

JYOTI
RAJESH
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 323 OF 2000

IN

FIRST APPEAL NO.805 OF 1987

Dr. Girish Jayantilal Sanghavi
residing at 28, Navrang,
58, Pedder Road, Mumbai 400026.

...Appellant

Versus

Smt. Premabai Narayan Telang (deceased)

Through legal heirs

1. Smt. Premabai Narayan Telang (Since deceased)

1A. Dr. Ramesh Naraan Telang (Since deceased)

1AA Shri Umesh Ramesh Telang, aged Adult

Occupation : Service

Residing at: 71, Sedleigh Road, London,

S.W. 18 IQE,

United Kingdom,

S/o. Dr. Ramesh Narayan Telang (Since Deceased)

1B. Mr. Shreekant Narayan Telang, (Since deceased)

1(B)(a) Mrs. Swati Pranay Athvankar,

age about 37 years, Occupation :Service

residing at: A 34/35, 4th Floor,

Ganesh Prasad, N.B.Marg,

Mumbai – 400007.

1(B)(b) Soorashree Sumit Sadekar,

Age 27 years, Occupation : Service

Residing at : 561, 10th Avenue ,

Apartment 22A, New York,

New York – 10036.

...Respondents

Ms. Sayali Puri Nair i/b. M.S. Bodhanwalla & Co., for Appellant.

Mr. Prashant Tikare, for Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 4th December 2025

Oral Judgment (Per : G. S. Kulkarni J.)

1. This Letters Patent Appeal challenges Judgment and order dated 17th August 2000, passed by the learned Single Judge in allowing the First Appeal No.805/1987, whereby the Judgment and Order dated 17th October 1986, passed by the learned Judge City Civil Court at Bombay in Short Cause Suit No.8388/1975, dismissing the suit filed by the Respondent/original plaintiff stands set aside. The Appellant in the present case is the original defendant. The Respondent is the original plaintiff. For convenience we refer to the parties as they stand in the Civil Suit.

2. The suit in question was instituted by plaintiff for possession of the suit premises viz. Shop No.3, Ground Floor, Krishna Building, Khetwadi, 6th lane Opposite SVP Lane, Mumbai, and for recovery of the arrears of the license fees of Rs.8,625/- for the period from March 1973 to September 1975 at the rate of Rs.325/- per month after deduction of Rs.1450/-, refund received during this period and for future mesne profits.

3. The plaintiff's husband was the tenant of the suit premises. As his Son Ramesh had just completed his M.B.B.S. Examination, the plaintiff's husband renovated the suit premises where he was running his dispensary. However, son Ramesh at the relevant time wanted to continue his education. He intended to pursue degree (F.R.C.S) M.S. for which he was to go abroad. The plaintiff was concerned, that the suit premises be put to proper use, hence he intended that, until Ramesh returns after completing his higher education, the dispensary should continue to operate. In these circumstances, the plaintiff allowed the defendant to

conduct the dispensary by entering into a Leave and License agreement and to that effect an agreement was entered in August 1969. The defendant was permitted to conduct the dispensary on a monthly pay of Rs.500/-. The leave and license was renewed from time to time and the last of such renewal was on 21st July 1972, under which the period agreed was upto 30th April 1973. It appears that Ramesh after completing his higher education intended to start his medical practice in the said premises, and for such reason the plaintiff addressed a notice dated 9th October 1975, calling upon the defendant to handover the possession alongwith the furniture and fixtures, which was made available by the plaintiff when the leave and license agreement was entered in the year 1969.

4. The defendant resisted vacating the suit premises, and set up a case that he had become a tenant of the suit premises and accordingly refused to deliver possession. He also did not pay the license fees/compensation from the month of March 1973 and in these circumstances the suit in question came to be filed seeking prayer for possession of the suit premises which was contended by the defendant by filing a written statement. The learned trial Judge, framed the following issues and recorded his findings :

Sr.No.	ISSUES	FINDINGS
1.	Whether the Plaintiff proves that the Defendant was given the suit dispensary for conducting on leave and licence basis alongwith the portion of the premises as stated in paras 6 and 7 of the Plaint ?	No.
2	Whether the Defendant proves that he executed the Agreement with the Plaintiff in the circumstances as mentioned in para 6 of the Written statement?	No

