
(2018) 10 BOM CK 0054

In the Bombay High Court

Case No : Writ Petitioner No. 4186 of 2014

Abidbhai S/O Ibrahimbhai And Another

APPELLANT

Vs

Mohammed Ejaz S/O Mohd. Bashir And Another

RESPONDENT

Date of Decision : 12-10-2018

Acts Referred:

Citation : (2018) 10 BOM CK 0054

Hon'ble Judges : S. B. Shukre, J

Bench : Single Bench

Advocate : K. N. Shukul, C. S. Kaptan, Masood Shareef, B. M. Lonare

Final Decision : Allowed

Judgement

1.Â Heard.Â Rule.Â Heard forthwith by consent of parties.

2.Â This petition challenges the judgment and order datedÂ 17th January 2014 passed in Misc. Civil Appeal No.Â 99 of 2013 by the District

JudgeÂ7, Nagpur, thereby allowing the application filed for grant of temporary injunction vide exhibit 5 by respondent no. 1 by upsetting the order

dated 2nd April 2013 passed by the Additional Judge, Small Causes Court, Nagpur rejecting this very application filed in a civil suit brought against the petitioners by respondent no. 1, being Regular Civil Suit No. 455 ofÂ 2012.

3.Â The facts, insofar as they are relevant for deciding the question involved in this petition, which is about an authority of the District Judge in Misc.

Civil Appeal filed against an order refusing temporary injunction to the plaintiff, basically in the nature of an appeal against the discretion exercised by

the trial Court,Â to undertake a fresh exercise of considering the prima facie merits of the matter as if it is a Court ofÂ first instance, are stated in

brief as under :Â?

(1) Respondent no. 1 claimed that he is occupying a shop block admeasuring about 1750 square feet, ground floor of the house bearing House No.

13/01 standing on Plot No. 11, City Survey No. 3021, situated on Main Road, near Bata Showroom, Sitabuldi, Nagpur in the capacity as a tenant of

the petitioner. For the sake of convenience, the shop block in question will hereinafter be referred to as the 'suit shop'.

(2) Respondent no. 1 contends that he was inducted as a tenant in the suit shop some time in the month of February 2012 on a monthly rent of Rs.

20,000 which was inclusive of Corporation taxes, but exclusive of the electricity charges. The tenancy month, according to respondent no. 1,

commenced on the 1st day of each month as per the English calendar and ended on the last day of such month. Respondent no. 1 further submits,

his induction into the suit shop was on the basis of an agreement which is said to have been obtained by the petitioners in February 2012.

Respondent no. 1 submits that this agreement was retained by the petitioners and its copy was never supplied to him by the petitioners. Respondent

no. 1 also submits that as a part of the tenancy agreement obtained from him by the petitioners sometime in February 2012, respondent no. 1 was

required to pay an amount of Rs. 15,00,000 in cash as a security deposit with a promise made by the petitioners that this amount would be refunded by

them at the time when the suit shop would be vacated by respondent no. 1. This agreement of tenancy, according to respondent no. 1, was valid for

a period of ten years from the date of agreement entered into by the parties sometime in February 2012 and this agreement also provided for 10%

increase in the monthly rent payable by respondent no. 1 after expiry of each tenancy year. It was also provided in the agreement, as averred by

respondent no. 1, that no receipt either acknowledging the receipt of the rent or cash deposit of Rs. 15 lakhs, would be issued by the petitioners to

respondent no. 1 and respondent no. 1 submits that he had no option but to agree to all such terms of the petitioners.

(3) Respondent no. 1 submits that the suit shop was taken on

rent subject to the aforestated conditions, for the purpose of carrying out his business of sale of ready-made garments and his conduct has been

all throughout was such as to never give any chance to the petitioners to be displeased with him. He also submits that he has promptly paid the

rent for every month till November 2012 or the time when he filed a civil suit against the petitioners. Respondent no. 1 further submits that he has

also engaged the services of 10-12 workers to assist him in carrying his business in the name and style of M/s Bombay Fashion from the suit

shop. He also submits that he has obtained a licence under the Bombay Shops And Establishments Act, 1948 in respect of his business being run

in the name and style of M/s Bombay Fashion from the suit shop and that he has stored merchandise worth Rs. 50 lakhs in the suit shop which

have been insured by him under the insurance policy taken for a period from 15.10.2012 to 14.10.2013.

(4) Respondent no. 1 further submits that there is a common electricity meter which is installed on the 1st floor of the building in which the suit

shop is situated and that the entire 1st floor of this building is under occupation and possession of the petitioners. Respondent no. 1 submits that he

has paid the monthly electricity charges for the consumption of electricity made by him and as per the practice followed by the parties, the

respondent would pay the amount due from him to the petitioners in cash from time to time and the petitioners would, in turn, deposit the same

with the Electricity Company. But, respondent no. 1 submits that as regards the electricity bill for the month of April/May 2012 which was for an

amount of Rs. 8240, the bill amount was actually deposited by him after that bill was handed over by the petitioners to him.

(5) Respondent no. 1 further submits that the petitioners are also carrying on the business of sale of ready-made garments in the name

of Fashion Club from a shop which is just adjacent to the suit shop and is located towards eastern side of the suit shop. Respondent no. 1

submits that even though the suit shop was rented out to him by the petitioners for a period of ten years from February 2012, the petitioners, after

having received the monthly rent for November 2012, called upon him to vacate the suit shop by the end of month of November 2012.

