

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 245 OF 2015**

Eknath Vithal Kadam

..Applicant

Vs.

Ranabanu Mahmad Taki Sonde

..Respondent

Ms Gauri Godse for the Applicant

Mr. S.S. Patwardhan for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 8th DECEMBER, 2015

P.C.

1 The judgment and order dated 2-12-2014 passed by the Learned Ad-hoc District Judge-2, Raigad, Alibaug, by which order the Appeal in question being Civil Appeal No.173 of 2010 came to be allowed and the judgment and decree dated 21-10-2010 of the Trial Court came to be set aside, is taken exception to by way of the above Petition.

2 The Applicant herein is the original Defendant and the Respondent herein is the original Plaintiff who has filed the Suit in question being Regular Civil Suit No.19 of 2007 for possession of the suit premises. The Suit is founded on the fact that a leave and licence agreement was executed in favour of the Defendant for the period of 1-6-2006 till 31-1-2007 i.e. for the period of 8 months. The said licence agreement came to be terminated by the notice issued by the Plaintiff which notice was replied to on behalf of the Defendant by contending that the Defendant was not a licensee but a tenant in respect of

the suit premises. It is thereafter that the cause of action for filing the instant Suit arose. The Defendant filed his Written Statement wherein he averred that it is on the request of the Plaintiff that the Defendant has executed the leave and licence agreement as he was told by the Plaintiff that the same was required for income tax purposes. It is further averred that the said premises is not in his possession as a licensee but as a tenant. It is also averred in paragraph 9 that the said leave and licence was got executed from the Defendant by misrepresenting and cheating him and therefore the Suit filed as well as the agreement are illegal. It is on the basis of the aforesaid pleadings that the parties went to trial and the Trial Court framed issues as to whether the Defendant was a licensee, as was the case of the Plaintiff. The Trial Court on the basis of the material on record came to a conclusion that the Defendant was a tenant and that the said leave and license agreement has been got executed on account of undue influence exercised by the Plaintiff who is a landlady and that the said agreement was unconscionable in view of the dominating influence of the Plaintiff over the Defendant in the capacity of being the landlady. The Trial Court accordingly dismissed the Suit by judgment and order dated 21-10-2010.

3 The aggrieved Plaintiff carried the matter in Appeal by way of Civil Appeal No.173 of 2010. The Lower Appellate Court on a re-appreciation of the material on record came to a conclusion that the Trial Court has erred in

recording a finding that the Defendant was a tenant and that there was a jural relationship of landlady and tenant between the Plaintiff and the Defendant .The Lower Appellate Court was of the view that the Trial Court had erred in drawing the presumption on the basis of Section 55 of the Maharashtra Rent Control Act. Before the Lower Appellate Court in view of the stand taken by the Defendant that he is a tenant and in possession of the premises in question since the year 1999, the Appellant/Plaintiff produced two earlier leave and licence agreements which are reflected in paragraph 12 of the impugned order passed by the Lower Appellate Court i.e. the leave and licence agreement for the period of 01-07-2004 to 31-05-2005 and 01-07-2005 to 31-05-2006 along with counterfoils of six licence receipts for the period mentioned in the said paragraph. The Lower Appellate Court adverted to the said two leave and licence agreements as also the receipts and observed that the said material proves that since beginning the parties were licensor and licensee and not landlady and tenant, as was claimed by the Defendant. In so far as the manner in which the agreement was got executed from the Defendant, the Lower Appellate Court has observed that the Defendant has not initiated any criminal or civil proceedings against the Plaintiff. The Lower Appellate Court has also by referring to the covenants of the said leave and licence agreement has recorded a finding that the said terms and conditions proved that no interest was created in favour of the Defendant and that he was a licensee in respect of the premises in question. The Lower Appellate Court has accordingly set aside the

decree of dismissal passed by the Trial Court and in turn has decreed the Suit in question.

4 In my view, having regard to the stand taken by the Defendant in the Written Statement as also the evidence led on behalf of the Defendant which evidence is bereft of any material to substantiate the case of the Defendant that there was a jural relationship of landlady and tenant between the parties, the case of the Plaintiff of the relationship being one of licensor and licensee as evidenced by the registered leave and licence agreement was rightly accepted by the Lower Appellate Court.

5 In that view of the matter, no case for interference in the Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

6 At this stage, the Learned Counsel for the Applicant seeks stay of the eviction decree for sometime. The said prayer is opposed by the Learned Counsel for the Respondent. In the facts and circumstances of the case, the eviction decree is stayed for a period of 8 weeks from date on the usual undertaking being filed by the Applicant in this Court within two weeks from date.

[R.M.SAVANT, J]