3	Whether the Defendant proves that he has become the tenant or a protected licensee under the Rent Act, as alleged in para 8 of the Written statement ?	Yes
4	If yes on above issue No.3 whether this Court has got jurisdiction to entertain and try this suit by reason of the provisions of the Bombay Rent Act, 1947 ?	Jurisdiction ousted after the suit.
5	Whether the Plaintiff proves that she is entitled to the possession of the suit dispensary and the premises alongwith telephone, furniture and fixtures and medical equipments as detailed in the list annexed to the Agreement Ex. "A" to the Plaint as alleged in para 15 of the Plaint?	No
6	Whether the Plaintiff is entitled to a decree for Rs.8,625/- and also mesne profits?	As it is paid during the pendency of the suit
7	What relief if any is the Plaintiff entitled to ?	Nil
8	What decree ?	As per order

5. After both parties were granted an opportunity to lead their evidence, the learned Trial Judge on hearing the parties reached a conclusion that the plaintiff did not prove that the defendant was given the suit dispensary for the purpose of conducting the dispensary. In other words the learned trial judge although held that it was proved that there was a leave and licence agreement, the learned trial judge, went behind the leave and licence agreement to determine the intention of the parties to have the leave and license agreement by such process of reasoning held that the defendant had become the tenant of the suit premises. As a result it was held that the plaintiff is not entitled for the possession of the premises alongwith furnitures and fixtures. The Trial Court also held that, although the defendant could be considered as a licensee, the plaintiff had nevertheless failed to

establish the existence of any leave-and-license agreement. It was held that the plaintiff did not prove that the defendant was given the suit-dispensary for conducting on leave and license basis. It was also held that the defendant had proved that he had in fact become a tenant or the protected licensee under the Rent Act, and accordingly by dismissing the suit it was held that the plaintiff was not entitled to the decree of possession. The relevant paragraphs of the findings of the learned Trial Court are reproduced below:

“6. The main question in suit is whether the Defendant has taken the premises on an Agreement to run the running dispensary or as alleged by him, he has taken it under sub-tenancy or under Leave and Licence and has thereby become protected licensee. In such a case when the terms of the Agreement are reduced to writing they carry considerable weight. Though oral evidence for the parties tries to support the respective stand, that evidence has to be considered in the light of the terms reduced in writing. The terms of Leave and Licence Agreement right from 1969 which are at exhibits 1, 2, 3 and 4 do not say a word that the suit premises was given to the Defendant to run or conduct the dispensary as a running dispensary. These agreements have been labelled as Leave and Licence Agreements. These Agreements say that Leave and Licence was granted to Defendant to use the premises to run the dispensary and that there was a running dispensary then. According to the Plaintiff, the relevant clauses of the Agreement coupled with the fact that Ramesh was to start his suit premises till he left for U.K. for higher studies, there is no direct evidence on this point.

7. Plaintiff Prema Narayana Telang, who had been examined as (P.W.1) has clearly admitted in her cross examination that she never went to the suit premises after the death of her husband. So she has no personal knowledge whether her son was practicing in the suit premises or not. No other evidence either of any patient or of neighbour is produced to show that Dr. Ramesh was also practicing in the suit premises. Even Dr. Ramesh is not examined. It is said that he is now not in India but he is in Australia. That itself does not show that this witness was not available when he has her own son. It was also submitted that he was also appointed as doctor under F.S.I.S. scheme. Though time was granted to produce records from that office, no such record was produced. So there is absolutely no practised at any time in the suit premises though his father had intention or desire to see that his son Ramesh practised in the suit premises, and renovation work was carried out just round about that time. The evidence of the Plaintiff suggests that after the death of her husband Dr. Narayan Telang, the family was not well off financially and required some other doctor to conduct the

