

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

RSA.No. 20 of 2006 ()

**AGAINST THE JUDGMENT & DECREE IN AS 91/2004 of
II ADDITIONAL DISTRICT COURT, ERNAKULAM DATED 31-08-2005**

**AGAINST THE JUDGMENT & DECREE IN OS 151/2001 of II ADDITIONAL MUNSIFF'S
COURT, ERNAKULAM DATED 28-11-2003**

APPELLANT/APPELLANT/DEFENDANT:

**O.P.PRAKASH, AGED ABOUT 30,
S/O.PRABHAKARAN, PAREPARAMBIL, THUPPANPADY
VETTICAL.P.O, MULANTHURUTHY (VIA).**

**BY ADVS.SRI.K.V.JAYACHANDRAN
SMT.K.B.SMITHA**

RESPONDENTS/RESPONDENT(S)/PLAINTIFFS:

**1. M.U.CHACKO, AGED 86,
S/O.UTHUP, MANKIDIYIL HOUSE, MULANTHURUTHY.P.O
MULANTHURUTHY VILLAGE, KANAYANNUR THALUK.
(DIED) ***

**2. M.C.JOSEPH, AGED 58,
S/O.M.U.CHACKO, DO. DO.**

***(IT IS RECORDED THAT IT IS NOT NECESSARY TO IMPLEAD LEGAL HEIRS OF R-1
AS PER ORDER DATED 18.12.2014 IN RSA)**

**R2 BY ADV. SRI.ELVIN PETER P.J.
R2 BY ADV. SRI.T.G.SUNIL (PRANAVAM)
R2 BY ADV. SRI.K.R.GANESH**

**THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 03-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ALEXANDER THOMAS, J.

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R.S.A.No. 20 of 2006

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Dated this the 3rd day of December, 2015

J U D G M E N T

The defendant is the appellant. The respondents/plaintiffs filed the suit for eviction on the strength of title. Though the plaintiffs took the stand that Ext.A-1 agreement is for a lease and not a licence, both the courts below have found that it is only a licence and not a lease. But both the courts below concurrently found that the plea of the defendant that Ext.A-1 agreement amounted to an irrevocable licence under Sec.60(b) of the Easements Act, is without any substance and that the trial court accordingly, decreed the suit, which has been affirmed by the lower appellate court.

2. The plea of the defendant is that Ext.A-1 amounts to an irrevocable licence and that he constructed the existing permanent structure over the property in question (plaint B schedule property) and that he is running a hotel therein and that he is entitled for the protection of the irrevocability of the licence in view of Sec.60(b) of

the Easements Act and that accordingly, he is not entitled to be evicted. The respondents herein/plaintiffs also concede that the agreement as per Ext.A-1 is only a licence. Both the courts below have found that the construction made by the defendant in the plaint B schedule property is a permanent construction. The instant Second Appeal was admitted by this Court on 11.1.2006, with the further order that the question of law (b) formulated in the memorandum of this Regular Second Appeal shall be the substantial question of law to be entertained in this appeal. The said substantial question reads as follows:

“When the appellant under license made construction of permanent nature even before Ext.A1 and the appellant has explained the circumstances under which Ext.A1 happened to be executed, whether the courts below are justified in relying on Ext.A1 to disallow the claim of irrevocable license.”

3. Heard Sri.K.V.Jayachandran, learned counsel appearing for the appellant herein/defendant and Sri.K.R.Ganesh, learned counsel appearing for the respondents herein/plaintiffs.

4. The main aspect to be considered by this Court for determination in this appeal is as to whether the defendant is entitled to the benefit of irrevocability of the licence as envisaged in Sec.60(b) of the Indian Easements Act, 1882, in the facts and

circumstances of this case. Sec.60 of the Indian Easements Act, 1882, reads as follows:

"Sec.60. License when revocable.- A license may be revoked by the grantor, unless –

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution."

5. It would be profitable to have a brief overview of the legal principles governing the revocability or otherwise of such licensed arrangements. The licence is defined as per Sec.52 of the Easements Act to mean grant of permission by a person to the other, a right to do or continue to do, in or upon, the immovable property of the grantor, something which would, in the absence of such right, be unlawful. But such right does not amount to an easement or any interest in the property. The grant of licence may be express or implied, which can be inferred from the conduct of the grantor. Sec.60 provides that a licence may be revoked by the grantor unless; (a) it is coupled with a transfer of property and such transfer is in force; and (b) the licensee, acting upon the licence, has executed a work of permanent character and incurred expenses in the execution. Revocation of licence may be express or implied. Sec.62 enumerates the circumstances on the existence of which the

licence is deemed to be revoked. One of such conditions contemplates that where licence is granted for a specified purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the licence shall be deemed to be revoked. Secs.63 and 64 of the Easements Act deal with the licensee's right on revocation of the licence to have a reasonable time to leave the property and remove the goods which he may have placed on the property and the licensee is further entitled to compensation if the licence was granted for consideration and the licence was terminated without any fault of his own. These provisions would indicate that ordinarily a licence is revocable at the will of the grantor and the revocation may be express or implied. Sec.60 enumerates the conditions under which a licence is irrevocable, as stated earlier hereinabove.