Respondent no. 1 further submits that when he refused to oblige the petitioners, the petitioners started harassing him, one way or the other, solely with

an intention to get the suit shop vacated by the respondent anyhow. Respondent no. 1 also submits that false complaints were filed with police by

the petitioners against respondent no. 1 and the petitioners tried to bring pressure upon respondent no. 1 with the aid of some police officials. He

avers that the petitioners even tried to threaten him that if he failed to vacate the suit shop within fifteen days, the petitioners would forcibly obtain

possession of the suit shop without following the due process of law. Respondent no. 1 submits that he too tried to file complaint with police

against the petitioners, but in vain. Therefore, respondent no. 1 further submits, as a last option, he was required to prefer a civil against the

petitioners wherein the reliefs claimed were, respondent no. 1 being statutory tenant of the petitioners in respect of suit shop cannot be evicted except

except through due process of law and for perpetual injunction restraining the petitioners from evicting respondent no. 1 from the suit shop illegally

except in accordance with due process of law.

(5) By way of temporary injunction, respondent no. 1 sought interim direction to the petitioners from taking forcible possession of the suit shop

and from disconnecting electric supply to the suit shop as also disturbing possession of respondent no. 1 over suit shop in any manner.

4. This case of respondent no. 1 was completely negated by the petitioners who filed their reply to the application vide exhibit 5 and also

Written Statement some time later.

5. It is the case of the petitioners that

(1) respondent no. 1 is a gratuitous licensee of the petitioners in respect of outer portion of the suit shop admeasuring 1750 square feet and not the

whole suit shop. It is submitted that in April 2012, there was request made to the petitioners by brother of respondent no. 1 to allow respondent

no. 1 to keep his goods in the outer portion of the suit shop and as a good gesture, the petitioners allowed respondent no. 1 to make use of outer

portion of the suit shop for the purpose, only as a gratuitous licensee and that there was in fact no creation of relationship of landlord and tenant in

between them. They submitted that the arrangement was that respondent no. 1 used to take the key to the suit shop every morning from the

petitioners and return the key to the petitioners in the evening after closing the shop. It was also submitted by the petitioners that in fact in the suit

shop there were two office chambers which were and continued to be used by the petitioners for carrying out the administrative and

commercial functions pertaining to their business of selling ready-made garments.

(2) The petitioners denied that there was any rent agreement executed between the petitioners and respondent no. 1, as alleged. The petitioners submitted that neither any amount of Rs. 15 lakhs in cash was paid to them as security deposit by respondent no. 1 nor any rent was paid and is being paid to them by respondent no. 1.

(3) The petitioners further submitted that the licence obtained by respondent no. 1 under the Bombay shops And Establishments Act showed different address than that of the suit shop and this fact sufficiently indicated that respondent no. 1 was never a tenant of the petitioners. They also submitted that they too obtained licence under the said Act and their licence would show that it was in respect of suit shop at the address mentioned in the plaint.

(4) The petitioners further submitted that no documents in support of the claim of respondent no. 1 were placed on record and if it was the case of respondent no. 1 that there was rent agreement; that he paid cash amount of Rs. 15 lakhs as security deposit to the petitioners, copy of rent agreement and copy of receipt of Rs. 15 lakhs would have been filed by respondent no. 1, but that was not the case. It was also submitted that no prudent man would agree to pay amount of Rs. 15 lakhs in cash without obtaining any receipt for the same and, therefore, the submission of respondent no. 1 that even in respect of such huge amount of Rs. 15 lakhs, it was agreed that no receipt would be issued, cannot be accepted.

(5) The petitioners further submitted that there was no attempt made by them to forcibly evict respondent no. 1 from the suit shop. They also submitted that all the allegations made by respondent no. 1 regarding pressure being brought upon him and the police complaint were false. They further submitted that on 27.11.2012, respondent no. 1 instead of returning the key to the suit shop, fled away with the key.

(6) The petitioners further submitted that respondent no. 1 has only been given permissive possession of the outer portion, which was a small portion of the suit shop and that was as a gratuitous licensee.

On these grounds, the petitioners urged that respondent no. 1 was not entitled to any relief of temporary injunction.

6. It appears that this is the second round of litigation after the matter was remanded in the first round of litigation to the trial Court for deciding

afresh the temporary injunction application filed by respondent no. 1 vide exhibit 5. In the second round of litigation, the result, it is seen from the

orders passed by the trial Court as well as the District Judge, is no different than what was the situation earlier. Previously, by order passed on

1.12.2012, the trial Court had rejected the application vide exhibit 5, which order was upset by the learned District Judge by his order passed on

21.12.2012. The learned District Judge, Nagpur allowed the application vide exhibit 5 filed by respondent no. 1. This Court in Writ Petition

No. 119 of 2013 remanded the matter back to the trial court for considering afresh the application while directing the trial Court to also prima facie

decide the question as to whether or not the petitioners/defendants had an alternate way to enter the two chambers owned and possessed by them and

situated inside the suit shop. Accordingly, upon a fresh consideration, the trial Court found that respondent no. 1 did not make out any prima facie

case and that, prima facie, there was no alternate way to the petitioners to get an access to the suit shop and, therefore, rejected the application by

the order passed on 2.4.2013. In appeal being Misc. Civil Appeal No. 99 of 2013, the learned District Judge, Nagpur by the order passed on

17.1.2014 allowed the appeal, reversed the order of the trial Court dated 2.4.2013 and allowed the application (exhibit 5) of respondent no. 1. The

learned District Judge, however, gave no prima facie finding regarding availability to alternate way to gain entry into the two chambers situated

inside the suit shop by the petitioners. It is this order which is under challenge in the present writ petition.

