

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

WRIT PETITION NO.13291 OF 2024

1. Funds and Properties of the Parsi Punchayet, Bombay, who are vested with the properties of RN & NN Wadia Trust building for Parses having their Trust Office situated at Neville House, Ballard Estate, Mumbai 400 038.
2. Viraf Dinshaw Mehta
Age 44 years, occ: Service
3. Armaity Rustom Tirandaz
Age 73 yrs, occ: Social Service and Physiotherapist
4. Xerxes Vispi Dastur,
Age 51 years, Chartered Accountant
5. Anahita Yazdi Desai
age 59 years, occ: Social Worker and Community Activist
6. Hoshang Jal Bejon Jal
Age 66 yrs, occ: Retired IRS Officer
7. Maharukh Kobad Noble
Age 66 years, Occ: Social worker
8. Adil Jiji Malia,
Age 64 years, occ: Business Management Consultant

The Petitioner Nos. 2 to 8 are the present Trustees of Funds and Properties of the Parsi Punchayet, Bombay, who are vested with the

R.N. & N.N. Wadia Trust Buildings
of Parsees, having trust office situated
at Neville House, Ballard Estate,
Mumbai 400 038.

....Petitioners

V/S

1. Minoo Keki Mistry
Age: Not known Occ: Business
Garage No. 1, situated on Plot No. 7
Petit Compound, Behind Ness Baug,
Nana Chowk, Mumbai 400 007.
2. Heirs and Legal Representatives
of Late Mr. Darayus Cawas Balsara,
if any Flat No. 5, 2. K1 floor Keki Court
Cumballa Hill, Mumbai 400026
3. Shabbir Patanwala
Age and Occ: Not known
Shop No. 2 on Plot No. 7
Petit Compound, Behind Ness Baug
Nana Chowk, Mumbai 400007
4. A. G. Lokhandwala
Age and Occ: Not known
Claim to be partners doing business in
Shop No. 2 on Plot No. 7
Petit Compound, Behind Ness Baug
Nana Chowk, Mumbai 400007

....Respondents

Mr. Jamsheed Master with Mr. Agnel Carneiro and Mr. Smith John
i/b M/s. Mulla & Mulla & Cragie Blunt & Caroe *for the Petitioners.*

Mr. Mihir Nerurkar with Mr. Mihir Tambe i/b M/s. Bharucha &
Partners *for Respondent No.1.*

Mr. Kedar Purav, *for Respondent Nos.3 and 4.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 03 OCTOBER 2024.
PRONOUNCED ON : 09 OCTOBER 2024.

J U D G M E N T:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for final hearing and disposal.
2. Petitioners have filed this Petition challenging order dated 1 August 2024 passed by Appellate Bench of Small Causes Court allowing Revision Application No. 92 of 2024 and setting aside order dated 2 November 2023 passed by the learned Judge of the Small Causes Court. By order dated 2 November 2023, Small Causes Court had allowed application filed by Petitioners/Plaintiffs at Exhibit-18 for amendment of the Plaint. The Appellate Bench has however reversed Trial Court's Order and has dismissed the application for amendment of Plaint at Exhibit-18. Aggrieved by rejection of their application for amendment of the Plaint, Plaintiffs have filed the present Petition.
3. Plaintiff No.1 is a Public Charitable Trust and Plaintiff Nos.2 to 8 are its Trustees. Plot No.7 situated in D-Ward, bearing No. 3371 (6A), at Petit Compound, Behind Ness Baug, Nana Chowk, Mumbai -400 007 is the suit property. It is Plaintiffs' case that one Mr. Cawas Balsara was inducted as monthly tenant in respect of the suit plot, after whose death, his son Mr. Daravus Cawas Balsara became the tenant. That a temporary shed was put up by the tenant at the suit plot, which came to be assessed by the Municipal Corporation for levy of property taxes.

That the tenant Mr. Daravus Cawas Balsara passed away on 25 October 2016. Plaintiffs received a letter dated 22 March 2017 from Advocate of Defendant Nos. 3 and 4 claiming rights in respect of portion of the GI shed at the suit plot. Plaintiffs also received a separate letter from one Mr. Minoo Keki Mistry (Defendant No.2) claiming rights in respect of GI Shed, where he was allegedly conducting his business. Plaintiffs do not accept entitlement of Defendant Nos. 2 to 4 to occupy any portion of the suit plot accordingly Plaintiffs have instituted TE & R Suit No.182 of 2018 against "*Heirs and legal representative of Late Mr. Darayus Cawas Balsara*" (Defendant No.1), Mr. Minoo Keki Mistry (Defendant No.2), Mr. Shabbir S. Patanwala (Defendant No.3) and Mr. A.G. Lokhandwala (Defendant No.4). The Suit is filed by the Plaintiffs under provisions of section 41 of the Presidency Small Causes Court Act, 1882 (**PSCC Act**) on a premise that the suit property let out was open piece of land, which is not covered by definition of the term 'premises' within the meaning of section 7(9) of the Maharashtra Rent Control Act, 1999 (**MRC Act**) and that Defendant Nos. 2 to 4 are not tenants within the meaning of MRC Act.