6. In the case *Philomina v. Executive Officer* reported in 1987 (2) KLT 89, this Court held in para 12 thereof that Sec.60 bars the grantor from revoking a licence, in the circumstances specified in Clauses (a) and (b) thereof. However, if the parties themselves have entered into an agreement for the licence to expire or terminate by efflux of time, or on the happening of any particular

event or contingency, then the bar under Clauses (a) and (b) of S.60 does not apply. This is because quite apart from the law of easements and licences, the parties are at liberty to enter into any contract of their choice, and when they have arrived at a solemn agreement that the licence shall be only for a particular duration or shall stand terminated on a particular eventuality or contingency, the licensee is bound by the engagement, and shall not be entitled to continue the licence in derogation of the contract arrived at between the parties. In such a case, termination of licence as under the terms of the contract between the parties, is not a "revocation" of the licence by the grantor under S.60, but one relatable to the agreement. The role of irrevocability has its foundation on the principle of an implied grant, and therefore has no operation when there is an express contract between the parties. It was further held that there is no provision in the Easements Act or elsewhere, which precludes the parties from entering into any such agreement. Such a contract is not vitiated or rendered invalid in any manner even if it makes inroads into the conditions of irrevocability provided in Sec.60. In the ruling of this Court in *Philomina's case supra*, this Court was concerned with a case where the licensor had permitted

the licensee to set up a cinema theatre in the land in question in the year 1979 and the total investment made by the licensee for setting up the cinema theatre in that land then came to about Rs.2.2. lakhs. The licence agreement was for year to year and the latest agreement in that case was for a period of 11 months, which was to expire on 30.11.1986. A contention was taken up by the licensee urging that since the licensee was permitted to make permanent constructions in the land in question as per the licence agreement, the same became irrevocable in view of the mandate of Sec.60(b) of the Easements Act. This Court held in para 10 thereof that the licensee's contention therein was that the licence arrangement between the parties was one intended to be continued so long as the cinema theatre existed, cannot be countenanced and that if it was indeed intended to be a permanent arrangement, as contended by the licensee, then one wonders why the parties should enter into the successive agreements of limited duration. After referring to the rulings of various High Courts as in *Bhagwauna v. Sheikh Anwaruzzaman*, reported in 1980 All. Law Journal, 368; *M.F.De Souza v. Childrens Education Uplift Society*, reported in AIR 1959 Bom.533 and *Muhammed Ziaul Haque v. Standard Vacuum Oil*

Company, reported in 55 Cal. W.N.232, this Court held that if the licensee has entered into an agreement for enjoying the licence for a fixed duration or on the happening of a particular event of contingency, then the termination of licence as under the terms of the agreement between the parties is not a “revocation” of the licence by the grantor as envisaged in Sec.60 and, therefore, since that is the position, the irrevocability envisaged as per Clauses (a) or (b) of Sec.60 will not then arise in such a situation. It was held that the rule of irrevocability, which has its basic foundation on the principle of an implied grant, will have no operation when there is an express agreement or contract between the parties and that nothing precludes the parties from entering into any such agreement and that such an agreement is not vitiated or rendered invalid in any manner even if it makes inroads into the conditions or irrevocability provided in Sec.60. This Court also referred to the legal position as well summarised by the learned author, Katiyar in his Treatise on the Law of Easements and Licences (Tenth Edition– at page 895) as can be seen from para 15 of the Philomina's case *supra*, which reads as follows:

“As the rule (of irrevocability) is based on the principle of an implied grant arising from the conduct of the licensor which estops

him from claiming his right of revocation, it applies only in cases of grants of an unlimited character by persons possessing an unlimited power of disposition. But where the power of disposition is limited in character or duration, or where the right of revocation is expressly reserved, or where the licence is granted only for a limited term, or where the act licensed is found to have such injurious consequences as could not have been contemplated by the licensor in its inception, or where there are any other circumstances which make the inference of an irrevocable grant or the application of the principle of estoppel by conduct impossible, or at any rate improbable, this rule does not apply."

On this basis, this Court held that in view of the specific agreement entered into between the parties therein, that the licence arrangement was only from year to year, subject to renewal and since the latest agreement was only for a period of 11 months, a fixed and determinate expiry period, the licensee cannot wriggle of such solemn contract made between the parties and that the irrevocability as envisaged in clause (b) of Sec.60 of the Easements Act could not then arise in such a situation.

7. In the case *M.F. De Souza v. Childrens Education Uplift Society*, reported in AIR 1959 Bom.533, the Bombay High Court dealt with a case where, as per the terms and conditions of the consent decree, the defendant licensee was entitled to occupy one-third of the original portion of the earlier allotted to her and that the said licence in her favour would be irrevocable so long as the Bombay Rent Act remains in force. A contention was raised by the

licensor that the situation covered by the agreement does not fulfil the vital ingredients of either Clause (a) or (b) of Sec.60 and since it does not come within the scope and ambit of Sec.60, the licensee cannot claim the benefit of irrevocability, as such right flows only from Sec.60 of the Easements Act. The Bombay High Court considered this issue and referred to the legal position as adumbrated in Corpus Juris Secundum, Vol.LIII, p.p.815-16., (see para 2 on page 534 of the AIR report), which reads as follows:

“As a general rule, a mere license, that is, one which is merely a personal privilege not coupled with an interest in the land, may be revoked by the licensor at any time, at his pleasure. This rule generally applies regardless of how long the use has been permitted and although the intention was to confer a continuing right, and even though the license was created by a deed or other written instrument. The general rule, however, is not without its modifications and exceptions, and does not apply where the license is coupled with or partakes of the character of an easement and the rights under it are affirmatively and definitely fixed and settled, or where it constitutes apart of a contract between the parties.”