7. I have heard Shri K. N. Shukul, learned counsel for the petitioners and Shri C. S. Kaptan, learned Senior Advocate for respondent no. 1. I

have gone through the paper book of the petition including the order of the trial Court and the impugned order passed by the learned District Judge.

8. It is the contention of learned counsel for the petitioners that the learned District Judge found some statement made by the petitioners in their

Written Statement as an admission of possession of respondent no. 1, by picking up the statement out of the context. He submits that what was

pleaded by the petitioners was that respondent no. 1 was never a tenant but a gratuitous licensee and was given permissive possession only of a

very small portion which the petitioners submitted, was an outer portion of the suit shop. He further submits that this has been taken by the learned

District Judge as an admission of factum of possession of respondent no. 1 over the suit shop, thereby indicating it to be an admission also of the settled possession of respondent no. 1, though the statement, in its purport and meaning, is clear and only points out that the occupation of respondent no. 1 was only permissive and by way of a gratuitous licence and nothing more. He submits that in any case such statement could not have been mistaken for an admission of settled possession, which the learned District Judge has done amounting to commission of perversity by him.

9. Learned counsel for the petitioners further submits that the law is well settled regarding the scope of the authority of the appellate court to make an interference with an order granting or refusing an equitable relief of temporary injunction. He submits that it is not open for the appellate court to embark upon an enquiry as if it is a court of facts and substitute its own view for the view taken by the trial Court just because another view is possible even though the view taken by the trial Court has not been found to be impossible or illogical or contrary to well settled principles of law, for, the authority exercised by the appellate court is an authority to regulate the exercise of jurisdiction by the lower and not to take a view upon de novo enquiry as if it is a court of first instance.

10. Learned counsel for the petitioners further submits that it is also well settled law that when a plaintiff comes out with a case (as in the present case) that he is a tenant of the defendant landlord, he must place on record some document which would prima facie establish his relationship as such with the landlord. But, it is further submitted, not a single document, not only copy of the rent agreement or copy of any rent receipt, but also copies of balance sheets, income tax returns reflecting entries regarding alleged payment of monthly rent of Rs. 20,000/ have been placed on record by respondent no. 1. He submits that in the absence of any such document having been placed on record, it is settled law, no temporary injunction protecting possession of such a plaintiff can be granted.

11. Shri C. S. Kaptan, learned Senior Advocate submits that a careful perusal of Written Statement filed by the petitioners would show that the petitioners have given admissions at several places regarding respondent no. 1's possession in respect of the suit shop and, therefore, no perversity

could be noticed in the view taken by the learned District Judge. He has taken me through the pleadings of the parties in support of his such contention.

12. Learned Senior Advocate further submits that it is the case of the petitioners that respondent no. 1 used to take key to the suit shop from the petitioners everyday in the morning and return it to the petitioners everyday in the evening. But, he submits, one does not understand as to how the petitioners continued to hand over key to respondent no. 1 in this fashion inspite of there being a dispute in between them, regarding vacating of the suit shop by respondent no. 1. He submits that no explanation in this regard has been given by the petitioners and their silence on this crucial aspect of the matter would make the case of respondent no. 1 prima facie even more stronger.

13. Learned Senior Advocate further submits that this is not a case wherein no documentary proof has been filed on record by respondent no.

1. Copy of the licence issued under the Bombay Shops and Establishments Act has been filed on record and so also, invoices of the goods purchased by respondent no. 1 were placed on record. He also submits that copy of insurance policy was also made available on record. According to him, these documents not properly considered by the trial Court, were properly appreciated by the learned District Judge and, therefore, it cannot be said that the view taken by the learned District Judge was unnecessary. He submits that in fact, it was necessary for him to take such a view in the matter as the view taken by the trial Court was perverse and illogical. Thus, the learned Senior Advocate submits that there is no reason for this Court to make any interference with the impugned order.

14. Shri K. N. Shukul, learned counsel for the petitioners has relied upon the following cases :

(1) Skyline Education Institute (India) Private Limited v. S. L. Vaswani & anr (2010) 2 SCC 142.

(2) Kashi Math Samsthan & anr v. Shrimad Sudhindra Thirtha Swamy & anr (2010) 1 SCC 689.

(3) Maria Margarida Sequeira Fernandes & ors v. Erasmo Jack De Sequeira (dead) through LRs (2012) 5 SCC 370.

15. Shri Kaptan has relied upon the following cases :

(1) Punamchand R. Shah (Dead) (by legal representatives v. Income Tax Officer, Companies Circle (12) Madras (1975) 101 ITR 373.