4. Defendant No.2-Mr. Minoo Keki Mistry appeared in the suit and filed Written Statement stating that he is in possession of Garage No.1 admeasuring 50 x 11 ft. at Petit Compound, in which he has been conducting the business under name "Mistry Motors". Defendant No.2 has raised the issue of jurisdiction of Small Causes Court to entertain the suit under section 41 of the PSCC Act contending that Defendant No.2 is a protected tenant under the provisions of the MRC Act. The Issues in the suit were framed on 15 October 2020, which includes the issue of jurisdiction.

5. In the above background, Plaintiffs filed Application at Exhibit-18 seeking amendment of the Plaint for raising alternate plea of eviction of Defendants under provisions of MRC Act. In the Schedule of amendment, Plaintiffs have pleaded that in the event of the Small Causes Court coming to the conclusion that Defendants or any of them are protected tenants under MRC Act, they are liable to be evicted on the grounds of unlawful subletting, additions and alterations, non-user and bonafide requirement. The grounds of eviction under section 16 of MRC Act are sought to be incorporated without prejudice to the earlier ground under Chapter 7 of PSCC Act pleaded by Plaintiff. The application for amendment was opposed by Defendant No.2 by filing Affidavit-in-Reply. Defendant No.3 also filed Affidavit-in-Reply opposing the amendment application. The Trial Court proceeded to allow the application for amendment by its order dated 2 November 2023. In revision preferred by Defendant No.2, the Appellate Bench has reversed the decision of the Trial Court and had dismissed Plaintiffs' application for amendment by order dated 1 August 2024, which is subject matter of challenge in the present Petition.

6. Mr. Master, the learned counsel appearing for Petitioners/Plaintiffs would submit that the Appellate Bench has erred in reversing well considered decision of Trial Court allowing amendment of Plaint. He would submit that the Appellate Bench of Small Causes Court did not have jurisdiction to try and entertain the Revision Application in view of the law declared by Full Bench of this Court in ***Bhartiben Shah vs. Smt. Gracy Thomas and Ors.***¹

¹ (2013) 2 Mh.L.J. 25

7. That though issues in the suit are framed, evidence has not been filed by any of the parties and that therefore no prejudice would be caused to any of the Defendants if the amendment is allowed. That Plaintiffs desire to incorporate alternate plea for eviction of Defendants in the event of Small Causes Court holding that they are protected tenants under the provisions of MRC Act. That it is permissible for Plaintiff to raise alternate pleas for claiming relief in a suit. He would submit that the nature of the suit does not change and continued to remain same viz. for eviction of Defendants. That all that is sought to be done is to merely incorporate additional and alternate grounds for eviction. In support of his contentions Mr. Master would rely upon following judgments:

- i) ***Praful Manohar Rele vs. Krishnabai Narayan Ghosalkar & Ors.***²
- ii) ***Prabhudas Damodar Kotecha & Ors. vs. Manhabala Jeram Damodar & Anr.***³
- iii) ***Ganesh Prasad vs. Rajeshwar Prasad & Ors.***⁴
- iv) ***Smt. Laxmibai Popatlal Shah & Ors. vs. Pankaj Anokhelal Nahar***⁵

8. The Petition is opposed by Mr. Mihir Nerurkar, the learned counsel appearing for Respondent No.1. He would submit that by way of amendment Plaintiffs are attempting to introduce mutually destructing pleas, which is impermissible in law. That the suit is for eviction of Defendants from open piece of land and therefore the ground of eviction under section 16 of MRC Act cannot be incorporated in a suit relating to

² (2014) 11 SCC 316

³ (2013) 15 SCC 358

⁴ 2023 SCC OnLine SC 256

⁵ Civil WP No.65 of 2020 Bombay High Court

open piece of land, which is not covered by definition of term ‘premises’. That the description of the suit property remains unaltered even after incorporation of amendment. That in such situation, incorporation of amended plea would not only be mutually destructive but completely inconsistent with the earlier plea originally set up in the un-amended plaint. That Plaintiffs cannot be permitted to raise inconsistent pleas in a suit. That doctrine of election would apply in present case and Plaintiffs must elect the exact stand that they want to take in the suit. That the amendment would completely alter the nature of suit since suit for eviction of unprotected tenant under section 41 of the PSCC Act can have absolutely no connection with suit for eviction of protected tenant under section 16 of the MRC Act. That Plaintiffs cannot be permitted to approbate and reprobate. That the suit has been filed in the year 2018 whereas the application for amendment is filed after three years on 11 March 2021. That the amendment application does not disclose any averments relating to due diligence. That since the Trial in the suit has commenced on account of framing of issues, post-trial amendment cannot be permitted in absence of demonstration, due diligence on the part of the Plaintiffs. He would rely upon Rule 11 of the PSCC Rules providing for bar for conversion of character of suit into another inconsistent character. In support of his contentions, Mr. Nerurkar would rely upon following judgments:

- i) ***Savitribai Vishnupati Vaske & Ors. vs. Faruk Abdulrahim Patel & Ors.***⁶
- ii) ***Narendra Harial Jethwa vs. Shri Bholadasji Mandir, Nashik & Ors.***⁷
- iii) ***Basavaraj vs. Indira & Ors.***⁸

6 2010 (5) Mh.L.J. 357

7 2019 (6) Mh.L.J. 885

8 (2024) 3 SCC 705

iv) ***Hiralal alias Hiranand vs. Commissioner of Customs & Ors.***⁹

9. Mr. Kedar Purav, the learned counsel appearing for Respondent Nos.3 and 4 (original Defendant Nos.3 and 4) would also oppose the Petition by adopting the submissions made by Mr. Nerurkar. He would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. Plaintiffs have instituted TE & R Suit No.182 of 2018 seeking eviction of Defendants by describing the suit property as open piece of land. In this regard paragraph 2 of the Plaint reads thus:

“2. The subject matter of the present suit is Plot No.7 situated in the D-Ward bearing No.3371(6A) and situated at Petit Compound Behind Ness Baug, Nana Chowk, Mumbai 400 007. The said Plot is hereinafter for the sake of brevity described to as the suit premises. The said plot is bound in the:-

North by	:	Wood/Joshi Compound No.1
South by	:	5A/B
East by	:	Baug Boundary wall and BMC School
West by	:	Boligar Company & CTS No.1244, 1/1244 Girgaon Division.