(Emphasis supplied)

In the said ruling, the Bombay High Court upheld the validity of the agreement between the parties, which led to the consent decree, by which, they agreed that the licence will be irrevocable so long as the Bombay Rent Act was in force. The Bombay High Court overruled the contention of the licensor that irrevocability can be claimed only in the two classes of cases covered by Clause (a) or clause (b) of

Sec.60 and in no other situation and held that the said contention is not tenable and that parties can arrive at an agreement regarding the irrevocability of licences. It was held in the aforestated ruling of the Bombay High Court as follows in 2 thereof:

"2. On behalf of the plaintiff it is contended before me that a licence must always be regarded as revocable at the will of the licensor except in the two cases set out in S. 60 of the Easements Act. Section 60 reads thus :

"License may be revoked by the grantor, unless –

- (a) it is coupled with a transfer of property and such transfer is in force
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution."

The learned Counsel for the plaintiff points out that there is no mention here of a third class of cases wherein a licence would be irrevocable, that is, cases where parties have agreed that it shall be irrevocable. In my opinion, the argument advanced by the learned Counsel is not sound. It is no doubt true that S. 60 mentions only two classes of cases in which the licence could be regarded as irrevocable. This means that where a case falls in either of these categories the licence is made irrevocable by operation of law, that is the Easements Act. But apart from the Easements Act, there is the law of contract, and if parties enter into a contract and arrive at a solemn agreement to the effect that the licence shall be irrevocable or shall be limited for a particular duration, it follows that the licensor will be bound by his engagement and will not be entitled to terminate the licence or revoke the licence at his sweet will and pleasure. If authority were necessary for this proposition, I may refer to the following passage in Corpus Juris Secundum, Vol. LIII, pp. 815-16 :

"As a general rule a mere license, that is, one which is merely a personal privilege not coupled with an interest in the land, may be revoked by the licensor at any time, at his pleasure. This rule generally applies regardless of how long the use has been permitted, and although the intention was to confer a continuing right, and even though the license was created by a deed or other written instrument. The general rule, however, is not without its modifications and exceptions, and does not apply where the license is coupled with or partakes of the character of an easement and the rights under it are affirmatively and definitely fixed and settled, or where it constitutes part of a contract between the parties....."

Now, here the consent decree to which I have referred earlier was passed in an appeal which the plaintiff had brought to this Court from the dismissal of its suit for possession of the very room a portion of which is in the defendant's occupation, The plaintiff, which had lost its suit in the first Court, agreed to allow the defendant to be in exclusive possession of one-third portion of that room, and further agreed that her right as a licensee to occupy the room will be irrevocable so long as the Bombay Rent Act remains in force. Now, it is clear that the plaintiff, which had lost earlier in the City Civil Court, wanted to rescue something out of its original claim and therefore it entered into the aforesaid compromise. The consideration for the compromise was apparently the defendant's parting with her right to the use of two-thirds of the room, because as a result of the compromise she became entitled to use only one-third of the room. The plaintiff having thus received consideration for the compromise, cannot in equity and in all fairness be allowed to go back upon it. Therefore, I am of opinion that, quite apart from S. 60 of the Easements Act, the Court will have to bear in mind in a suit of this nature whether the licensor is precluded from revoking the licence because of any contractual engagement into which he has entered. There being an engagement of this kind here, I am of the opinion that the plaintiff cannot claim to itself the right of revocation at its free will and pleasure. To hold otherwise and to decree possession in such circumstances would be nothing else than putting the Seal of approval of the Court to a breach of contract."

Accordingly, it was held in the said ruling that to hold otherwise, "would be nothing else than putting the Seal of approval of the court to a breach of contract."

8. In the case *Ulahannan v. George*, reported in 1988 (1) KLT 335, this Court dealt with a case where the agreement provided that the licensee has to vacate the premises after demolishing the same, even if he is permitted to execute construction of permanent character in the land in question. It was contended therein that as and when the requirements of Sec.60(b) are satisfied, the said

provision comes into operation, even if there is a contract, which says that the licence is revocable under the circumstances, which would otherwise satisfy the requirements under Sec.60(b) of the Easements Act. The said contention made on behalf of the licensee was repelled by this Court in Ulahannan's case *supra*, by relying on the decision of the ruling of the Allahabad High Court in the case in *Ganga Sahai v. Badrul Islam* reported in AIR 1942 All.330, wherein it was held while considering the scope of Sec.60 of the Easements Act that, *"a condition in the licence that the landlord would have the right to get the site vacated whenever he so chose by the licensee deprives the licensee of the benefit of S.60..... A contract to the contrary disentitles the licensee from deriving advantage conferred by S.60. There is nothing to preclude a party from binding himself to surrender land, although there may be a construction of a permanent character standing thereon..."* This Court relied on the ruling of the *Ghotey Lal v. Durga Bal* reported in AIR 1950 All. 661, wherein it was held that *"where a licensee executes a work of a permanent character under a clear understanding that he or his heirs may be called upon after certain time to leave the land, it is not open to him to plead such work as a bar against his eviction on a suit brought by the plaintiff in pursuance of the solemn undertaking given by him."* In the light of this aspect, this Court held that the agreement therein stipulated a clear provision that at the time of surrender of possession, the defendant should dismantle the structures put up by him in the land in question and

that such clear contract would disentitle the appellant licensee from claiming the benefit under Sec.60(b) of the Easements Act and accordingly, dismissed the Second Appeal preferred by the licensee therein.