(2) Baban Anantrao Naik v. Sau Pramila Uttamrao Yenare & anr (2011) 6 ALL MR 15.

(3) Vishwanath Sawant v. Gandabhai Kikabhai (1990) 1145 Mh. L. J. 1145.

(4) Munshi Ram & ors v. Delhi Administration (1968) 702 AIR 702 (1).

(5) Rame Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs & anr (2004) 1 SCC 769.

(6) Prabhudas Daodar Kotecha & anr v. Smt Manharbala Jeram Damodar & ors (2007) 5 Mh. L. J. 341.

(7) Govindbhai Ramjibhai Chauhan v. Gokulchand Juthalal Agrawal & anr (1996) 2 Mh. L. J. 1062.

(8) Vyankati Raghobaji Parbat & anr v. Sau Varsha Vinod Deshpande & anr (2005) 2 ALL MR 157.

(9) Smt Rajnibai alias Mannubai v. Smt Kamla Devi & ors (1996) 1946 AIR 1946 SC 1946.

16. In the case of Skyline (supra), the Hon'ble Apex Court has considered various precedents relating to power of the appellate court to interfere

with the order granting or refusing temporary injunction to a party. It has considered such cases as N. R. Dongre v. Whirlpool Corpn., (1996) 5

SCC 714; Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727 and Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73

and has laid down that an appeal filed against an order granting or refusing temporary injunction is an appeal against exercise of discretion and,

therefore, it is appeal on principle and as such, the appellant court must not reassess the material and seek to reach a conclusion different from the

one, if the one reached by that court was reasonably possible on the material. The ratio that was culled out by the Hon'ble Apex Court has

been succinctly stated in paragraph 22, which is reproduced below:

The ratio of the abovenoted judgments is that once the court of first instance exercises its discretion to grant or refuse to grant relief of temporary

injunction and the said exercise of discretion is based upon objective consideration of the material placed before the court and is supported by cogent

reasons, the appellate court will be loath to interfere simply because on a de novo consideration of the matter it is possible for the appellate court to

form a different opinion on the issues of prima facie case, balance of convenience, irreparable injury and equity.â??

This principle would govern the facts of this case.

16.â? Kashi Math (supra) is the case which lays down that the first parameter that must be considered by a court exercising its discretion regarding

grant of injunction is that of the prima facie case being in favour or not in favour of the party seeking the injunction.â? It has been held that if the case

of the party does not satisfy the first parameter, the other two parameters relating to balance of convenience and irreparable loss need not be looked

into.â? There is no dispute about this principle of law and would have to be considered for its application here.

17.â? In Maria Margarida (supra), the Hon'ble Apex Court has held in paragraph 64â? that there is aâ? presumption that possession of a person,

other than the owner, if at all it is to be called possession, is permissive on behalf of the titleâ?holder and possession of the past is one thing and the

right to remain or continue in future is another thing.â? It is held, it is the latter which is usually more in controversy than the former, and it is the latter

which has seen much abuse and misuse before the courts.â? Therefore, the Hon'ble Supreme Court laid down in paragraphs 70 to 77 various factors

by way of illustrations, and not as a complete list,â? which must be considered by the court exercising its discretion in such matters. These paragraphs,

I find it necessary to reproduce here as the observations made therein have a bearing upon the rights of the parties in the present case.

They are reproduced as under:â?

â??70. It would be imperative that one who claims possession must give all such details as enumerated hereunder.â? They are only illustrative and

not exhaustive:

(a)â? who is or are the owner or owners of the property;

(b)â? title of the property;

(c)â? who is in possession of the title documents;

(d)â? identity of the claimant or claimants to possession;

(e)â? the date of entry into possession;

(f)â? how he came into possession â?" whether he purchased the property or inherited or got the same in gift or by any other method;

(g)Â in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;

(h)Â If taken on rent, licence fee or lease â?" then insist on rent deed, licence deed or lease deed;

(I) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

(j)Â subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(k)Â basis of his claim that not to deliver possession but continue in possession.

71.Â Apart from these pleadings, the court must insist on documentary proof in support of the pleadings.Â All those documents would be relevant

which came into existence after the transfer of title or possession or the encumbrance as is claimed.Â While dealing with the civil suits, at the

threshold, the court must carefully and critically examine the pleadings and documents.

72.Â The court will examine the pleadings for specifically as also the supporting material for sufficiency and then pass appropriate orders.

73.Â Discovery and production of documents and answers to interrogatories, together with an approach of considering what in the ordinary course of

human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues. 74. If

the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission.Â On vague

pleadings, no issue arises.Â Only when he so establishes, does the question of framing an issue arise.Â Framing of issues is an extremely important

stage in a civil trial.Â Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

75.Â In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with

specificity about who was the owner, on what date did he enter into possession, in what capacity and in what manner did he conduct his relationship

with the owner over the years till the date of suit.Â He must also give details on what basis he is claiming a right to continue in possession.Â Until

the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.

76. Dr Arun Mohan in his classic treatise on Justice, Courts and Delays has dealt with these fundamental principles of law exhaustively.

77. The court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces, the ability to put forward a non-existent or false claim or defence. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.??