dispensary on payment of certain premium to the family. In this background probably after death of Dr. Narayan Telang, the family must have changed its mind and Dr. Ramesh also must have felt that he should concentrate more on higher studies than practising in the suit practice in Bombay, the Plaintiff's intention was to give the suit premises for conducting the running dispensary. Throughout the Leave and Licence Agreement, running dispensary. On the other hand it says that a of the Defendant that the family never intended and in the family would normally not think of asking another man to run the dispensary of late Dr. Telang. Because in such a case it would be difficult for Dr. Ramesh also to conduct the dispensary in the suit premises particularly when the Plaintiff alleges that in fact Ramesh had also his table and a chair and was practicing in the portion of the suit premises. If he was to do so it does not wisper that Defendant was to conduct the running dispensary was given to the Defendant to use and occupy the same for the purpose of running the dispensary. In this background, we have to see whether the Defendant was put in exclusive possession of the suit premises as it is one of the important ingredient to find out whether mere right to conduct a running dispensary was granted or exclusive possession was given to the Defendant to remain in possession of the dispensary for the purpose of the practice of the Defendant. There is considerable force in the submission fact Ramesh never practiced in the suit premises. Father died in July, 1969, By that time, Ramesh had passed his M.B.B.S. Examination and was in Bombay. Though he had continued his studies for M.S. Examination, he was at the same time working as Registrar in J.J.Hospital, at Bombay. So when a person who has qualified to practice medicine was in the family and was present in Bombay, the family would not normally think of inducting or bringing another doctor in the same premises which would certainly create a sort of competition between two doctors in the same premises. **Further though the Plaintiff allege that Dr. Ramesh was practicing in the premises even during the interval after attending his studies for M.S. I therefore hold that soon after the death of Br. Telang there was change in the family and so Dr. Ramesh must have taken a decision not to practice in the suit premises. Otherwise, no family would try to bring and/or induct a competitor in the same premises particularly when Ramesh was to start his new career, at that place. I therefore hold that there is much truth in what the Defendant says that the family was not interested in retaining the suit premises for the practice of Rs. Ramesh.**

8. There are other circumstances which weigh heavily against the Plaintiff. The family on the death of Dr. Narayan Telang, possessed other two premises where late Dr. Narayan had a dispensary and nursing home. Even in those premises, Dr. Ramesh did not practice. On the other hand within a few months one of the premises was admittedly disposed off by the family and the other was kept under lock. This speaks in volumes that Dr. Ramesh never intended to practice till he completed his higher education. I therefore hold that at the time of the first agreement with the Defendant, Dr. Ramesh was not at all in sight and in this background, the Defendant would be put in exclusive possession of the suit premises for his practice. It is also in the evidence of the Defendant, that soon after the Defendant took

possession he removed the sign board put up earlier and fixed his own. If the family was interested in seeing to make a capital out of reputation of Dr. Narayan Telang built up in the suit premises, certainly, it would not have allowed the Defendant to remove the old sign board of Dr. Telang and fix his own. This conduct of Plaintiff's family in allowing the Defendant to have his own sign board suggests that the Plaintiff's family had no intention to retain the dispensary for the practice of Dr. Ramesh, but the Defendant was allowed to deal with the premises, as if it was his own dispensary and start his own practice and not that it was to continue the good will or to capture on the reputation of late Dr. Telang. This circumstances particularly the immediate conduct of the Defendant in respect of changing of the sign board also shows that the suit premises must have been given to him for his own practice and not for conducting the dispensary. Here an attempt is made on behalf of the Plaintiff to show that the very fact that the furniture and other articles were allowed to be retained by the Plaintiff suggests that a running dispensary was allowed to be conducted by the Defendant. In the first place, the terms of leave and licence agreement do not clearly suggest such a case of conducting. Had there been such a case, there would not have been reference to the parties as licensor and licensee, and that they would have been referred to as contracting parties owner and contractor. Secondly the recitals in the Agreement suggest that licensee was to use and keep the running dispensary. It even does not suggest anywhere according to Leave and Licence that Defendant was to conduct the running dispensary of late Dr. Narayan Telang. It is true that the furniture that existed in the suit premises was allowed to be used by the Defendant. That itself is no circumstances to suggest the case of the Plaintiff particularly in the background of the wording of Leave and Licence Agreement and various circumstances discussed above. Since the furniture was of such nature that it would have been otherwise not useful to furnitures and fixtures in the suit premises is still owned by the Plaintiff and the Defendant has no title to it.

9. Even though the finding in respect of the furniture in favour of the Plaintiff, and it is held that the Defendant was allowed to use the furniture in the premises at the time of the Agreement of 1969, that aspect itself as discussed earlier does not prove that the Agreement was of conducting the running dispensary. It is true that gradually premium has been reduced from Rs.500/- to Rs. 325/-. The Plaintiff has explained this. According to the Plaintiff, the Defendant represented that he was not doing well in its practice, the premium came to be reduced. Though normally the landlord may not think of reducing the rent, after all It depends upon the relations one maintains. It appears that till the Defendant claimed tenancy by his notice dated .4.74, Ex.12, the parties trusted each other and they had good relations. Even certain letter sent from England Dr. Ramesh Telang to the Defendant reveals about this cordial relations between these two families. He has thanked the Defendant for maintaining good relations and his assistance. It is very clear from the letter EX.9 that both the families were on very good terms and in this background, if the Defendant expressed that he was not doing well or he did not get much the practice which he expected in 1969, the Plaintiff might have readily agreed to reduce the premium. Secondly he might be the hope of the mother of Dr. Ramesh,