9. In the case *Indian Molasses Co. Ltd. v. Kerala State Civil Supplies Corporation Ltd.* reported in 2001 (2) KLT 872, a Division Bench of this Court held that unlike in Sec.60, the subsequent provisions in Sec.62 do not speak of an exclusive right conferred on the licensee in particular, to revoke the licence when any of the circumstances mentioned therein occurs. That Secs.60 and 62 operate in the same field, namely as to when a licence can be revoked or ceased to be in force. The main part of Sec.60 provides that a licence can be revoked by the grantor at any time except in the two circumstances made mention of therein and was in cases covered by Clauses (a) and (b) of Sec.60, the grantor cannot exercise the general right to revoke the licence. Sec.62 catalogues the specific instances on the happening of which the licence stands revoked and it is obvious from the wording of that Section itself that the said right can be invoked by both grantee as also the grantor. The Bench held that it would not be reasonable to interpret that the right to invoke

which was taken away by the operation of Sec.60 in a given case would revive by taking recourse to the provisions under Sec.62. It was held that otherwise, then in a case where the grant is coupled with transfer of property, by which circumstance, the right of the grantor to revoke the licence is statutorily forfeited, such licence can still be revoked, nevertheless, if any of the circumstances made mention of in Sec.62 exists and that such an interpretation will defeat the restriction the legislature in its wisdom as introduced in Sec.60. That the rights conferred under Sec.62 of the Act are subject to the operation of Sec.60 of the Act. Sec.62 merely enumerates various circumstances when the right of revocation created under Sec.60 can be exercised by the licensor as well. That if so, then all the disabilities that are created by Sec.60 in the matter of exercise of that right to revoke the licence would run along with the exercise of the right of revocation on any of the grounds mentioned in Sec.62. That if the licence is irrevocable, then it cannot be revoked by the operation of any of the provisions in Sec.62 of the Act. In the said case the Division Bench of this Court was concerned with an agreement wherein the defendant took on hire a shed owned by the plaintiff on a monthly rent of Rs.1.54 lakhs for an agreed period of

three years to store and handle edible oil at Cochin Port. Likewise, as per addends to the said agreement, the defendant took on hire four other sheds taken on lease by the plaintiff on a monthly rent of Rs.17,460/- for three years with effect from 1.2.1988. There was a specific clause in the agreement that either party shall not revoke the agreement for an agreed period of three years. While so, the defendant unilaterally informed the plaintiff that they have abandoned the agreement with effect from their notice dated 31.7.1989 and that they are releasing the plaintiff from the licence. The plaintiff took the stand that the defendant cannot repudiate the agreement and that they are in such event, liable to compensate the plaintiff the hire charges for the agreed period of three years. Clause 39 of the said agreement provides as follows:

“39. Either party cannot revoke this agreement of hire during the period of three years i.e., from 1st February 1988 to 31st January 1991. Further extension of the agreement, after the expiry of the first 3 years shall be on mutual agreement by the parties.”

Construing the aforestated specific contract agreed upon between the parties, the Division Bench of this Court held in the light of the aforestated Bombay High Court ruling in M.F. De Souza v. Childrens Education Uplift Society, reported in AIR 1959 Bom.533, etc. that the licence created by the said Clause 39 of the contract is

irrevocable for a period of three years. Therefore, it was held by the Division Bench of this Court that since the licence is irrevocable for a period of three years as per the terms and conditions of the contract entered into between the parties, either party cannot take recourse to the provisions contained in Sec.62 for prematurely revoking the licence before the expiry of the agreed minimum three year period. Therefore, if a licence has become irrevocable either due to the operation of law in terms of the provisions contained in Sec.60 of the Easements Act or by the operation of a contract by virtue of a voluntary contract arrived at between the parties, then the parties cannot take recourse to the provisions contained in Sec.62 to revoke the contract, in a manner, which would amount to violation of the provisions contained in Sec.60 of the Easements Act or the agreement entered into between the parties, as the case may be. The said decision of the Division Bench in Indian Molasses' case supra does not in any way overrule either expressly or impliedly the ratio decidendi of the ruling of a learned Single Judge of this Court in Philomina's case supra. It is to be borne in mind that in Indian Molasses' case supra, it was the plaintiff –licensor, who was contending that the agreement therein was irrevocable for a period

of three years in view of the specific contract entered into between the parties and that therefore the defendant licensee could not have unilaterally terminated the licence prematurely prior to the expiry of the minimum three year period and that therefore, the defendant – licensee is liable to compensate the plaintiff – licensor the hire charges for the agreed period of three years. The Bench was not considering a factual situation of a licensor permitting the licensee to make permanent construction in his land, but was considering a case of a different nature as can be seen from the details mentioned hereinabove. If the parties have agreed for a fixed period for the currency of the licence arrangement, giving no right to the parties for any premature revocation, the licence arrangement could be irrevocable for the agreed fixed period and the provisions in Sec.62 could not then be invoked as an aid to prematurely revoke the licence before the expiry of such agreed period, contrary to the contract. But, needless to say, in such a case, after the expiry of the fixed period, the validity of the licence arrangement gets expired and the licence then ceases to have effect.