18. In Punamchand R. Shah (supra), the Madras High Court has held that possession may be actual or constructive and even custody of keys

would show as to who has the control over or custody of the goods. It is held in the facts and circumstances of that case that not holding the keys by

the petitioner with himself suggested that he was divested of the possession. However, in the present case, there is no admission given by the

petitioners that key to the suit was always possessed by respondent no. 1, the original plaintiff and that it is their case that respondent no. 1 used to

take away key in the morning and return it in the evening everyday as a part of the permission given by the petitioners to use outer portion of the

suit shop only as a gratuitous licensee without charging any fees or rent. Except for this, there is no prima facie evidence available on record to show

that upon being handed over the key to respondent no. 1, respondent no. 1 was permitted to retain the key with him. The case of the petitioners is

that on 27th November 2012, respondent no. 1 fled away with the key. Such being the nature of respective cases of both sides and there being no

prima facie evidence brought on record by respondent no. 1 that he was permitted to retain the key with him by the petitioners, it cannot be said that

respondent no. 1 held the key with him always and as such, this law would not be applicable to the present facts.

19. In the cases of Baban Anantrao, Munshi Ram, Rame Gowda, Govindbhai and Vyankati, referred to above, it is the factum of

possession and not whether the possession is lawful or otherwise, which matters for protecting possession of the party seeking temporary

injunction. There is no dispute about the law laid down in these cases and it would have a relevance here.

20. In the case of Vishwanath Sawant (supra), the learned single Judge of this Court has held that a licence may be of two kinds, namely, a bare

licence which is purely a matter of personal privilege and a licence coupled with a grant or interest and where there is no formal document embodying

the terms of agreement, the intention is to be inferred from surrounding circumstances and the conduct of the parties and find out whether the licence

is a bare licence or licence with grant or interest. It is also held that in the former case, the licence is purely a permissive right and is personal to the

grantee casting no duties and obligations upon the person making the grant. However, it is held that such is not the case when the licence is found to

be coupled with grant or interest, which is not revocable and which would confer rights upon the licensee sufficient to seek protection of law. These

principles would certainly have a bearing upon the present case.

21. In Smt Rajnibai's case (supra), the same principle, as stated earlier, that a person in possession of the property needs to be given protection till

final disposal of the suit, has been laid down. This case would be relevant here.

22. In the case of Prabhudas (supra), the Full Bench of this Court has held that suit by a licensor against the gratuitous licensee is tenable before

the Presidency Small Cause Court. Considering the fact that no challenge on this ground has been raised by the petitioners in this petition, there

would be no need for me to consider application of this law to the facts of the present case.

23. Bearing in mind the aforestated principles to the extent they are found to be applicable here, let us now proceed to consider the case put

forward by each of the rival parties.

24. It would be appropriate to first examine the objection taken by the learned counsel for the petitioners upon the expansive exercise of the

authority by the learned District Judge while deciding the appeal challenging the exercise of discretion by the trial Court on the anvil of the test

laid down by the Hon'ble Apex Court in the cases referred to earlier, in particular, the case of Skyline.

25. Upon perusal of the order dated 2.4.2013 passed by the learned Additional Judge, Small Cause Court, Nagpur rejecting the application (exhibit

5) for grant of temporary injunction, I find that the learned Judge has considered the pleadings of both the parties, conduct of the parties, documents

placed on record including the affidavits and also failure of the parties to plead certain material facts and file on record documents to substantiate their

contentions. Upon consideration of the pleadings of the parties, their conduct and the documents placed on record, the learned Judge found that

respondent no. 1 failed to clear the test of Maria Margarida (supra) and thus, could not establish existence of prima facie case regarding his

possession over the suit shop. The learned Judge, therefore, refused to exercise the discretion in favour of respondent no. 1.

26. Learned Judge of the Small Cause Court, it is further seen from his order dated 2.4.2013, has considered the respective cases of both sides

and has found that admittedly, the petitioners are the owners of property. He considered that it was the case of the petitioners that only outer

portion of the suit shop was given as a good will gesture and by way of gratuitous licence to respondent no. 1 to enable him to make a temporary

use of the said outer portion and that, prima facie, there was no rent agreement executed between the parties, as alleged by respondent no. 1.

Considering such respective cases of the rival parties and also the admitted position that the petitioners were owners of the suit shop, the learned

Judge found, by applying the ratio of the case of Maria Margarida (supra), that there was a heavy burden upon respondent no. 1 to establish the

fact that there was prima facie substance in his case that he was not a gratuitous licensee but a monthly tenant of the petitioners based upon a written

rent agreement, since February 2012. The reason being, as noted in paragraph 64 of Mariya Margarida (supra), the presumption in law in such a

case is that such a party is in permissive occupation and if the party pleads that it is not so and it is a tenant, it must give all the details and also make

specific pleadings, as observed in paragraphs 70 to 77 of the judgment. But, the learned Additional Judge noted that neither the pleadings gave the

requisite details nor the case put forward by respondent no. 1 was substantiated by him by placing on record relevant documents such as

agreement to lease, documents relating to registration under the Central Sales Tax Act and Value Added Tax Act for the relevant period, rent

receipts, income tax returns and other relevant documents showing payment of amount of Rs. 20,000 per month by respondent no. 1 to the

petitioners, if it was the case of respondent no. 1 that the petitioners never issued, as per the rent agreement, rent receipts to him.