that her son, Dr. Ramesh who had gone to U.K. for higher studies and return to India and start practice in the suit premises in the hope of securing back possession of the suit premises, he might have readily agreed to reduce the premium because that gesture may persuade the Defendant to repay the debt to the family which did not insist for the same premium. Such attitude of the landlord, in the present case the Plaintiff cannot be ruled out when she agreed to reduce the premium as when her son was on the path of building his career. I therefore hold that the circumstance of reduction of premium the plaintiff but was only useful for a medical practitioner in a dispensary, it must have been allowed to remain there and at the same time allowed the Defendant to use the same for higher premium. Here an attempt has been made by the Defendant that in fact, the Defendant had agreed to purchase the articles and furnitures lying in the suit premises and had agreed to pay higher premium and when the price was fully paid, the premium was gradually reduced to Rs.325/-. In this regard there is the only interested evidence of the Defendant. Had there been an independent agreement relating to the purchase of the furniture, there would have been a document because the furniture was not of small value. There were a number of articles including fixtures and certainly a purchaser would like to have document of purchase or payment of price in respect of such articles. Even the Leave and Licence Agreement is silent about it. There is no reason why such a clause was not inserted in the Leave and Licence. On the other hand, by way of precaution, the Plaintiff had taken Rs.2,500/- from the Defendant as deposit for the goods in the suit premises for the safety of the goods in the suit premises as provided under clause 6 of the Leave and Licence Agreement. A list of those articles is appended to this Agreement. The falsity of the Defendant's case is obvious by mere perusal of the last Agreement Ex.4 of the year 1972. Under this Agreement premium was reduced to Rs.325/. If the entire price was paid at that time, and if the Defendant had become owner of the furniture it was not necessary again to describe these articles as in possession of the Defendant as was done at the time of earlier Leave and Licence Agreements. This conduct of the Defendant in agreeing that various furnitures and fixtures are in his possession on behalf of the Plaintiff even in July 1972 when according to him entire price was paid certainly shows that there was no such agreement of purchase of furnitures and the story of the Defendant is not true. I, therefore, hold that it does not show that the Defendant purchased the furniture or it is the circumstance which helps the Plaintiff to prove not show that the Defendant purchased the furniture or her case that a running dispensary was given to the Defendant to conduct or run it.

10.The Learned Advocate for the Plaintiff strongly contend-ed that the Defendant is making out inconsistent stand, because 10. at one stage, he came out with the case of protected licensee and at the time of recording evidence he stated that he came out as a sub-tenant. I do not find any force in this submission. In fact, in the Written Statement the Defendant has first alleged that he is a sub-tenant, of the Plaintiff and in the alternative, he has contended that if he is a Licensee then his licence is protected, under the provisions of the Bombay Rent Act. Besides, long before the Written Statement was filed, in the Notice dated 27.4.74 Ex.12 the Defendant has

already informed the Plaintiff about the sub-tenancy and he claiming as tenant. I therefore hold that the Defendant has in fact made a case of sub-tenancy and/or in the alternative as a protected Licensee.

11. The Defendant contends that in order to circumvent the provisions of the Bombay Rent Act, though the transaction was of sub-tenancy, the Agreement of Leave and Licence was brought into existence. There does not appear to be any truth in this stand. In fact the Defendant had executed as many as four Leave and Licence Agreements. Only when there was a change in Law giving protection to Licensee by the Amendment of 1973, thereafter only he started claiming to be tenant. Earlier to that he has not put forth his case of sub-tenancy at all. Besides, the Defendant who by his conduct in 1974 that he is very alive to his rights to claim the right of protected licensee would not normally agree to execute Leave and Licence Agreement if he really was a sub-tenant. It appears that both the Plaintiff and the Defendant were very much alive to position of law. If the Agreement of sub-tenancy is executed, would land in difficulty because at that time creation sub-tenancy was against the law and it would have enabled. he landlord to evict both. So to avoid the situation, Leave and Licence must have been brought into existence and not that such Agreement was brought into existence to circumvent the provisions of the Bombay Rent Act, though the transaction was one of sub-tenancy. I therefore hold that the transaction that was agreed between the parties was not of conducting the running dispensary but was Leave and Licence Agreement and by that Agreement as discussed earlier, the Defendant was put in exclusive possession of the premises to have his own practice and to run the dispensary once run by late Dr. Telang.