10. In the case Ram Sarup Gupta v. Bishun Narain Inter College and ors. reported in AIR 1987 SC 1242 = (1987) 2 SCC 555 = 1987

KHC 965, the Apex Court held in para 9 of the AIR report thereof that Sec.60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and incurs expenses in execution. That Sec.60 is not exhaustive and there may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, none of the two classes of cases as per clauses (a) & (b) as specified under Sec.60 are fulfilled. It was further held by the Supreme Court that, similarly, even if the two clauses of Sec.60 are fulfilled to render the licence irrevocable, yet it may not be so if the parties agree to the contrary. The Apex Court further noted the ruling of the Calcutta High Court in the case Muhammad Ziaul Haque v. Standard Vacuum Oil Company reported in (1951) 55 Cal WN 232, wherein it was held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature, there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall

be revocable. On this basis it was also held that on the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence, as contemplated by Sec.60, should nevertheless be irrevocable. That such a view was also taken in the case *Dominion of India v. Sohan Lal* reported in AIR 1950 East Punjab 40 and by the Bombay High Court in *M.F.De Souza v. Childrens Education Uplift Society*, reported in AIR 1959 Bom 533, that the parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Sec.60 of the Act shall be irrevocable, etc. That such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also. In that case, terms, conditions and the nature of the licence can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence. It would be profitable to quote the relevant portion in para 9 of the decision in the case *Ram Sarup Gupta v. Bishun Narain Inter College and ors.* reported in AIR 1987 SC 1242 which reads as follows:

“9.....Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, neither of the two clauses as specified under Section 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Haque v. Standard Vacuum Oil Co. the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or impliedly that the licence which may not prima facie fall within either of the two categories of licence (as contemplated by Section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in Dominion of India v. Sohan Lal. Bombay High Court has also taken the same view in M.F. De Souza v. Childrens Education Uplift Society. The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence.”

Therefore, from a reading of the judgment dated 2.6.1987 of a learned Single Judge (T.L.Viswanatha Iyer, J.) of this Court in Philomina's case (supra) reported in 1987 (2) KLT 89 and the judgment dated 8.4.1987 of the Apex Court in Ram Sarup Gupta's case (supra) reported in AIR 1987 SC 1242, this Court is of the considered opinion that the ratio decidendi laid down by this Court in Philomina's case (supra) is fully in consonance with the legal

principles laid down by the Apex Court in Ram Sarup Gupta's case (supra) reported in AIR 1987 SC 1242 para 9. The Apex Court has clearly held therein that even if the two clauses of Sec.60 are fulfilled to render the licence irrevocable, yet it may not be so if the parties agree to the contrary. The Apex Court has relied on the decision in the ruling of the Calcutta High Court in Muhammad Ziaul Haque's case (supra) as well as that of the Bombay High Court in M.F.De Souza's case (supra) which were relied on by this Court in Philomina's case (supra).

11. In Ram Sarup Gupta's case (supra), the Supreme Court dealt with a case where there was no written agreement executed by the parties containing the terms and conditions of the alleged licence. Therefore, the Apex Court was called upon to infer the terms and conditions of the arrangement, from the attendant circumstances and conduct of the parties in that case. On this basis, the Apex Court noted that one Raja Ram Kumar Bhargava, who was the President of the Educational Society in question, which was running the Middle School, which was not earlier recognized by the Education Department of the State of Uttar Pradesh. The correspondence on record from the Education Department show

that the Department insisted that there should be some endowment and school should own building and land before it could be given recognition. Thereupon, Raja Ram Kumar Bhargava gave away the disputed property donating the building and the land in favour of school by his letter 26.11.1941 addressed to the Education Department wherein he stated that he has given his building free of rent to the Middle School and that the premises at present in the occupation of the school free of rent may be considered as his permanent contribution to the cause of the school. The records further also disclose that a meeting of the Managing committee of the School was held on 6.1.1942 which was presided over by Raja Ram Kumar Bhargava and in that meeting the Managing Committee expressed its deep sense of appreciation and grateful thanks to Raja Ram Kumar Bhargava for donating the building to the school for procuring the recognition to the school from the U.P Government and it further resolved to name the school in the name of the father of Raja Ram Kumar Bhargava to perpetuate his memory. That a cumulative valuation of all these attendant circumstances, the Supreme Court held that all these documents clearly indicate that Raja Ram Kumar Bhargava had permanently donated the property in

dispute to the school and in lieu thereof the institution was named after his father to perpetuate his memory and the purpose of the grant was to enable the school to carry on its activity of imparting education to the students. That, later the school progressed and it requires additional building and the management of the school which was headed by Raja Ram Kumar Bhargava constructed additional building to provide for class rooms and other amenities to the students to which he never raised any objections against such constructions on the disputed land. From all these attendant facts and circumstances, the Apex Court held that this discloses the terms and conditions of the licence, that the school was permitted to occupy and enjoy the land permanently for the purpose of education. Therefore, it was held that it would be reasonable to infer an implied condition that the licence was irrevocable and the school was permitted to occupy and use the premises so long as it continued the purpose of imparting education to the students. It is in the light of all these attendant facts and circumstances that the Apex Court came to the conclusion that the grant of licence in that case amounted to irrevocable one as envisaged under Sec.60(b) of the Easements Act.