27. The learned Additional Judge also noted the fact that if it was the case of respondent no. 1 that he had paid security deposit of Rs. 15 lakhs in

cash and as agreed between the parties, no receipt thereof was issued by the petitioners although, I would add, such a pleading does not appeal to common sense of a prudent man, respondent no. 1 was expected to at least substantiate such a claim by producing some documents showing the source of procurement of such a huge amount in cash by him, its payment having been actually made by him and so on and so forth, and that these documents could have been the bank statements, statement of accounts, the incometax returns etc., but none of these documents was produced before the Court by respondent no. 1.

28. The learned Judge of Small Cause Court has further found that although it was the case of respondent no. 1 that he had stored merchandise worth Rs. 50 lakhs in the suit shop, the bills and invoices produced by him were of meagre amount, not consistent with the value depicted by respondent no. 1. It was also found by the learned Judge that if it was the case of respondent no. 1 that the original rent agreement obtained from him by the petitioners sometime in February 2012, was taken away by the petitioners and that the petitioners did not supply him any copy of that document, respondent no. 1 could have done a small service to him by issuing notice to the petitioners to produce this agreement and if he had done so, it would have assisted the Court a long way in appropriately adjudicating the application, but, respondent no. 1 did not make any such effort.

29. The learned Judge of the Small Cause Court has also considered the pleadings and documents produced on record regarding respondent no. 1 obtaining a licence under the Bombay Shops And Establishments Act and insurance policy as also the electricity bill allegedly paid for the period from 22.4.2012 to 22.5.2012. The learned Judge compared copy of licence produced on record by respondent no. 1 with copy of shop licence filed on record by the petitioners and found that while copy of shop licence of the petitioners showed the address of the shop as 'Fashion Gallery' Shri Musa Ibrahimhai & 6 others, Sales of Ready-made Garments, situated at House No. 13, main road, Sitabuldi, Nagpur, Ward No. 11, licence of respondent no. 1 disclosed the address of the shop as 'Bombay Fashion Shri Mohd Ejaz s/o Mohd. Bashir, Ready-made clothes sales near Bata Show Room, main Road, Sitabuldi, Nagpur'. In the

opinion of the learned Judge, such difference was indicative of the fact that respondent no. 1 had possessed no shop licence in respect of his business which he says to be carrying on from the suit shop, rather the licence would show that his business was somewhere else i.e. near Bata Show room, Main Road, Sitabuldi, Nagpur.

30. About the insurance policy, the learned Judge of the Small Cause Court found that it was drawn on 15.12.2012 and as regards the electricity bill, the learned Judge considered a material fact signified by the bill to conclude that these documents did not help respondent no. 1, rather created a doubt about his case. The electricity bill showed consumption of about 100-200 units which was quite meagre.

31. In the absence of important documents and with the presence of doubt arising from the own pleadings of respondent no. 1, as noted above, the learned Judge formed an opinion that no prima facie case was made out by respondent no. 1 and, therefore, he refused to exercise the discretion by granting temporary injunction in favour of respondent no. 1 by the order passed on 2nd April 2013..

32. The view so taken by the learned Additional Judge of the Small Cause Court is possible and cannot be said to be perverse or so illogical as would not arise from the facts and circumstances of the case.

It would then follow that it would not be permissible for the appellate court to take another view just because it is possible and which it would have taken if it were a Court of first instance.

33. The learned District Judge by his impugned order dated 17th January 2014, however, has upset and reversed the order of learned Judge, Small Cause Court, Nagpur. Upon going through the order of the learned District Judge impugned herein, I find that the learned District Judge has only given one ground in a specific manner for doing so. According to him, as noted in paragraph 36 of the order, the facts pleaded by the plaintiff and defendants clearly showed that the plaintiff was in possession of the suit shop and, therefore, he has succeeded in positively answering the factors of existence of prima facie case and balance of convenience. Then, the learned District Judge found that as respondent no. 1 was running his business from the suit shop which was his source of livelihood, respondent no. 1 could not be deprived of the same or otherwise, irreparable loss

would occur to him. Then, he also found that the Court of first instance erred in ignoring the possession of the plaintiff over the suit shop or erred in rejecting the application for grant of temporary injunction.

34. These observations are based upon the premise presumed to be present on record by the learned District Judge. In paragraph 32, the learned

District Judge observed that the possession of the plaintiff in respect of the suit shop was admitted by the petitioners (defendants) in Written

Statement and since case of respondent no. 1 (plaintiff) could be proved only on the basis of admission of petitioners in their pleadings, as

held in the case of Tulsabai w/o Narayanrao Deshpande v. M. Adhavrao Narayanrao Deshpande reported in 2006 (2) Mh. L. J. 2190, the learned

District Judge found that this was sufficient for him to take a view that, prima facie, possession of respondent no. 1 was established by him. By

making further observations in paragraph 33, the learned District Judge held that the plaintiff was inducted as a gratuitous licensee and so entry

in possession of the suit shop block of the plaintiff cannot be termed as forcible or illegal possession.