12. The Defendant though is shown to have come in possession under the Leave and Licence Agreement, still the Plaintiff is not entitled to possession from him on termination of the Agreement in view of the provisions of section 15 A Amendment to Bombay Rent Act, 1973. By this amendment, Licensee from the tenant also becomes a protected Licensee and as such a tenant of main tenant would be his landlord. In other words in view of the provisions which says that all those Licensees who are in possession on 1.2.1973 are protected and become the tenant of the said premises.

In the present case there was an existing Leave and Licence agreement on 1.2.1973 in view of the Ex.4. Therefore the Defendant becomes a protected licensee and as such a tenant and Plaintiff a landlady. Therefore the Plaintiff is not entitled to possession even on the ground of termination of Leave and Licence of the Defendant.”

6. The Judgment and Order dated 17th October 1986, was challenged by the plaintiff before this Court in First Appeal in question (FA No.805/1987) which was allowed by the impugned judgment and order dated 17th August 2000. The

learned Single Judge examined the rival contentions and more importantly the relevant clauses in the leave and license agreement viz. 9, 12, and 15, which are extracted in paragraph 5 of the impugned Judgment. Learned Single Judge on examining the evidence on record, has recorded a finding that it was an admitted position that in the suit premises, the husband of the plaintiff was practicing as a Doctor and it was his dispensary. It is further ordered that he also admitted that he was a licensee of the premises. It was observed that the plaintiff's husband passed away on 16th July 1969, and shortly thereafter, on 10th August 1969, the agreement between the parties was executed. Considering the close proximity between the date of the plaintiff's husband's death and the date of the agreement, the court noted that such circumstance was significant. It was further observed that the Trial Court itself had held that the agreement executed between the parties must be examined while deciding the dispute. It was also observed that the agreement decided the nature of relationship between the parties as created under such agreement which was of a licensor and licensee. Considering such evidence and the undisputed recitals/terms and conditions of the agreement, the learned Single Judge observed that the agreement clearly demonstrated that what was given to the defendant was a running dispensary, alongwith furniture and fixtures including Chairs, wall-clock, Medical tools etc. which was not disputed.

7. The learned Single Judge, considering the provisions of law viz. Section 15A of the Bombay Rent Act, observed that the provisions clearly contemplated that if a person is a licensee on 1/2/1973, then such person becomes a tenant of the premises. The term licensee as defined by the act, indicated that if the business of

the licensor is given for conducting then the transaction does not amount to licence. In such context, also considering the provisions of Sub-Section 8 of Section 5, which defines the term 'premises/lot' it was observed that the said premises were given on a license to the defendant for conducting business. Thus, considering the nature of the agreement as also the evidence which had come on record, in regard to the rights the parties exercised in respect of the suit premises, the learned Single Judge on the following reasons allowed the proceedings:

"Perusal of above quoted terms in the agreement clearly shows that what was given to the respondent is a running dispensary for conducting. A look at the Items which were given to the respondent from the list at Schedule 'A' to the agreement shows table fan, chairs, stools, wall clock, dispensary counter with medicine bottles etc. were allowed to be continued in the dispensary even the framed certificate obviously of the husband of the appellant and also photograph continued to be in the dispensary. If only premises were given to the respondent and not a running dispensary for conducting then there was no need for the appellant to continue the above referred articles in the dispensary and the respondent to accept them. At this juncture, it will be useful to look into the provisions of section 15-A of the Bombay Rent Act:-

"Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person in on the 1st day of february 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises of part thereof, in his occupation".