12. In the ruling of this Court in Gopalan Gangadharan v. Devassia reported in 1989 (2) KLT 912, this Court dealt with a case where agreement envisaged the removal of the structure after the period stipulated in the agreement. It was contended by the licensee that in view of the construction of permanent structure in the property by the defendant, the licence has become irrevocable and that the plaintiff–licensor cannot revoke the licence by taking recourse to the provisions in the other statute like the Indian Contract Act so as to ignore Sec.60(b). This Court overruled the aforesaid contention of the licensee and held that in view of the specific agreement entered into between the parties, the licence cannot be said to be irrevocable in terms of Sec.60(b) by relying on the decision of the Apex Court in Ram Sarup Guptha's case (supra) reported in AIR 1987 SC 1242, ruling of the Calcutta High Court in Muhammad Ziaul Haque' case (supra) reported in (1951) 55 Cal WN 232 (see para 4 of the KLT report) which reads as follows:

“4. As it is open to the parties to enter into any agreement which is not opposed to public policy, it cannot be said that merely because of the work of a permanent nature effected by the licensee the agreement becomes a dead letter. In Ziaul Haque v. Standard V.O. Co. (1951–55–Calcutta W.N. 232) the Calcutta High Court held that where a licence is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee has erected works of a permanent nature, there is nothing to prevent the parties from agreeing expressly or impliedly that the licence nevertheless shall

be revocable. On the same reasoning, it was held that there is nothing to prevent the parties from agreeing expressly or by necessary implication that a licence which is prima facie revocable being not within either of the categories of irrevocable licence should nevertheless be irrevocable. The Supreme Court has referred to the above ruling in A.I.R. 1987 S.C. 1242 (Ram Sarup Gupta v. Bishun Narain Inter College) and observed that there may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, none of the two clauses under S.60 are fulfilled.”

13. Coming to the facts of this case, it can be seen that the plaintiff has specifically and cogently pleaded in para 2 of the plaint that on 3.11.1995, the defendant obtained a lease of two cents of land (covered by plaint B schedule) from the 2nd plaintiff for the purpose of conducting a tea shop therein agreeing to pay a monthly rent of Rs.200/-. That the defendant constructed a shed with laterite stones and tiles for the aforesaid purpose in plaint B schedule property and defendants started a tea shop in the property as per the said arrangement. The said arrangement made in 1995 was for a period of 11 months and that after the expiration of the said period, a fresh lease arrangement was entered into between the parties on 23.10.1996. Thereafter, at the expiration of every 11 months' period, the defendant renewed the lease every year by executing fresh lease agreements, the last one being executed on 25.9.1999 (as per Ext.A-1). As per the said Ext.A-1 agreement, the defendant is liable to pay a monthly rent of Rs.250/- and he was

bound to demolish and remove the structure erected by him at his cost on the termination of the tenancy. The 11 months period as per the said agreement dated 25.9.1999 (Ext.A-1) expired on 25.8.2000 and that from 26.8.2000 the defendant is holding over and that he is only a tenant from month to month in respect of the two cents property covered by B schedule. However, in para 3 of the plaint, the plaintiff has clearly averred that the defendant was only given a right to erect a shed in plaint B schedule property for the purpose of conducting a tea shop, which structure he has to demolish and remove as and when the rental arrangement stood terminated. To this specific averment in para 2 of the plaint, the defendant has averred in para 5 of the written statement as follows:

“5. The averments in paragraph 1 of the plaint are not admitted and the plaintiffs have to prove the same. The averments in paragraph 2 of the plaint are not correct. In fact after obtaining license this defendant constructed the existing permanent structure using laterite stones, wood and tiles by spending about one lakh of ruppees. There are shutters and glass windows fitted to the said building and it is not a shed as contended by the plaintiffs. The building is assessed by the Chottanikkara Grama Panchayat as No.VIII/52A. This building has electricity, water and telephone connections. This defendant is holding license to run the hotel in the said building and the defendant is running a hotel by name 'Shilpa Hotel'. This defendant is paying license fee also. The averments to the contrary are false and hence denied. It is true that this defendant paid Rs.5000/- to the 2nd plaintiff.”

To the specific averments in para 3 of the plaint, the defendant in para 6 of the written statement averred as follows:

“6. The averments in paragraph 3 & 4 of the plaint are also not correct. This defendant is not liable to demolish and remove the permanent structure as alleged therein. This defendant has never made any additional construction as alleged therein. There was no occasion for the plaintiffs to demand demolition of any structure and this defendant never caused verbal assaults as alleged. The plaintiffs have come up with a false story. The hotel business being run by the defendant is the only source of the income of the defendant's family. This defendant never threatened the plaintiffs as alleged. This defendant never intended to make any construction out side the 2 cents of land. It is not correct to say that this defendant fixed shutters and put up walls during Onam holidays. The plaintiffs are not entitled to terminate the arrangement or to claim recovery of the property from this defendant.”

Both sides have submitted that this Court may proceed on the basis that the arrangement made as per Ext.A-1 agreement is only a licence and not a lease, in spite of the recitals therein that it is a lease/rental arrangement. From a scanning of the aforesated pleadings in paras 2 & 3 of the plaint and the averments in paras 5 & 6 of the written statement, it can be seen that the defendant has not specifically denied the averments in para 2 of the plaint that the agreement was specifically for 11 months' period and that separate agreements have been entered into between the parties after the expiry of each 11 months' period and the last one is the one covered by Ext.A-1 and that it expired on 25.8.2000, etc. As regards the specific averments of the plaintiffs in paras 2 & 3 of their plaint, the defendant has not specifically denied them. But the defendant has stated in para 6 of the written statement that he is

not liable to demolish and remove the permanent structure as alleged. Further, he has stated in para 3 of the written statement that the 2nd plaintiff granted an irrevocable licence in respect of plaint B schedule property to the defendant and he constructed the existing permanent structure over their property and he is running a hotel therein, etc., and that the plaintiffs are not entitled to recover plaint B schedule property. At any rate, there are no specific and cogent denial of the pleadings in para 2 of the plaint that the agreement of the year 1995 was only for a 11 months' period and that separate agreements have been entered into after the expiry of each 11 months' period and that the last agreement was the one covered by Ext.A-1. Ext.A-1 agreement dated 25.9.1999 executed between the parties reads as follows:

“ആയിരത്തി തൊള്ളായിരത്തി തൊണ്ണൂറ്റി ഒൻപതാമാണ്ട് സെപ്തംബർ മാസം ഇരുപത്തിയഞ്ചാം തീയതി, കണയന്നൂർ താലൂക്ക് മുളത്തുരുത്തി ദേശത്ത് മുളത്തുരുത്തി വില്ലേജിൽ മങ്കിടിയിൽ ചാക്കോ മകൻ ജോസഫ് കമ്പനി ജോലി വയസ്സ് അൻപത്തിയേഴ് പേർക്ക്, മുളത്തുരുത്തി വില്ലേജിൽ തുപ്പുപടി ദേശത്ത് പാറെപറമ്പിൽ പ്രഭാകരൻ മകൻ പ്രകാശ് എഴുതികൊടുത്ത വാടക കരാർ.

957-ലെ 920-ാം നമ്പർ ആധാരപ്രകാരം താങ്കളുടെ ഉടമസ്ഥതയിലും കൈവശത്തിലിരിക്കുന്നതുമായ തുപ്പുപടിയിലെ ഭൂമിയിൽ എനിക്ക് ഒരു ഹോട്ടൽ നടത്തുവാൻ വേണ്ടി രണ്ട് സെന്റ് ഭൂമി നമ്മൾ പരസ്പരം സമ്മതിച്ചതായ സെക്യൂരിറ്റി 5000/- രൂപ (അയ്യായിരം) താങ്കൾ രൊക്കം കൈപറ്റി 250/- ഇരുന്നൂറ്റി അൻപത് രൂപ പ്രതിമാസവാടകയ്ക്ക് താങ്കൾ എനിക്ക് തരികയും ഞാൻ ഇനേക്ക് പതിനൊന്നുമാസത്തേക്ക് ഏൽക്കുകയും ചെയ്തിരിക്കുന്നു. ഇവിടെ ഞാൻ നിർമ്മിച്ചിട്ടുള്ള കല്ല് കെട്ടി ഓട് മേഞ്ഞ് അടച്ചുപൂട്ടുള്ളതായ കെട്ടിടം എനിക്ക് എപ്പോൾ വേണമെങ്കിലും പൊളിക്കാവുന്നതും അത് താങ്കൾക്ക് തടസ്സപ്പെടുത്തുവാൻ അവകാശം ഇല്ലാത്തതും ആകുന്നു. ടി കെട്ടിടത്തിലേക്ക് സ്ഥലമുടമയായ താങ്കളുടെ പേരിൽ ഞാൻ എടുത്തിട്ടുള്ളതായ കരണ്ട് വാട്ടർ കണക്ഷനുകളുടെ ബില്ലിന് ഞാൻ തന്നെ

ഒടുക്കുന്നതും കുടിശ്ശിക വന്നാൽ താങ്കൾക്ക് യാതൊരുവിധ ബാധ്യതയും ഇല്ലാത്തതാകുന്നു. താങ്കൾ എനിക്ക് അനുവദിച്ചു തന്നിട്ടുള്ളതായ രണ്ടുസെൻറ് സ്ഥലത്തിന് പുറമേ ഞാൻ പ്രവേശിക്കുകയോ എടുപ്പുകൾ നിർമ്മിക്കുന്നതോ അല്ല. പ്രതിമാസ വാടക എല്ലാ ഇംഗ്ലീഷ് മാസം അഞ്ചാം തീയതിക്കുള്ളിൽ തന്ന് രസീത് വാങ്ങിച്ചുകൊള്ളാം.

എന്ന്
ഒ.പി. പ്രകാശ് "

It is specifically undertaken therein by the defendant that “ഞാൻ ഇന്നേക്ക് പതിനൊന്നുമാസത്തേക്ക് ഏൽക്കുകയും ചെയ്തിരിക്കുന്നു” (i.e., I have been entrusted the land for a period of 11 months from today i.e., 25.9.1999). Further it is acknowledged in Ext.A-1 that the security amount given to the plaintiffs is Rs.5,000/- and that the agreed monthly licence fee is Rs.250/-. It is further clearly acknowledged in Ext.A-1 by the defendant that the water connection and the electricity connection taken in respect of the building in question stands in the name of the plaintiffs-licensor. Therefore, it has clearly come out in evidence that in all the 5 agreements entered into between the parties, the entrustment of the land is for the purpose of enabling the defendant to run the tea shop in the construction made by him in the land of 2 cents which is limited for a fixed period of 11 months from the respective date of execution of the agreement. The last of such agreement as per Ext.A-1 has expired on 25.8.2000. It is also to be borne in mind that the

specific averments of the plaintiffs as regards all the 5 agreements including the last one have not been specifically denied by the defendant in his written statement. Therefore, in a case like this, the most cardinal aspect of the matter is as to whether there was clear and ambiguous and manifest intention on both parties that the licensor has agreed for a licence of an unlimited nature or duration by permitting the licensee to make permanent construction therein or whether the agreement arrived at between the parties clearly show that it is only a temporary and transient arrangement. Ext.A-1 agreement is not in any way controverted by the defendant. Admittedly, the contents of Ext.A-1 would show that electricity connection and water connection in respect of the permanent construction made by the defendant in that land belong to the land owner (plaintiff). The security deposit was only Rs.5,000/-. The monthly licence fee for occupation of the 2 cents of land covered by plaint B schedule is only Rs.250/-. The licence was meant only for a fixed and short period of 11 months. From these crucial aspects, this Court has no hesitation to come to the conclusion that what was agreed upon between the parties was only a temporary and transient arrangement whereby the plaintiff has permitted the

defendant to run a tea shop in the permanent construction made by him in the land in question for a fixed period of 11 months. At best, it may be a case where the licensor has not been given any option to revoke the licence before the expiry of the fixed period of 11 months from the date of execution of the agreement.