35. It is only on the basis of the assumed and so-called admission of the petitioners and the reasoning, as aforestated, particularly a pleading

about letting a party occupy certain portion of the premises as a gratuitous licensee that the learned District Judge has upset the view taken by the trial

Court. The learned District Judge did not think it necessary to consider the own pleadings of, rather failure to make specific pleadings on the part

of, respondent no. 1, conduct of respondent no. 1, failure of respondent no. 1 to produce any supportive documents to substantiate his claim.

Such an approach of the learned District Judge, I must say, was patently contrary to law settled by the Hon'ble Apex Court in many of its judgments

including that of Skyline (supra). The learned District Judge, in particular, has not said anywhere that the view taken by the trial Court was

impossible or so illogical that it could not have arisen in the facts and circumstances of the case or was perverse having been based on non-

consideration of important material or consideration of extraneous material.

36. It appears to me that the learned District Judge, only on the basis of two facts i.e. so-called admissions given by the petitioners regarding

possession of respondent no. 1 and the pleading that respondent no. 1 was

temporarily occupying the outer portion of the suit shop as a permissive occupier or as a gratuitous licensee, has found that respondent no. 1 succeeded in establishing his prima facie case in the matter. In fact, both these foundations of the learned District Judge are patently erroneous. I could not come across any admission given by the petitioners in their Written Statement, which I have gone through with the valuable assistance rendered by the learned Senior Advocate appearing for respondent no. 1, from which one can say that the petitioners have indeed admitted possession of respondent no. 1 as a tenant of the petitioners. It is significant to note here that it is not the case of respondent no. 1 that he is a trespasser and that his possession over the suit shop is that of a trespasser which would require protection till he is evicted therefrom in accordance with law. It is his specific case that he is in possession on the basis of an agreement of tenancy and in reply to such a case, the petitioners have only stated that as a good will gesture, they agreed to let respondent no. 1 make temporary use of some portion of the suit shop, just to enable him to store his goods and merchandise so that they are protected from vagaries of nature and they considered respondent no. 1 as a gratuitous licensee for which they charged no fees or rent from him. Such case of the petitioners is clearly seen from their pleadings which are repetitively found in several paragraphs of their Written Statement as well as reply filed to exhibit 5 application.

37. Of course, as pointed by learned Senior Advocate from paragraph 10 of the reply filed by the petitioners to temporary injunction application, there is a submission made by the petitioners to the effect, "However, subsequently, the plaintiff surprisingly agreed to vacate the premises peacefully, however, he is actually yet to do so, and unlikely to do so unless the Court intervenes." It appears to me that this averment has been picked up by learned District Judge and read in isolation in order to assume that there is an admission of possession of respondent no. 1 over the suit shop. It is well settled law that pleadings are required to be considered on the whole and in their entirety and it is not permissible for the Court to selectively choose a few words or a few sentences, separate them from the other pleadings and understand them completely out of context. But, the learned District Judge appears to have adopted the same course, which is

not permissible in law. He has forgotten or ignored the other pleadings and the impression given by them about the basic case of the petitioners. If one reads the pleadings of the petitioners in their entirety, the only impression that one would form is that the case of gratuitous licensee having a permissive occupation over the suit shop for a temporary purpose and a period of time only has been put forward by the petitioners.

38. As regards the opinion of learned District Judge that an admission given by the petitioners about respondent no. 1 being a gratuitous licensee amounts to an admission of possession, either settled or long standing, I must say, it is also not consistent with the settled principles of law. As held in the case of Vishwanath (supra), it is required of the court to first find out as to whether a licence is a bare licence or licence with interest or grant and it is only in latter cases that perhaps some protection can be granted. The learned District Judge made no such effort and straightway came to a conclusion that whenever a case of gratuitous licensee is pleaded by the defendant, it is an admission made by the plaintiff of the possession contemplated by law to be sufficient for issuing order of temporary injunction.

39. Thus, one can say, in a reasonable manner, that the District Judge has not considered the limits of his authority to make interference with the order passed by the trial Court refusing grant of temporary injunction in this case. I have already stated the reasons for such a conclusion in detail in the previous paragraph and to say it again, would only be a repetition. Such an order passed by the learned District Judge, I must say, is patently illegal and against well settled principles of law and, therefore, it must go.

40. In this case, the difference in addresses of two shop licences present on record is worthy to take note of to decide the question of prima facie case, which has also been considered by the trial court, but ignored by the learned District Judge. It, prima facie, indicates that if the petitioners could be issued a licence on the address of the suit shop, there was no way respondent no. 1 would not have been issued a shop licence on the address of suit shop, and the fact that it was not so issued would also prima facie show that respondent no. 1, in his application, gave address of that place from where he actually carried on his business i.e. near Bata Showroom,

which was different from suit shop. That apart, a documentary proof of address is also required to be given, which proof, as per the own case of respondent no. 1, was not with him. But, he also pleads specifically in his plaint that he obtained a shop licence. So, the question is, what proof was given by respondent no. 1 to the authorities ? Respondent no. 1 does not give any explanation in this regard in the plaint. All these facts and circumstances of the case bring the case of respondent no. 1 into mire of doubt, showing no prima facie case as existing in his favour. These facts together rather show that, prima facie, respondent no. 1 possessed no shop licence for carrying out his business of sale of ready-made garments from the suit shop situated at the address given in plaint.