7. I have pointed out above that there is a recital in the agreement between the parties themselves that the date on which agreement was entered into 10th August 1969, the dispensary was running. In the face of this clear recital in the agreement, in my opinion the defendant cannot now say that the date on which agreement was entered into, it was not a running dispensary. It is further to be seen that it is clear from the deposition of the plaintiff that her husband had expired in the month of July 1969 and by that date her son had also passed M.B.B.S. examination. He was doing his post-graduation and in this situation therefore, her anxiety was that the dispensary of her husband which was running, at the time of his death should continue to be there when her

son becomes ready to start practice in the dispensary. It is clear from the agreement between the parties as also the deposition of the parties, that the intention behind the transaction entered into between the parties was to give to the defendant a running dispensary for conducting. In these circumstances, therefore, in my opinion, it is clear that the relationship between the plaintiff and defendant would be covered by the exception that is carved out in the definition of the term license in the Bombay Rent Act and therefore, the relationship between plaintiff and defendant would not amount to a license within meaning of the Bombay Rent Act and consequently, therefore, the defendant would not be entitled to protection under the provisions of section 15-A of the Bombay Rent Act. If the relationship between the parties does not amount to a license within the meaning of the Act then the jurisdiction of the Civil Court to entertain the suit between the plaintiff and defendant will not be ousted because of the provisions of section 28 of the Act. The Trial Court was therefore in error in holding that the Trial Court will not have jurisdiction to entertain the suit.

8. It is nobody's case that the license granted in favour of the Respondent was not validly terminated by the plaintiff and therefore, as a result of valid termination of the license, granted in favour of defendant by the plaintiff, the plaintiff would be entitled to the decree of possession. The suit filed by the plaintiff therefore, is to be decreed in terms of prayer clause (a) and (c) of the plaint. There is no question of granting decree in terms of prayer clause (b) of the plaint as it has been observed by the Trial court that arrears of the compensation till the date of filing of the suit has been paid by the plaintiff. In the facts and circumstances of the case, there shall be no order as to costs. At the request of the learned counsel for the defendant/respondent, the execution of the decree of eviction being passed by this Court is stayed for the period of 12 weeks from today. The learned Counsel appearing for the defendant states that the defendant shall within a period of four weeks pay all the arrears of the rent for period subsequent to 1986 to the plaintiff excluding the amount that have been deposited in the declaratory suit in the Small Causes Court. Statement accepted. It is directed that during the period of 12 weeks the defendant shall not part with possession, create third party interest or alienate etc., to the suit premises."

8. The defendant has filed this Letters Patent Appeal assailing the Judgment and order passed by the learned Single Judge. It is seen that on 10th April

2007, a co-ordinate Bench of this Court has passed the following interim order, on the stay application viz. Civil Application No.7464/2000:

“1. The learned counsel for the appellants submit that the appellants shall pay a sum Rs. 55,000/- within a weeks time and from 1.08.07 he shall pay the use and occupation charges @ Rs. 2500/- per month. In so far as arrears are concerned the learned counsel for the appellants submits that the appellants undertake to deposit all arrears and use and occupation charges commencing from August 2000 till 30.04.07 on or before 31.01.07, and would start paying use and occupation charges for the current month of April 2007 on or before 10th of the following month. On the amount being deposited, the respondents would be entitled to withdraw the same. The undertaking given is accepted. The order for staying possession would be subject to aforesaid terms conditions.

2. Both the Civil Applications are disposed of accordingly.”

9. Learned counsel for the plaintiff/Respondent submits that he had addressed a letter dated 30th August 2023 to the Registrar of this Court, requesting for statement to be issued from the order dated 10th April 2007, till the date of the said letter with regard to the amounts, as per the aforesaid interim orders, being deposited by the defendant/ Appellant. That letter was responded by Nazir/cash branch vide its letter dated 25th September 2023, that the Registry had taken thorough search of the relevant registers for the entry regarding amounts deposited as per order dated 10th April 2007, in the Civil Revision Application in present proceedings and also in the Computer section/entries, but no deposited amount was found or is received by the Registry. Learned counsel for the Respondent/plaintiff accordingly has contended that the interim orders passed by this Court are not complied and for such reason the defendant/Appellant is required to be non-suited. He has also drawn our attention to the subsequent developments viz. that the declaratory suit filed by the defendant/Appellant before

the Small Causes Court at Bombay viz. RAD/1135/1976, also was dismissed by an order dated 18th December 2021 passed by the learned Judge of the Small Causes Court at Mumbai.

