

MHSN020003482024



Order Below Exh No. 05

The plaintiff has prayed for the relief of temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure, claiming to restrain the defendant from interfering with his possession of the suit property, without due process of law.

It is the case of the plaintiff is as under:

2. The shop No. FF-7B has a carpet area of 850 sq. ft on the first floor of SFC Mega Mall bearing C.S.No.341, situated within Sangli-Miraj Kupwad Corporation is suit property and it is bounded as under:

Towards East: Passage

Towards West: Shop No.8

Towards South: Shop No. 9 to 12

Towards North: Shop No.7A

Above :the Second floor

Below : Ground floor

(Hereinafter it is referred to as the “**suit property**”).

3) The defendant is the owner of the suit property and the plaintiff is occupying the suit property in pursuance of leave and license deed dated 16.06.2016 on a monthly license fee of Rs.45,136 excluding the electricity charges. The maintenance charges for the suit property are Rs.10 per square foot. The plaintiff has paid Rs.2,29,500/ to the defendant as a refundable security deposit. The alleged leave and license were for five years; moreover, the agreement has a clause that the licensee may extend or renew the agreement for a further period of four years after the completion of the license period thereafter, the defendant has extended the leave and license agreement period orally and through his conduct. Therefore, he has invested 40 lakhs in his business. However, on 11.01.2024, the defendant moved an application to MSEB for temporary discontinuation of the power supply in the suit property. On the application of the plaintiff, the power supply of the suit property has been restored. Further, after meeting with the defendant, the plaintiff came to know that on grounds of religion, a defendant had been pressurizing him to vacate the suit property. Further, on the notice of the defendant, he had paid the remaining license fee amount of Rs. 90,267 to him. Even, the defendant threatened him to dispossess from the suit premises. Thus, he has constrained to file suit.

4) The defendant has resisted the suit claim by filing a written statement vide Exh No. 19 . The defendant alleged that the leave and license agreement was for five years and said period has expired. As per the agreement, the plaintiff has to pay an escalated 12% license fee every 3 years. He neither renewed his leave and license agreement for a

further period of four years, nor paid escalated license fee i.e Rs. 50,552 since 16.06.2021. The defendant has specifically denied that he has orally extended the leave and license agreement and gave an application for discontinuation of the electric supply in the suit property. He further stated that the plaintiff has paid license fees for October 2021 and March 2022. However, the plaintiff failed to pay an agreed license fee, hence, notice dated 18.01.2024 was issued to hand over the possession of the suit property. However, the plaintiff has not handed over the possession of the suit property. Therefore, he has filed a counter claim for recovery of license fee and possession. Finally, he prayed for the rejection of an application.

5) Perused the application , say filed thereto by the defendant at Exh. 19 . Perused the documents on record. Heard the learned Advocates representing the parties.

6) The following are points for determination along with my findings thereon for the reason to follow:

Sr. No	Points for Determination	Findings
1.	Whether the plaintiffs have a prima facie case?	Yes
2.	Whether the balance of convenience lie in favor of the plaintiffs?	Yes
3.	Whether the plaintiff would suffer irreparable loss if the application of temporary injunction is refused?	Yes
4.	What order?	As per final

		order
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REASONS

As to Point Nos.1 to 4:

7) To support the suit claim, the plaintiff has relied upon the following documents vide Exh No.3 namely leave and license agreement at Exh No.3/1, Notary No.537 at Exh No.3/2, extract of C.S No. 341 at Exh No.3/3, payment receipts as well as bank statement at Exh No. 3/4, to 3/11, Notice at Exh No.3/12, payment receipt at Exh No. 3/14, Application at Exh No.3/15, applications of plaintiff at Exh No. 3/16 and Exh No.3/17, Letters of MSEB at Exh No.3/18 and 3/19, paper notice at Exh No.14/1, payment receipt dated 06.04.2024.