41. Apart from what is stated above, I also find in the present case, in particular, that the pleadings of respondent no. 1 are vague and, therefore, on the basis of such vague pleadings, there was no way to record a finding that respondent no. 1 succeeded in showing existence of prima facie case in his favour. It is the case of respondent no. 1 that the suit shop was given on monthly rent to him in February 2012 and at that time, a written agreement was obtained by the petitioners from him. Respondent no. 1 does not give the date on which the rent agreement was executed between him and the petitioners. He also does not plead any date of his entry into the possession. All these details, as held in Maria Margarida (supra) are necessary for making out a prima facie case, but they are absent.

42. Then, respondent no. 1 says that the original rent agreement was retained by the petitioners and they never supplied copy thereof to him. But, he also says that this agreement was for a period of ten years and the agreed rent was of Rs. 20,000 per month with increase of 10% of agreed rent after every tenancy year. He also submits that it was a condition of such an agreement that respondent no. 1 paid an amount of Rs. 15 lakhs in cash as security deposit with reciprocal promise on the part of the petitioners to refund the same as and when the rented premises would be vacated by respondent no. 1. But, respondent no. 1 does not say that in compliance with the condition of the rent agreement which appears to be an essential one, respondent no. 1 indeed paid a huge amount of Rs. 15 lakhs in cash to the petitioners. In fact, both the Courts below have reeled

under an erroneous impression that cash amount of Rs. 15 lakhs changed the hands between the parties.Â But, upon carefulÂ reading of the plaint, I

could not notice any such averment having been specifically made by respondent no. 1.

43.Â So, it is a mystery as to how respondent no. 1 entered into the possession although he does not say that he complied with the said condition of

paying Rs. 15 lakhs as security deposit.Â Â Â Therefore, respondent no. 1 owed a duty to the Court as to how,Â inspite of his silence about

fulfillment ofÂ the said essential condition of the rent agreement, he acquired the possession over the suit shop.Â But, respondent no. 1 has not given

any explanation and this fact adds to already doubtful case ofÂ respondent no. 1.Â Â Respondent no. 1 also does not say that any witnesses were

present at the time when the rent agreement was allegedly executed.Â Because of absence of such material pleadings, the affidavits of some

witnessesÂ tendered on record by respondent no. 1 could not be considered as it is not known so far as to whether or not the deponents had a

personal knowledge as to what had actually transpired between the parties.Â Of course, there are some photographs, but those photographs do not

give any indication about the possession and the learnedÂ Judge, Small cause Court was right in observing that these photographs would not be

sufficient to record any prima facie finding regarding possession.

44.Â So, it is obvious that the pleadings are vague and material brought on record by respondent no. 1 is insufficient.Â On this backdrop, no

findingÂ about existence of prima facie case in favourÂ of respondent no. 1Â could have beenÂ recorded .Â Here, I must say, the conduct ofÂ

respondent no. 1 in not making any efforts for seeking production of alleged rent agreement from the petitioners is also relevant.Â Â Â In fact, the

date of rent agreement itself is not mentioned in the pleadings.Â It is also not the case of respondent no. 1 that he forgot the date of agreement and,

therefore, he was unable to give specific date.Â All these facts would show that the parameters prescribed by the Hon'ble Apex Court inÂ Maria

Margarida (supra) in paragraphs 70 to 77 are not met by respondent no. 1 and this should be the additional reason for me to uphold the order passed

by the learned Additional Judge of Small Cause.Â Even otherwise, as per the law discussed earlier, it is not open to the appellate court muchless a

court exercising supervisory jurisdiction to substitute its own views just because another view is possible unless it is established on record that the view

taken by the court of first instance is patently illegal or perverse or arbitrary, which is certainly not a case here.

45. About the argument, why petitioners parted with key to the suit shop despite the dispute and no answer having been given by them, I find, it has not been the case of the petitioners that they kept handing over the key everyday after the dispute started and it is their case, the dispute started after respondent no. 1 fled away with the key and so, I further find that there is no substance in the argument.

46. In the circumstances, I find substance in the argument of learned counsel for the petitioners and no merit in the argument advanced on behalf of

respondent no. 1. The impugned order passed by the learned District Judge is patently illegal and erroneous. It cannot stand to the scrutiny of law

and deserves to be quashed and set aside.

47. Writ Petition is allowed. The impugned order passed by the District Judge, Nagpur dated 17th January 2014 in Misc. Civil Appeal No.

99 of 2013 is hereby quashed and set aside and the order dated 2nd April 2013 passed by the Additional Judge, Small Causes Court, Nagpur in

Regular Civil Suit No. 455 of 2012 is hereby restored and confirmed.

48. Rule is made absolute in the above terms. No costs.

At this stage, Shri Masood Shareef, learned counsel for respondent no. 1 seeks stay to the effect and operation of this order for a period of eight

weeks, which has been strongly opposed by Shri K. N. Shukul, learned Counsel for the petitioners.

Considering the fact that the injunction is in operation by virtue of the order passed by the learned District Judge till disposal of this petition, I am of the

view that the request made by the learned counsel for respondent no. 1 can be granted for a limited period of time.

Accordingly, the effect and operation of this order is stayed for a period of three weeks from the date of the order.