10. This Letters Patent Appeal being of the year 2000, we had fixed the appeal for hearing. We also find from the record that from the earlier orders viz. order dated 17th December 2019 that the Appellant/defendant whenever the matter was listed, had taken the position that he is ready to settle the dispute. This is seen from the order dated 25th November 2019 and 17th December 2019 and the subsequent order dated 24th November 2022. However it appears that there were no settlement talks, as also confirmed by the Advocate for the plaintiff/Respondent. 10. The present Letters Patent Appeal was listed before this Bench on 25th September 2025, when as none appeared at that time we had disposed the Appeal for want of prosecution. However, later on as the Appellant appeared and was represented by an Advocate, we restored this appeal and adjourned the proceedings to 9th October 2025. Thereafter the proceedings appeared before us on 6th November 2025 when the following order was passed permitting the legal heirs of the respondent/plaintiff to be brought on record. The said order reads thus:

“1. As the only respondent -Smt Premabai Narayana Telang has passed away during the pendency of this appeal, we had permitted amendment to bring on record her legal heirs. Out of the legal heirs, respondent Nos.1 (A) and 1(B) have also expired and their legal heirs were permitted to be brought on record by us by an order dated 9 October 2025, and the amendments are accordingly carried out.

2. Learned Counsel for the appellant states that some time be granted to serve the newly added legal heirs. Let private service be accordingly effected by all permissible modes and place on record an affidavit of service on or before the adjourned date of hearing.

3. Stand over for 20 November 2025. HOB.”

11. Thereafter on 20th November 2025, when the proceedings were listed before us. The learned counsel for the Appellant/defendant submitted that she is not receiving any instructions from the Appellants and in this view of the matter she was unable to proceed and also taken a discharge. We accordingly passed the following order also directing the office to issue notice to the Appellant and to serve the same through Bailiff of the local Court and report of service be placed on record. The said order reads thus:

- “1. Learned counsel for the appellant submits that she is not getting any instruction from appellant Dr. Girish Jayantilal Sanghavi. In this view of the matter, she is unable to proceed. She submits that advocate for the appellant accordingly intends to seek discharge. Let the formalities in this regard be completed.
2. In the meantime, office is directed to issue notice to the appellant which be served through Bailiff of the local Court and report of the service be placed on record on the adjourned date of hearing.
3. Stand over to 27 November 2025.”

12. It is on this backdrop proceedings are placed before us. We have perused the office report which indicates that the Bailiff by his notice has served the Appellant/defendant. However a very peculiar reply was given by the Appellant/defendant that he is a bedridden and handicapped person and therefore he cannot attend the Court although the advocate appointed is not discharged. Learned counsel for the Appellant also is helpless that she has already taken a position that no instructions have been given.

13. Considering the facts and circumstances and that the premises of the Respondent/plaintiff are in possession of the Appellant/defendant to which the Respondent/plaintiff is deprived since the year 1969 and has litigated since the

year 1970. Since 1975, the intention of the appellant/defendant appears to have been to continue occupying the premises without any semblance of a legal right, as observed by the learned Judge in the impugned judgment. In fact the conduct of Appellant/defendant is such that the interim orders passed on the present Appeal dated 10th April 2007 have also not been complied and the suit premises are being enjoyed without a farthing being paid to the Respondent/plaintiff. Also there appears to be false assurances of settlement talks as to already three generations have suffered this litigation, what settlement can be brought about, and that too, in respect of the premises which are presently not in use, as informed to us, itself cannot be understood.

14. With the assistance of the learned counsel for the parties we have perused the record. We do not find that there is any infirmity much less any illegality in the finding as arrived by the learned Single Judge in deciding the First Appeal and decreed the S.C.Suit No.8388/1975. We also find that it is clearly an admitted position on record, that the defendant had no other rights qua the suit premises than the rights under the leave and license agreement in question. There was no intention on the part of the Respondent/plaintiff to create any tenancy in favour of the Appellant/Defendant as erroneously observed by the learned trial Court Judge.

15. The Appellant/defendant is directed to handover the possession of the suit premises to the Respondent/plaintiff within two weeks from the date this order is made available on the official website of this Court.

16. We are passing this order as the litigation has been pending for more than fifty years. The original plaintiff has already passed away, and the present proceedings are now being pursued by the legal heirs. Considering that the premises are not in use, if the appellant/defendant fails to hand over possession, we permit the respondent/plaintiff to file an appropriate application in the execution proceedings, upon which suitable orders for recovery of possession may be passed.
17. On any such application being filed or already filed in the execution proceedings, the learned trial Judge shall expeditiously pass orders including coercive orders.
18. The office is also directed to issue decree to enable the Respondent/plaintiff to obtain an appropriate orders before the executing Court.
19. All contentions in that regard to those proceedings are expressly kept open.
20. Subject to above observations, the Appeal is rejected.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)