

HIGH COURT OF GUJARAT

BHARATBHAI UKAJI PRAJAPATI

Versus

MANIBEN PARSHOTTAMBHAI PATEL

Date of Decision: 18 December 2012

Citation: 2012 LawSuit(Guj) 1320

Hon'ble Judges: [Rajesh H Shukla](#)

Case Type: Appeal From Order

Case No: 340 of 2012

Subject: Civil

Acts Referred:

[Code Of Civil Procedure, 1908 Or 43R 1\(r\)](#)

Final Decision: Appeal dismissed

Advocates: [R C Jani](#), [Tanvish Bhatt](#)

Cases Referred in (+): 1

Rajesh H. Shukla, J.

[1] The present Appeal from order has been filed under Order 43, Rule 1(r) of the Civil Procedure Code, 1908 being aggrieved with the order passed by the Judge, City Civil Court, Ahmedabad below Exh.6-7 in Civil Suit No.2080/2011 dated 06.08.2012 on the grounds stated in the memo of appeal in detail.

[2] Heard learned counsel appearing for the respective parties.

[3] Learned counsel, Mr.R.C. Jani for the appellant submitted that the appellant is accepted as a tenant by the present respondent after the termination of the agreement, which has not been appreciated. He submitted that a rent was accepted for nine months even after the termination of the agreement and, therefore, he is a tenant, which has not been appreciated. Learned counsel, Mr.Jani also submitted that initially the possession and occupation of the appellant was legal and valid as he was occupying it pursuant to his agreement of franchise with REI Agro Ltd. He, therefore, submitted that when the possession and occupation is valid and legal and he is not a

trespasser, he could not have been evicted without following procedure. He submitted that therefore the possession could not have been claimed without filing a suit for eviction when he has been treated as a tenant. He therefore submitted that the Court below has failed to appreciate this aspect and proceeded on wrong assumption with regard to the agreement of lease and committed an error. He, therefore, submitted that the present Appeal from Order may be admitted and interim relief may be granted.

[4] Per contra, learned counsel, Mr. Tanvish Bhatt for the respondent referred to the facts of the case and submitted that there is no privity of contract between the appellant and the respondent and there is a leave and license agreement with regard to the premises in question between the respondent and the Company-REI Agro Ltd. He further submitted that similarly there is a franchise agreement between REI Agro Ltd as Franchiser and the present petitioner-Bharatbhai Ukaji Prajapati as a franchisee. The franchiser had taken the premises on leave and license basis from the original landlord (the respondent-original defendant), however, there is no privity of contract between the present appellant and the respondent. He submitted that the respondent had entered into leave and license agreement with REI Agro Ltd., who in turn had entered into franchise agreement with the appellant-original plaintiff for the purpose of business and the plaintiff was to use and occupy the premises as part of the franchise agreement between the Company and the appellant-plaintiff and when the franchise agreement has been terminated, the appellant-plaintiff has no right to continue or occupy the premises. He submitted that there is a subtle distinction between the leave and licence. He submitted that in view of the fact that the premises was given on leave license basis by the respondent to the Company, there is no question of any right of tenancy.

[5] Further, learned counsel, Mr. Bhatt submitted that there is no transaction or privity of contract between the plaintiff and the defendant, but as a landlord the defendant has never accepted the plaintiff as tenant nor it has been given to the Company as a tenant. It was an agreement between the defendant and the Company. The Company had entered into franchise agreement with the appellant-plaintiff for the purpose of business and pursuant to that, he was to occupy and use the premises as a permissive use. He therefore submitted that the appellant cannot claim any relief much less as a tenant in view of the settled legal possession.

[6] In view of these rival submissions, it is required to be considered whether the appellant can claim any right as a tenant in light of the settled legal possession and the present agreement.

[7] Admittedly there is no privity of contract between the appellant-plaintiff and the respondent. Admittedly the respondent had entered into leave and licence agreement with REI Agro Ltd., which in turn had entered into franchise agreement with the present appellant-original plaintiff for the purpose of business. Thus, the appellant-original plaintiff is occupying the premises pursuant to the franchise agreement between the appellant-plaintiff and the Company-REI Agro Ltd., and the premises was to be used by the appellant-plaintiff only for the purpose and to the extent as provided in the franchise agreement for the purpose of business. Therefore, there is no question of making any claim based on such franchise agreement, to which, the respondent was not a party. In other words, the occupation and possession of the appellant pursuant to the franchise agreement with REI Agro Ltd., could be said to be a permissible use for the purpose of business of the said Company and no right could be claimed vis-a-vis the respondent landlord (original defendant). Further, the leave and license agreement between the respondent landlord and REI Agro Ltd., would be governed by the terms and conditions of the said leave and license. It is evident that REI Agro Ltd., and the respondent-defendant had agreed and accepted to be governed by the leave and license agreement as expressed in stipulation and the possession was given on the basis of such leave and license agreement for a limited/stipulated period. Thus it would make it clear that the party is intended to be governed by such leave and license. It is pursuant to said agreement by REI Agro Ltd., further franchise agreement has been made between the Company and the present appellant-original plaintiff, to which, the respondent landlord was not even a party to the contract and has no concern. The franchise agreement between the appellant-plaintiff and REI Agro Ltd., is with regard to the business and the franchise agreement refers to the terms and conditions for the business and the manner in which it should be carried out and nothing beyond. Therefore, no right could be claimed by the appellant-plaintiff by any stretch of imagination merely because some payment has been made, which learned counsel, Mr.Jani wanted to claim as an acceptance of rent. It is required to be mentioned that the provisions of Rent Act have been suspended by the Government Notification (Gujarat 2nd Amendment Act, 2011) (Gujarat Act 27 of 2001). It is required to be mentioned that subsequently by Gujarat Act No.6 of 2011 dated 31st March, 2011, the suspension of applicability of Rent Act has been further extended till 31st March, 2021. Therefore, the Rent Act would not be attracted and the protection under the Rent Act would not be available as sought to be canvased. A useful reference can be made to the judgment of this Court in case of [Dipak Rasbiharilal Goyal Vs. Naliniben H. Raval](#), 2012 2 GLR 1572 in this regard. Therefore also, it implies that even the relationship of REI Agro Ltd., and the respondent would be governed by the leave and license agreement and if the Company has terminated the franchise agreement with the appellant-plaintiff pursuant to which the appellant-plaintiff was permitted to carry on business in the premises, it could be only termed as permissive use on behalf

of the Company based on the franchise agreement and when the agreement itself has been terminated by the Company, no right could be claimed by the appellant-plaintiff. Therefore, the submission made by learned counsel, Mr.Jani based on the footing that he has been tenant is thoroughly misconceived and the impugned judgment and order passed by the City Civil Court, Ahmedabad does not call for any interference as the order passed below notice of motion dismissing the notice of motion and refusing to grant any interim injunction is consistence with the criteria/guidelines for the grant of injunction under Order 39, Rules 1 & 2 regarding the relevant factors/criteria like prima facie, balance of convenience etc.

[8] Therefore, the present Appeal from Order deserves to be dismissed and accordingly stands dismissed. Notice is discharge.

[9] In view of dismissal of main Appeal from Order, Civil Application for stay does not survive and stands disposed of accordingly. Notice is discharge.