The Monthly compensation in respect of the suit premises is Rs.16551/- per month and the area approximately of the said Plot is 301.20 sq. mtrs.“

12. The term ‘premises’ has been defined under sub-section 9 of section 7 of the MRC Act, which reads as under:

“(9) “premises” means any building or part of a building let or given on licence separately (other than a farm building) including, -
(i) the gardens, grounds, garages and out-houses, if any, appurtenant to such building or part of a building,
(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof, but does not include a room or other accommodation in a hotel or lodging house;”

9 2013 SCC OnLine Cal 17620

13. Thus, the term 'premises' does not include mere open piece of land and therefore the lessee in respect of open piece of land cannot enjoy protection under the MRC Act. This appears to be the reason why suit has been filed by Plaintiffs under section 41 of the PSCC Act which reads thus:

“41. (1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small ad Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent of therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence to fee or charges or rent thereof, to which the provisions of the Bombay ser to Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act "the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply.”

14. Thus, the Small Causes Court is vested with necessary jurisdiction under section 41 of the PSCC Act where the premises are not covered by the provisions of the MRC Act. Plaintiffs' suit thus proceed on a footing that Defendants are not protected tenants under the MRC Act and have accordingly sought their eviction under section 41 of the PSCC Act. However, after filing of the Written Statement by Defendant No.2 and by Defendant Nos.3 and 4, Plaintiffs have been advised to incorporate alternate plea for eviction of Defendants by admitting that they are protected tenants. The schedule of amendment appended to the application at Exhibit-18 reads thus:

“To be added after paragraph No. 20

20 a. The Plaintiffs say that in view of the contentions raised by the Defendants in their respective Written Statements, and in order to obviate grievance, the Plaintiffs have without prejudice to their rights and contentions taken by way of alternative plea that being under the provisions of the Maharashtra Rent Control Act.

20 b. In the event of this Hon'ble Court coming to the conclusion that the Defendants or any of them are allegedly protected under the provisions of the Maharashtra Rent Control Act then in that event the Plaintiffs seek their eviction from the Suit premises on the grounds as stated hereinbelow:

a. That the deceased Late Mr. Darayus C. Balsara and/or the Defendant No.1 herein have without the prior knowledge and consent of the Plaintiffs inducted into and / or parted with and/or disposed of the portions of the suit premises to and in favour of the Defendants separately and exclusively.

b. That each of the Defendants have without the prior knowledge and consent carried out additions/alterations and modifications of permanent nature in the portions of the suit premises thereby rendering the suit property of the Plaintiffs to waste and damage.

c. That the Defendant No. 1 has not used the suit premises for the purpose for which the same had been let out for a period of more than six months immediately preceeding the date of the suit without reasonable cause.

d. That the Plaintiffs require the suit premises for the purposes of the Trust that being to augment the income of the Trust.

20 c. The Plaintiffs seek possession of the suit premises on the grounds as stated above without prejudice to their rights and contentions to the earlier ground pleaded under the provisions of Chapter VII of the Presidency Small Causes Court Act.”

15. Thus, Plaintiffs want to raise alternate plea in the event of the Small Causes Court arriving at a conclusion that the Defendants are protected tenants. In such situation, Plaintiffs want to raise grounds of unlawful sub-letting, additions and alternations, non-user and bonafide requirement.

16. According to Defendant Nos.2 to 4, the pleas under section 41 of the PSCC Act and under section 16 of the MRC Act are mutually destructive and that therefore both the pleas cannot be raised in a single suit. Thus, what is sought to be suggested by Defendant Nos.2 to 4 is that Plaintiffs must elect the exact ground on which and exact enactment under which eviction of Defendants is sought. It is contended that the original nature of the suit was premised on assumption that Defendants do not have protection of Rent Act. However, the amended plea now introduces a mutually destructive plea of Defendants being protected tenants. The issue that arises for consideration is whether such inconsistent pleas can be permitted to be raised in same suit?