8) I have gone through the documents produced on record as well as authorities cited by the defendant, **Smt Bhikhani Devi v/s Amar Lal. AIR 2006 PATANA 141**, where in Hon'ble Apex Court observed that the Appellate Court acted wholly without jurisdiction in granting the relief by way of interim relief, the reliefs far in excess of the final relief as sought by the plaintiff himself. In, **Samarpan Varishtha Jan Parisar and others, v/s Rajendra Prasad Agarwal and others, AIR 2022 SUPREME COURT 2209**, wherein the Hon'ble Court observed that the plaintiff, a licensee can not seek an injunction to stay in an old age home unless they allow other inmates, a peaceful co-existence.

9) Under this application, the plaintiff has prayed for a temporary injunction against the defendant claiming to restrain them from

interfering with his possession of the suit property, otherwise than by due process of law. Admittedly, plaintiff has been in occupation of the suit property. The alleged leave and license agreement expired in the year 2021. Therefore, it is to be seen as to whether the plaintiff has a prima facie case that, the defendant is obstructing his possession over the suit property.

10) To substantiate the prima facie case, the plaintiff has produced some documents on record. The license payment receipts, as well as notice of termination of leave and license, vide Exh No.3. On the perusal of payment receipts, it can be seen even after the expiry of leave and license agreement in the year 2021, a defendant has been accepting the licensee fees. Moreover, on the perusal of notice dated 18.01.2024, it reveals that a defendant issued notice for the termination of leave and license agreement on the count that the plaintiff has not paid the agreed license fee as per clause 10 of the agreement as well as outstanding license fee of Rs.90,267. If you fail to remove furniture, and goods within a stipulated period, then, we shall remove the said furniture and goods from said premises and thereof, we are not responsible for any damage to said furniture and goods.

11) No doubt, leave and license has come to an end. The defendant has issued notice for termination of leave and license. At present, the plaintiff has been running his business there. Once leave and license comes to an end, it would be for the lessee and licensee to vacate the premises and hand over the same to the lessor or licensee. It is the contention of the plaintiff that, the defendant is trying to oust the plaintiff from the suit property without following due process of law.

Even though, as per the notice dated 18.01.2024, he has paid an outstanding license fee.

12) From the contentions of the defendants, it appears that according to him, the plaintiff has to vacate the suit property, as agreed to make in default of the license fee. Even if it is assumed that the plaintiff is not vacating the suit property, the defendant cannot take the law into his own hands and oust the plaintiff from the suit property without following due process of law. For this reason, the apprehension of the plaintiff that the defendant is trying to obstruct his possession and is trying to oust him from the suit property is well founded. On any count, the defendant cannot obstruct the plaintiff's possession over the suit property or oust the plaintiff from the suit property without following due process of law. Therefore, Smt. Bhikani (Supra) ,Hon'ble Apex Court observed that the Appellate Court granted the interim injunction over the final relief sought by the plaintiff. Samarpan (Supra), Hon'ble Apex Court observed that the plaintiff is in permissive possession of suit property in an old age home. Therefore, he cannot seek an injunction to stay in an old age home unless they allow other inmates, peaceful existence. Thus, aforesaid authorities would not be helpful to a defendant.

13) Thus, it is clear that the plaintiff has a prima facie case, as well as the principle of balance of convenience, lies in favor of the plaintiff. In such a situation, if the application is rejected, the plaintiff would suffer irreparable loss. However, if the application is allowed, the defendant would not suffer any loss. Hence, all the essential ingredients for the grant of a temporary injunction are in favor of the

plaintiff. Hence the application deserves to be allowed against defendant no.1. Therefore, I answer point no.1 to 3 in the affirmative and in answer to point no.4, pass following order:

ORDER

- 1) The application is allowed
- 2) The defendant is hereby restrained by an order of temporary injunction, from interfering with the possession of the plaintiff over the suit property, in any manner either by herself or through anybody claiming through him, except according to due process of law, till disposal of the suit.
- 3) Cost in cause.

Date:30.04.2024
Sangli

Smt.S.H.Nalawade
8th Jt.C.J.J.D,Sangli

CERTIFICATE

I affirm that the contents of this PD.F file are same, word to word, as per original order.

Name of the Stenographer	: Self
Court Name	: 8 th Jt. C.J.J.D. and J.M.F.C., Sangli.
Date	: 30/04/2024
Signed by P.O.on	: 04/05/2024
Uploaded on	: 09/05/2024