

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

WRIT PETITION NO. 14288 OF 2024

M/s. Bhram Deo Holding & Trading

Ltd. and anr.

}Petitioners

: Versus :

M/s. Mahendra Builders

}....Respondent

Mr. G.S. Godbole, Senior Advocate *i/by. Ms. Eventa A. Gonsalves and Mr. Reyden L. Gonsalves, for the Petitioners.*

Mr. Rohan Cama *a/w. Ms. Shweta Jaydev and Ms. Azraa Milliwalla i/by. M/s. Rashmikant & Partners, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 16 October 2024.

P.C. :

1) The challenge in the present petition is to the order dated 18 September 2024 passed by the learned Judge of the Small Causes Court allowing the application at Exhibit-90 filed by the Plaintiff for amendment of the plaint.

2) Plaintiff has instituted T.E. & R. Suit No.68/73 of 2001 under the provisions of Section 41 of the Presidency Small Causes Courts Act (PSCC Act, 1888) seeking recovery of possession of the suit premises on the ground that Defendant No.1-tenant is not entitled to

protection under the provisions of the Maharashtra Rent Control Act, 1999 (**MRC Act**) on account of its paid-up share capital being in excess of Rs.1 crore. By amendment, Plaintiff sought to incorporate additional pleading for raising an inconsistent and alternate plea that in the event of the Court coming to a conclusion that either of the Defendants are covered or protected by the provisions of the M.R.C. Act, Plaintiff is entitled to recover possession of the suit premises on the pleaded grounds under Section 16 of the M.R.C. Act.

3) According to the Petitioners, Plaintiff cannot be permitted to raise such alternate and inconsistent pleas by way of amendment.

4) The issue, in my view, is squarely covered by the judgment of this Court in **Funds and Properties of Parsi Punchayat, Bombay V/s. Minoo Keki Mistry and Ors.**¹ in which this Court has held in paras-17 to 24 as under :

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

¹ Writ Petition No.13291/2024 dtd. on 9.10.2024

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 reinitiate 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 provisos 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 case³, 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 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 Plea 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.

- 5) In view of the judgment of this Court in ***Funds and Properties of Parsi Punchayat, Bombay*** (supra), I do not find any error in the order of the Learned Judge in permitting the Plaintiff to incorporate alternate and inconsistent plea with regard to Section 41 of the PSCC Act and Section 16 of the MRC Act.
- 6) After noticing the view sought to be taken by the Court, Mr. Godbole the learned Senior Advocate appearing for the Petitioners

would alternatively submit that Petitioner No.2 has filed R.A.D. Suit No.648/2018 seeking declaration of tenancy and that T.E. & R. Suit No.68/73 of 2001 be clubbed and decided together with R.A.D. Suit No.648/2018. His submission is premised on the issue of alleged tenancy rights of Defendant No.2 being involved in both the suits. I am afraid, the said prayer cannot be granted. T.E. & R. Suit No.68/73 of 2001 is pending for the last 23 years in which Defendant No.2 has already taken the defence of subsistence of tenancy rights in its favour. Defendant No.2, however waited for 18 long years to file declaratory suit. On the basis of the suit filed in the year 2018, proceedings of suit pending since the year 2001 cannot be delayed. In that view of the matter, the request of Mr. Godbole cannot be accepted.

7) Writ Petition is devoid of merits and is **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]