17. For answering the issue of permissibility to raise inconsistent pleas by way of amendment of plaint, it is first necessary to decide whether the inconsistent pleas under section 41 of the PSCC Act and section 16 of the MRC Act could be raised in a single suit. The facts of the present case are unique, where Plaintiffs claim absence of any privity between them and Defendant Nos.2 to 4. It is Plaintiffs' case that what was leased out to the original tenant was only open piece of land, which is not covered by definition of the term 'premises' under section 7(9) of the MRC Act and that therefore Defendants are not entitled to the status of protected tenants. Defendants have raised the plea of being protected tenants under the MRC Act. In such a situation, it becomes slightly difficult to apply the doctrine of election for Plaintiffs. If Plaintiffs are made to elect at the inception as to whether they want to file suit under section 41 of the PSCC Act or under section 16 of the MRC Act, the same in my view would cause severe prejudice to rights and contentions of Plaintiffs. Such a course of action would also

result in Plaintiffs first trying their luck by filing suit under section 41 of the PSCC Act, spend substantial period of time in prosecuting the said litigation in hierarchal Courts and in the event it is ultimately found that Defendants are protected tenants, Plaintiffs will have to re-initiate the entire process all over again by instituting a fresh suit on the grounds enumerated under section 16 of the MRC Act. This course of action can be avoided by permitting Plaintiffs to raise both the pleas relating to section 41 of the PSCC Act and section 16 of the MRC Act in a single suit. If both pleas are permitted to be raised in a single suit, far from causing any prejudice to the Defendants in the matter of defence, the Trial Court would be in a position to decide both the pleas, taken without prejudice to each other, in a single suit. This would obviously avoid multiplicity of proceedings between the parties. In my view therefore, in a suit of present nature, it is appropriate that the Plaintiffs are permitted to raise alternate pleas under section 41 of the PSCC Act and section 16 of the MRC Act in the same suit.

18. The above course of action appears to have been approved by the Apex Court in its judgment in ***Praful Manohar Rele*** (supra). Plaintiff therein instituted a suit against Defendants describing them as gratuitous licensees, who were allowed to occupy the premises on humanitarian grounds without any compensation. Plaintiff therein terminated the license and called upon Defendants to vacate the premises and later filed suit for possession by branding the Defendants as mere gratuitous licensees. In the Written Statement, Defendants raised plea that they are protected tenants and the suit was dismissed holding that Plaintiffs failed to prove that Defendants were gratuitous licensees and that they were monthly tenants. The Appellate Court

reversed the decree by allowing the appeal and decreed the suit holding Defendants to be gratuitous licensees. Single Judge of this Court allowed Second Appeal by formulating the following substantial question of law:

“Whether the plaintiff could raise two contradictory pleas in the plaint, namely, that (i) the defendants were permitted to occupy the suit premises gratis; and (ii) that the defendants should be evicted from the suit premises under the provisios of the Bombay Rent Act?”

19. In *Praful Manohar Rele*, this Court held that though Plaintiff therein could seek relief in the alternative, the contentions raised by him were not in the alternative, but contradictory and hence could not be allowed to be urged. This Court held that Plaintiffs’ case of Defendants being a gratuitous licensee was incompatible with the plea that they were tenants. In the above factual background, the Apex Court proceeded to consider whether it was permissible for Plaintiffs to raise alternate pleas of Defendants being gratuitous licensees and tenants. The Apex Court held in paragraphs 17, 18, 19, 20, 21, 22, 24, 24.1, 24.2 and 24.3 as under:

“17. The upshot of the above discussion is that the order passed by the High Court cannot be sustained. **Having said that we may deal with the question whether the plea of licence and tenancy could be together urged by the plaintiff for grant of relief in a suit for possession.**

18. The general rule regarding inconsistent pleas raised in the alternative is settled by a long line of decisions rendered by this Court. One of the earliest decisions on the subject was rendered by this Court in *Firm Srinivas Ram Kumar v. Mahabir Prasad*, AIR 1951 SC 177 wherein this Court observed: (AIR p. 179, para 9)

"9. ... It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs.30,000 was advanced by way of loan to the defendants second party. But it was certainly open to the plaintiff to make an alternative case to that effect and make a prayer in the alternative for a decree for money even

if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. **A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative."**

19. In *Bhagwati Prasad v. Chandramaul*, AIR 1966 SC 735 the plea of licence was accepted against the plea of tenancy although the plea of licence was not set up by the appellant. The appellant in that case contended that the land and the construction over the land belonged to him and that he had let the constructed portion to the respondent on a monthly rental basis. The respondent, however, alleged that although the land belonged to the appellant the building standing over the same was constructed by the respondent out of his own money and, therefore, he was entitled to occupy the same till his money was recovered from the appellant. Since the plea of tenancy set up by the appellant could not be proved, the Court in *Bhagwati Prasad* case (supra) held that the respondent was staying in the house with the leave and licence of the appellant.

20. What is important is that the Court clearly recognised the principle that if the plea raised by the tenant in his written statement was clear and unambiguous in a suit where one party alleged the relationship between the two to be that of licensor and licensee, while the other alleged the existence of a tenancy, only two issues arose for determination, namely, whether the defendant is tenant of the plaintiff or is holding the property as a licensee. If the court comes to the conclusion after the parties lead their evidence that the tenancy had not been proved, then the only logical inference was that the defendant was in possession of the property as a licensee. This Court said: (*Bhagwati Prasad case*³, AIR p. 739, paras 12-13)

12. ... In such a case the relationship between the parties would be either that of a landlord and tenant, or that of an owner of property and a person put into possession of it by the owner's licence. No other alternative is logically or legitimately possible. When parties led evidence in this case, clearly they were conscious of this position, and so, when the High Court came to the conclusion that the tenancy had not been proved, but the defendant's argument also had not been established, it clearly followed that the defendant was in possession of the suit premises by the leave and licence of the plaintiff....

13. ...In our opinion, having regard to the pleas taken by the defendant in his written statement in clear and unambiguous language, only two issues

could arise between the parties: *is the defendant the tenant of the plaintiff, or is he holding the property as the licensee*, subject to the terms specified by the written statement? ... we are unable to see any error of law in the approach adopted by the High Court in dealing with it."

