and the pleadings on record. The plaintiff had specifically raised amongst other grounds a ground of "*bona fide requirement*" as pleaded by the plaintiff in the plaint in Paragraph No.7(A). An evidence to that effect was also lead by the plaintiff and the defendant had cross-examined the witness of the plaintiff. After the evidence of defendant was recorded the suit filed by the plaintiff on the ground of "*bona fide requirement*", non user and

'*permanent additions and alterations'* was dismissed in the year 2006. The plaintiff being dissatisfied, hence filed an appeal before the District Court. The said appeal was filed in the 2006 and after the appeal was filed it appears that the plaintiff on one or the other grounds kept on filing applications including an application for insertion of a new ground of 'Subletting'. It appears that thereafter the plaintiff landlord preferred one more application for deleting Paragraph No 7(A) from a disposed of a suit.

11. At this stage while the order is dictated Ms. Merchant appearing for the original plaintiff seeks liberty to withdraw the present Writ Petition.

12. Mr. Shastry opposed the request made by the petitioner. He submits that pending of the suit the petitioner had obtained a relief of stay to the hearing of the appeal therefore, Mr. Shastry submits that there should be a heavy cost, imposed on the petitioner / plaintiff.

12. Mr. Shastry submits that petitioner / plaintiff is a builder and developer therefore, there should be a heavy cost, of minimum of Rs.5,00,000/- to be paid to the original defendant.

13. Today when the matter was called out and was argued for sometime. I clearly indicated the advocate for the petitioner that I am not impressed by her arguments and I am much more inclined towards dismissing this Writ Petition. So also, I permitted her to withdraw the Petition. On which she submitted that she wanted to argue this matter.

Even-though after giving her liberty to withdraw this petition

petition the matter was argued for more than $1^{1/2}$ hours. Due to such conduct, Court's valuable time was wasted. Furthermore, it is not only about wasting Court's judicial time but so also they consumed the time of litigants who are patiently waiting to get justice. Therefore, in my opinion, there must be an order imposing cost against the petitioner and in favour of the Respondent. Hence, liberty as prayed by the petitioner for withdrawal of the Writ Petition is granted, subject to payment of cost of Rs.5,00,000/- to be paid within 4 weeks to the Respondent. If not paid in that time, the Respondent is entitled to put this Order into the execution against the petitioner for recovery of such cost.

14. Ms. Merchant seeks stay to the execution of this order. Mr. Shastry opposes the request. Request made by Ms. Merchant is declined.

15. This Writ Petition is accordingly disposed of.

(RAJESH S. PATIL, J.)