

ORDER BELOW Exh. No.35

The plaintiff has filed present application for amendment in plaint more particularly in para 5, 6 and 8 of plaint and addition of prayer clause that, issuance of mandatory injunction against the defendant for the execution of leave and license agreement of the suit property for the next five years from 16.06.2025 as per term and condition of registered leave and license No.315 and notarized deed No.537. The plaintiff also prayed that, if defendant failed to execute aforesaid leave and license agreement it should be executed through the Court.

2) The application contended that, defendant in his written statement pleaded that, plaintiff has not taken any efforts to renew or to extent the period of leave and license agreement. However, defendant by his conduct extended the period of leave and license agreement. The said leave and license agreement will be extinguished on 16-06-2025. Hence, it is necessary to seek the amendment of the plaint as incorporated in the present application. Hence, he prayed to allow the present application.

3) The application is opposed by defendant by filing reply at Exh no.38. It contended that, the present application is filed with an intention to prolong the present case. So as order of temporary injunction is passed in favour of plaintiff. He further contended that the issue has framed on 30.04.2024 and case posted for the evidence of plaintiff. However, plaintiff failed to adduce the evidence hence, evidence close order was passed against him which thereafter set aside subject to cost. Therefore, the present application for amendment is not tenable as per the provision of O.6 R.17 of the C.P.C. It is settled law that, defendant can take alternative plea and thus the plaintiff cannot seek the amendment on the basis of defence taken into written statement. He further contended that, present suit is filed for permanent injunction on the basis of leave and license agreement for 9 years. By way of proposed amendment plaintiff sought to introduce relationship landlord and tenant between them. Moreover, he is also seeking the proposed

amendment to project a completely new case and to change vary nature of the suit. Hence, he prayed for the rejection of application.

4) Perused application, say and record of the case. Heard the advocate of both the parties.

5) Plaintiff has instituted suit for permanent injunction on the basis of leave and license agreement dated 16.06.2016. However, the defendant has filed the counter claim and prayed for the possession of the suit property and for the recovery of arrears of license fee. On the perusal of agreement between the parties in the present case shows that, it is a titled as leave and license agreement for the period of 5 years commencing on 16-07-2016. Thus, the relevant clauses of the agreement is reproduced as under.

2.2 The agreement hereby granted by the Licenser in the favour of the Licensee shall be for a period of Five (5) years commencing on 16th July 2016, which shall be known as the 'Commencement Date'. The licensee has to pay the monthly license fees on or before 10th of each succeeding month. The Licensee may extend or renew the Agreement for a further period of four (4) years after the completion of the License period.

3.3 The Licenser shall be entitled to terminate the lease in case Licensee make a default in making the payments for month and fails to cure the default payment despite being served with a notice of 30 (thirty) days in writing.

6) On the bare reading of the clauses of the agreement demonstrate that, plaintiff was granted permission to use the suit property for the period of 5 years on the specific condition. The licensee hereby agrees to observe and perform all the terms and conditions of this agreement. The licensee may extend or renew agreement for the period of 4 years after the completion of the license period. The said agreement clearly shows that, licenser shall have right and shall be entitle to terminate agreement by issuing 30 days notice in writing. Thus, it is clear that, licensee can extend further period of license after the completion of earlier license period.

7) Coming back to the fact of present application it appears that, the plaintiff has move instant application on the count that, the defendant in his written statement pleaded about the registration of leave and license agreement which according to plaintiff shows that he is ready to renew or extend the leave and license agreement. On the other hand the defendant has been claiming the possession of the suit property by filing the counter claim. Moreover the record shows that defendant has issue the notice dated 18.01.2024 for the termination of leave and license agreement. Admittedly alternate plea can be permitted as long as cause of action or relief were not materially affected. However, the party cannot be permitted to amend the pleading so as to deny other side benefit of an admission contained in pleading.

8) Advocate of the plaintiff placed reliance on Life Insurance Corporation of India Vs. Sanjiv Builders pvt. Ltd. and anrs, Civil Appeal No.5909 of 2022 wherein Hon'ble Apex Court summed up the principles relating to amendment of pleading as under -

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 the multiplicity of the proceeding, provided
 - a) the amendment does not result in injustice to other side
 - b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by party which confers a right on the other side and
 - c) the amendment does not raise a time barred claim, resulting in divesting of other side of a valuable accrued right (in certain situation)

9) I have gone through the aforesaid authority. Therefore taking into consideration the observation Hon'ble Apex Court Life Insurance (Supra) and object of Order 6 Rule 17 of CPC an amendment is to be granted at any stage

so long as such amendment is necessary for the purpose of determining the real question in controversy between the party. The plaintiff has specifically placed on record and relied upon leave and license agreement in the plaint. The real question in controversy is true purport of the said document. The perusal of proposed amendment, sought to be made in plaint in the present case by addition in para no. 5, 6 and 8 would show that, the entire nature of the suit is sought to be change by the plaintiff. Moreover, the proposed amendment is beyond the ambit of leave and license agreement. Further the proposed amendment is not necessary to determine the real question in controversy. Moreover, on the comparison of proposed amended prayer with prayer in suit, it seen that it would change the nature of suit. In such circumstances if the said amendment is allowed, prejudice would be caused to the defendant and definitely the nature of suit will change and bring on the record new case. Hence, present application deserves to be rejected. Thus, I pass following order:

ORDER

- 1) The application at Exh no.52 is rejected.
- 2) Cost in cause.

Date: 07/10/2024
Sangli

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