21. In *G. Nagamma v. Siromanamma* (1996) 2 SCC 25 this Court held that the plaintiff was entitled to plead even inconsistent pleas especially when, they are seeking alternative reliefs.

22. To the same effect is the decision of this Court in *B.K. Narayana Pillai v. Parameswaran Pillais*, (2000) 1 SCC 712. In that case the appellant-defendant wanted to amend the written statement by taking a plea that in case he is not held to be a lessee, he was entitled to the benefit of Section 60(b) of the Easements Act, 1882. Allowing the amendment this Court held that the plea sought to be raised was neither inconsistent nor repugnant to the pleas raised in defence. The Court further declared that there was no absolute bar against taking of inconsistent pleas by a party. What is impermissible is taking of an inconsistent plea by way of an amendment thereby denying the other side the benefit of an admission contained in the earlier pleadings. In cases where there was no inconsistency in the facts alleged a party is not prohibited from taking alternative pleas available in law.

23. Reference may also be made to the decision of this Court in *J.J. Lal (P) Ltd. v. M.R. Murali*, (2002) 3 SCC 98 wherein this Court formulated the following tests for determining whether the alternative plea raised by the plaintiff was permissible: (SCC p. 111, para 14)

"14. ... To sum up, the gist of holding in *Firm Srinivas Ram Kumar case*? (supra) is: if the facts stated and pleading raised in the written statement, though by *way of defence to the case of the plaintiff*, are such which could have entitled the plaintiff to a relief in the alternative, the plaintiff may rely on such pleading of the defendant and claim an alternate decree based thereon subject to four conditions being satisfied viz. (i) the statement of case by the defendant in his written statement amounts to an express admission of the facts entitling the plaintiff to an alternative relief, (ii) in granting such relief the defendant is not taken by surprise, (iii) no injustice can possibly result to the defendant, and (iv) though the plaintiff would have been entitled to the same relief in a separate suit the interests of justice demand the plaintiff not being driven to the need of filing another suit."

24. **The appellant-plaintiff in the case at hand had set up a specific case that the defendant as also his legal representative after his demise were occupying the suit premises as licensees which licence had been validly terminated. In the reply to the notice, the case of the defendants was that they were in occupation of the suit premises not as licensees but as tenants. The plaintiff was, therefore, entitled on that basis alone to ask for an alternative relief of a decree for eviction on the grounds permissible under the Rent Control Act. Such an alternative plea did not fall foul if any of the requirements/tests set out in the decision of this Court in *J.J. Lal (P) Ltd. vs. M.R. Murali (2002) 3 SCC 98* (sic were met):**

24.1. We say so because the written statement filed by the defendant contained an express admission of the fact that the property belonged to the plaintiff and that the defendants were in occupation thereof as tenants.

24.2. **At the trial court also the question whether the defendants were in occupation as licensee or as tenants had been specifically put in issue thereby giving the fullest opportunity to the parties to prove their respective cases. There was no question of the defendants being taken by surprise by the alternative case pleaded by the plaintiff nor could any injustice result from the alternative plea being allowed and tried by the Court.** As a matter of fact the trial court had without any demurrer gone into the merits of the alternative plea and dismissed the suit on the ground that the plaintiff had not been able to prove a case for eviction of the defendants. There was thus not only a proper trial on all those grounds urged by the plaintiff but also a judgment in favour of the respondent-defendants.

24.3. Last but not the least, even if the alternative plea had not been allowed to be raised in the suit filed by the appellant, he would have been certainly entitled to raise that plea and seek eviction in a separate suit filed on the very same grounds. The only difference may have been that the suit may have then been filed before the Court of Small Causes but no error of jurisdiction was committed in the instant case as the finding recorded by the civil court was that the defendants were licensees and not tenants.”

(emphasis added)

20. Thus, in ***Praful Manohar Rele*** the Apex Court has held that there is no absolute bar against taking of inconsistent pleas by a party. It is held that what is impermissible to take of an inconsistent plea by

way of an amendment if the same results in denying the other side of the benefit of admission contained in earlier pleadings. It is further held that in cases where there was no inconsistency in the facts alleged, a party is not prohibited from taking alternate pleas available in law. In ***Praful Manohar Rele*** the Apex Court therefore held that it was permissible for Plaintiffs therein to raise alternative pleas of Defendants being gratuitous licensees and also tenants. The Court held that Defendants were neither taken by surprise nor any injustice resulted from such alternative pleas. The Apex Court further held that a separate suit could have been instituted if alternative plea was not allowed to be raised. In my view, the judgment of the Apex Court in ***Praful Manohar Rele*** completely answers the issue involved in the present case and Plaintiffs are entitled to raise alternative pleas that Defendants are not protected tenants and that they are protected tenants.

21. Mr. Master has also relied upon judgment of the Apex Court in ***Prabhudas Damodar Kotecha*** (supra) in support of his contention that the objective of 1976 amendment to PSCC Act was to bring all suits between landlord and tenant and licensor and licensee, whether under Rent Act or PSCC Act, are under one roof. The Apex Court held in paragraphs 57 to 60 as under:

“57. We are of the considered view that the High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in Section 41(1) of the PSCC Act and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between the "landlord and tenant" and the "licensor and licensee" under one umbrella to avoid unnecessary delay, expenses and hardship. **The act of the legislature was to bring all suits between "landlord and tenant" and "licensor and licensee" whether under the Rent Act or under the PSCC Act under one roof.** We find it difficult to accept the proposition that the legislature

after having conferred exclusive jurisdiction in one court in all the suits between licensee and licensor should have carved out any exception to keep gratuitous licensee alone outside its jurisdiction. The various amendments made to the Rent Act as well as the Objects and Reasons of Maharashtra Act 19 of 1976 would clearly indicate that the intention of the legislature was to avoid unnecessary delay, expense and hardship to the suitor or else they have to move from one court to the other not only on the question of jurisdiction but also getting reliefs.

58. We are of the view that in such a situation the court also should give a liberal construction and attempt should be to achieve the purpose and object of the legislature and not to frustrate it. In such circumstances, we are of the considered opinion that the expression "licensee" employed in Section 41 is used in general sense of the term as defined in Section 52 of the Easements Act.

59. We have elaborately discussed the various legal principles and indicated that the expression "licensee" in Section 41(1) of the PSCC Act would take a gratuitous licensee as well. The reason for such an interpretation has been elaborately discussed in the earlier part of the judgment. Looking from all angles in our view the expression "licensee" used in the PSCC Act does not derive its meaning from the expression "licensee" as used in sub-section (4-A) of Section 5 of the Rent Act and that the expression "licensee" used in Section 41(1) is a term of wider import intended to bring in a gratuitous licensee as well.

60. We are, therefore, in complete agreement with the reasoning of the Full Bench of the High Court. In such circumstances, the appeals lack merits and are, therefore, dismissed. There is no order as to cost."
(emphasis added)

22. In recent decision in ***Ganesh Prasad*** (supra) the Apex Court has held in paragraphs 42 to 45 and 47 as under:

42. A three-Judge Bench of this Court in the case of ***Firm Srinivas Ram Kumar v. Mahabir Prasad*** reported in 1951 SCC 136 : AIR 1951 SC 177, has held that **a party is entitled to take alternative pleas in support of its case. Where alternative pleas arose to some extent from the admitted position of the defendant, such plea is not impermissible merely because it is inconsistent with the other plea.** It held that a plaintiff may rely upon different rights alternatively and there is nothing in the CPC to prevent a party from making two or more inconsistent sets of allegations claiming relief therein in the alternative. It further observed that although, a Court should not grant relief to a plaintiff in a case in which there is no foundation in a pleading on which the other side was not called upon or had opportunity to meet yet when the alternative case which, the

plaintiff could have made was not only admitted by defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes.

43. The view that a plaintiff is entitled to plead even inconsistent pleas while seeking alternative reliefs was reiterated by this Court in *G. Nagamma v. Siromanamma* reported in (1996) 2 SCC 25. In that case, a suit for specific performance of an agreement of re-conveyance was filed by the appellants. Later, an application for amendment of the plaint was sought stating that the transactions of execution of sale deed and obtaining a document for re-conveyance came to be a single transaction, i.e., it was a mortgage by conditional sale. So, alternatively plaintiff sought relief to redeem the mortgage. The trial court and the High Court rejected the same on the ground that the suit was filed for specific performance and that the amendment would change the nature of the suit as well as the cause of action. But this Court reversed the said decision and held that since the plaintiff therein was seeking alternative reliefs, he is entitled to plead even inconsistent pleas and that the amendment of the plaint would neither change the cause of action nor would affect the relief.

44. In *Praful Manohar Rele v. Krishnabai Narayan Ghosalkar* reported in (2014) 11 SCC 316, this Court followed the decision in *Firm Srinivas Ram Kumar* (supra) and **reiterated the principle that alternative and inconsistent pleas can be taken by a plaintiff.** In that case, the plaintiff therein had alleged that the defendant therein and his legal representatives were occupying the suit premises as gratuitous licensees and upon termination of such licence, the plaintiff was entitled to a decree for possession. The trial court found that defendants were tenants and not licensees as alleged by the plaintiff. The 1st Appellate Court recorded a finding to the contrary, held that the defendants were let into the suit property by plaintiff on humanitarian grounds and as gratuitous licensees and the license was validly terminated by plaintiff. It thus, negated the defence of the defendants that they were tenants. In the plaint itself, the plaintiff therein had taken an alternative plea that he was entitled to vacant possession of the premises on the ground of bona fide personal need, nuisance, annoyance and damage allegedly caused to the premises and to the adjoining garden land belonging to him by the defendants. This Court held that the alternative plea of plaintiff and the defence set up by defendants was no different from each other. The Court held that it was open to the plaintiff not only to take a plea of license but also to alternatively plead tenancy in support of his plea for relief of recovery of possession. The Court held that defendants therein had specifically admitted that the property belongs to plaintiff and that they were in

occupation thereof as tenants, and an issue was also framed whether defendants were in occupation as license or as tenants, and defendants had full opportunity to prove their respective cases. So, the defendants cannot be said to have been taken by surprise by the alternative case pleaded by plaintiff nor could any injustice would result to them from the alternative plea being allowed and tried by the Court. It observed that even if the alternative plea had not been allowed to be raised in the suit filed by appellant, he would have been certainly entitled to raise that plea and seek eviction in a separate suit filed on the very same grounds.

45. In ***Revajeetu Builders*** (supra), cited by the learned counsel for the Appellant, a two-Judge Bench of this Court had an occasion to deal with Order 6 Rule 17 CPC In that case, the judgment of this Court in *Usha Balashaheb Swami v. Kiran Appaso Swami* reported in (2007) 5 SCC 602, was followed. It referred to the judgment in *Ganesh Trading Co. v. Moji Ram* reported in (1978) 2 SCC 91, wherein at para 50, this Court observed that if a plaintiff seeks to alter the cause of action itself and introduces it indirectly through amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it, if it amounts to depriving the party, against which a suit is pending, of any right which may have accrued in its favour due to lapse of time.

47. In the event, if the pleas sought to be introduced by plaintiff by way of an amendment is also the plea, which the defendant has set up in his written statement and such a plea of the plaintiff is an alternative plea, even though it is inconsistent with the original plea, since there is no prejudice caused to the defendant, the Court is not precluded from allowing the amendment.

(emphasis added)

23. Thus, introduction of inconsistent pleas by Plaintiff by way of amendment is something which is not completely prohibited. The ratio of the judgment in ***Ganesh Prasad*** would squarely apply to facts of the present case where the pleas sought to be introduced by way of amendment of Plaint is also the plea which the Defendants have set up in the Written Statement and therefore the plea of the Plaintiffs is an alternative plea and even though it is inconsistent to the original plea,

since no prejudice would be caused to the Defendants, such amendment is needs to be allowed.

24. In my view therefore, incorporation of both the inconsistent and alternative pleas of Defendants not being protected tenants and they being protected tenants must be permitted to be raised in the same suit as the same does not cause any prejudice to the Defendants and more importantly avoids multiplicity of proceedings. As observed above, if the amendment is not permitted and in the event the Court holds the Defendants to be protected tenants, Plaintiffs will have to file a separate suit and wait for considerable period of time to have their right of ejectment determined by the Court. On the other hand, if the alternative pleas are permitted to be raised and canvassed in the same suit, the Small Causes Court would first conduct an enquiry as to whether Defendants are protected tenants or not. In the event it holds that what was leased was mere open piece of land and that Defendants are not protected tenants, the Court can proceed to decree the suit under section 41 of the PSCC Act. In the event the Small Causes Court answers the above issues in the negative by holding that the Defendants are protected tenants, it can immediately proceed to decide the grounds of unlawful sub-letting, additions and alterations, non-user and *bonafide* requirement raised by the Plaintiffs. Thus far from causing any prejudice to the Defendants, the amendment would obviate unnecessary filing of another round of litigation. In my view therefore, the amendment sought to be incorporated by the Plaintiffs was rightly allowed and the Appellate Bench has erred in reversing the decision of the Trial Court.

25. In ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another***, Civil Appeal No. 5909 of 2022 decided on 01 September 2022, the position of law has been explained as under:

“70. (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

- (iii) The prayer for amendment is to be allowed
 - (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
 - (ii) to avoid multiplicity of proceedings, provided
 - (a) the amendment does not result in injustice to the other side,
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).
- (iv) A prayer for amendment is generally required to be allowed unless
 - (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,
 - (ii) the amendment changes the nature of the suit,
 - (iii) the prayer for amendment is malafide, or
 - (iv) by the amendment, the other side loses a valid defence.
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is

predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897)”

26. Reliance by Mr. Nerurkar on judgments of this Court in ***Savitribai Vishnupati Vaske & Ors.*** (*supra*) and ***Narendra Harial Jethwa*** (*supra*) to bring home his point of lease of open piece of land being not covered by the provisions of the Maharashtra Rent Control Act, to my mind, appears to be unnecessary. Mr. Master fairly does not dispute this position that open piece of land is not covered by definition of the term 'premises' under section 7(9) of the MRC Act and that therefore suit for eviction filed under general law of Transfer of Property Act, 1882 is maintainable for eviction of lessees/tenants of such open plot. Mr. Nerurkar has sought to suggest the description of the suit property is not amended, which continuous to be open piece of land and that therefore eviction under section 16 of the MRC Act cannot be sought by amending the Plaint. In my view, the plea of eviction under section 16 of the MRC Act is merely an alternative plea. Defendants have contended in their Written Statement that suit property is not merely open piece of land and comprises of constructed garage and that therefore the same is covered by definition of the term 'premises' under section 7(9) of the MRC Act. In the event of the Trial Court accepting the said defence of Defendants, provisions of MRC Act would become applicable to the

relationship between Plaintiffs and Defendants. This is why alternate plea for eviction under section 16 of the MRC Act is sought to be added by way of amendment to the Plaint.

27. Mr. Nerurkar has contended that doctrine of election would be attracted in the present case and has relied upon judgment of Single Judge of the Calcutta High Court in ***Hiralal Alias Hiranand*** (supra), in which it is held in paragraph 26 as under:

“26. The doctrine of election applies to cases when a man as against another has two alternative but mutually exclusive courses to resort to and he is to make an election between the two. If he by his conduct induces the other man to believe that he is pursuing a certain course leaving aside the other and as a result of it that induced other man alters his course of action he is not permitted to subsequently alter his stand by resorting to the other course which he had intentionally decided not to follow. Spencer Bower and Turner in their celebrated work on estoppel by representation had explained the essence of the doctrine of election:

"It is of the essence of election that the party electing shall be 'confronted' with two mutually exclusive courses of action between which he should mast, in fairness to the other party, make his choice. In election he is always found confronted by a choice of two alternatives one of which he must eventually choose, to the exclusion of the other."

28. In my view, the doctrine of election would have no application to the present case as the doctrine of election applies essentially to a case where mutually exclusive courses are available to a person and, if by his conduct, he makes the other person to believe that he is pursuing one of the two courses leaving aside the other. The result of such act is that he induced the other person to alter his course of action and subsequently he cannot be permitted to alter his own stand by resorting to other course which he intentionally decided not to follow. In the present case, Plaintiffs' course of action of treating the suit property as open piece of land and treating Defendants as not protected tenants has not resulted

in Defendants believing Plaintiffs' act as abandonment of right of ejectment under section 16 of the MRC Act. Therefore, doctrine of election has no application in the present case. In fact the principle of estoppel by invoking doctrine of election is not applicable in the present case as Plaintiffs are otherwise free to institute a fresh suit under section 16 of the MRC Act in the event of their suit under section 41 of the PSCC Act being dismissed for want of jurisdiction or as being not maintainable. In my view therefore, neither doctrine of election nor judgment of Calcutta High Court in ***Hiralal Alias Hiranand*** have any application to the present case.

29. Mr. Nerurkar has strongly objected amendment being allowed after commencement of Trial of the suit. The issues in the present suit have been framed on 15 October 2020 whereas the application for amendment of plaint is filed on 11 March 2021. No doubt the Trial has commenced with framing of issues. However, in the present case, none of the parties have filed evidence. In that sense framing of issues is merely a first step taken towards commencement of the trial. This is not a case where the Defendants have led evidence or have cross-examined Plaintiffs' witness and have extracted any admissions from them. The amendment is not aimed withdrawal of any admission given in favour of the Defendants. In my view therefore, mere framing of issues is not a ground for denial of opportunity to amend the Plaint. Even otherwise there is no absolute prohibition under provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908 (CPC) in permitting amendment after commencement of trial. All that is required to be done by party seeking amendment is to show due diligence. Considering the facts and circumstances of the present case, Plaintiffs cannot be accused of

inordinate delay in moving application for amendment. For these reasons reliance by Mr. Nerurkar on judgment of the Apex Court in **Basavraj** (supra) will have no application. In that case, the amendment was sought to be introduced at the fag-end of the suit and delay in moving amendment was one of the principal reasons for declining the same. The case also involved change in the nature of suit which was initially filed for partition and separate possession and by way of amendment, the relief relating to declaration of compromise decree being null and void was sought to be added. The Apex Court, in the facts of the case, held that prejudice will be caused to the Defendants therein. The judgment in **Basavraj**, rendered in the facts of the case, would have no application to the present case. On the contrary, Mr. Master has relied on judgment of this Court in **Smt. Laxmibai Popatlal Shah** (supra) in which this Court has held in paragraphs 15 and 16 as under:

“15) In my view, once the proposed amendment is found to be relevant for the purpose of determining the real question of controversy between the parties, the same ought to have been allowed by the Trial Court. The delay in moving the amendment application could have been taken care of by imposing costs on the Plaintiffs.

16) Mr. Kumbhat, has submitted that the evidence of the Original Plaintiff has already been recorded. On the contrary, it is Mr. Thorat's contention that during currency of his cross-examination, Original Plaintiff has passed away and that the current Plaintiffs will have to again lead evidence in support of their claim. In that view of the matter, no prejudice would be caused to the Defendant if the proposed amendment in paras-2(a) to 2(e) is allowed to be incorporated in the plaint. As rightly contended by Mr. Thorat, delay in decision of the suit enures to the benefit of the Defendant who is occupying the suit premises. I am therefore of the view that the proposed amendment as incorporated in paras-2(a) to 2(e) needs to be granted by imposition of costs on the Plaintiffs.”

30. In the present case as well, apart from absence of any prejudice being caused to the Defendants, any delay caused in decision of the suit

enures to the benefit of Defendants who are occupying the suit premises.

31. The conspectus of the above discussion is that the amendment is necessary for determining the real question of controversy between parties. Plaintiffs can be permitted to raise alternative and inconsistent pleas leading to same relief. The amendment does not change the nature of suit nor does it cause any prejudice to the Defendants. Though there is some delay in filing the application for amendment, Defendants can be compensated by imposition of costs. In my view therefore, the Appellate Bench has palpably erred in reversing the decision of the Trial Court, which had allowed the application for amendment to the Plaintiff. The order passed by the Appellate Bench of Small Causes Court is thus indefensible and is liable to be set aside.

32. In view of determination of correctness of the order passed by this Court, it is not necessary to go into the issue of maintainability of Revision Application before the Appellate Bench in respect of the challenge to the order allowing amendment of Plaintiff. The issue is accordingly kept open to be decided in appropriate case.

33. Resultantly, the Writ Petition succeeds, and I proceed to pass the following order:

ORDER

- i) Judgment and order dated 1 August 2024 passed by Appellate Bench of the Small Causes Court in Revision Application No.92 of 2024 is set aside and order dated 2

November 2023 passed by the learned Judge of the Small Causes Court on Application at Exhibit-18 is confirmed.

ii) Plaintiffs shall pay costs of Rs.25,000/- to the Defendant No.2, who had filed Revision Application before the Appellate Bench of Small Causes Court, within a period of four weeks from today.

34. With the above directions, the Writ Petition is **allowed**. Rule is made absolute.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2024.10.15
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