14. Further the learned counsel appearing for the defendant contended that unlike in the aforesaid reported rulings, the present agreement (Ext.A-1) does not contain a clause whereby the licensor is empowered to demand the dismantling and the removal of the permanent structure and that the clause in Ext.A-1 only provides that the licensee can at any time demolish and remove the permanent structure and that the licensor cannot obstruct the licensee from doing so. The relevant clause in Ext.A-1 reads as follows:

“ഇവിടെ ഞാൻ നിർമ്മിച്ചിട്ടുള്ള കല്ല് കെട്ടി ഓട് മേഞ്ഞ് അടച്ചുപൂട്ടുള്ളതായ കെട്ടിടം എനിക്ക് എപ്പോൾ വേണമെങ്കിലും പൊളിക്കാവുന്നതും അത് താങ്കൾക്ക് തടസ്സപ്പെടുത്തുവാൻ അവകാശം ഇല്ലാത്തതും ആകുന്നു.”

“The building which he constructed here using building stones with tile roofed can be demolished by him (defendant-licensee) at any time and the plaintiff-licensor have no right to cause any obstruction to the same”

Therefore, on this basis, the defendant would contend that since the licensor is not given any option as per Ext.A-1 to demand

dismantling and removal of permanent structure, it is only to be held that Ext.A-1 amounts irrevocable licence as envisaged under Sec.60(b) of the Easements Act in as much as the defendant has made permanent construction in the land. On an anxious consideration of the rival pleas in this regard, this Court is of the considered opinion that the aforestated plea of the defendant cannot be countenanced. Merely because the defendant-licensee has made permanent construction in the land in question will not by itself bring that the arrangement come within the scope and ambit of Sec.60(b) of the Act. The defendant will have to cogently plead and prove that the licensee, acting upon the licence, has executed the work of permanent character and incurred expenses in the execution. The overall attendant facts and circumstances disclosed in this case would clearly show, as noted herein above, that the arrangement agreed to between the parties was only transient and temporary arrangement even though the licensor had permitted the licensee to make permanent construction. The overall facts and circumstances clearly show that the unambiguous and manifest intention of both the parties was that the arrangement was only for a limited and temporary duration and it is continued for a fixed

period of 11 months. Each of the five agreements from 1995 have been only for a fixed period of 11 month from its respective dates of execution and after expiry of 11 months from the date of execution of each such respective agreements, a fresh agreement for the next 11 months has been executed. The last of such agreement has expired on 25.8.2000 as per Ext.A-1. If it was indeed intended to be a permanent arrangement between the parties, then, as observed by this Court in para 10 of Philomina's case (supra), "*one wonders why the parties should enter into successive agreement of fixed and limited duration*". The security amount claimed to be given is only Rs.5,000/- and the agreed monthly licence fee was Rs.250/- for using the 2 cents of land. Moreover, even if it is held that the ingredients of Sec.60(b) are attracted, the parties are at liberty to voluntarily enter into a contract so as to make it revocable as held by the Apex Court in AIR 1987 SC 1242, para 9, and other aforecited rulings. Ext.A-1 agreement clearly contained a clause that it will be valid only for a period of 11 months and clearly stipulated that the licensee can at any time demolish and remove the construction, etc. Since both parties, including the defendant with wide and open eye has accepted to such a state of affairs by

taking recourse to their power to voluntarily enter into a contract, the parties will have to adhere to the terms and conditions of the contract in view of the aforestated attendant aspects, as held in the various rulings stated above. Otherwise as held by the Bombay High Court in M.F.De Souza's case (supra) and in Philomina's case (supra) "it would be nothing else than putting the seal of approval of the court to a breach of contract". There is yet another crucial aspect of the matter. If actually the parties have indeed come into an agreement for a grant of a unlimited nature or duration as now contended by the defendant, then this Court is not able to understand as to why the parties have clearly incorporated a clause in Ext.A-1 that the licensee can demolish and remove the permanent structure at any time of his choice. Therefore, it can easily be inferred by this Court that what was intended by both the parties was that arrangement is only transient and temporary for a fixed period and that the licensee can demolish and remove the permanent structure constructed in that land. Moreover, since the said clause specifically says that the licensee can at any time demolish and remove the permanent structure, it can also be understood as giving an option to the licensee to revoke the licence at any time even before the expiry of

the agreed period of 11 months. Whereas the licensor is not given any such option to revoke the action prematurely before the expiry of 11 months. Therefore, at best, the defendant could have contended that the licensor is not empowered as per the mutual agreement to prematurely revoke the licence before the expiry of the agreed period of 11 months and further that in the event of the licensee prematurely terminating the licence arrangement prior to the expiry of the agreed period, then the licensor cannot claim any compensation of the remaining hire charges for the period after the licensee has quit the property. The aforementioned specific provision in the agreement regarding the demolition and removal of the constructed structure clearly shows that the licensee had fully known that the arrangement agreed to by both the parties is only for a temporary short term period. After expiry of the agreed period of 11 months and if there is no separate agreement for the subsequent period, then the inescapable conclusion is that the licence agreement has ceased to have any effect, the licensor is entitled to get eviction of the licensee from the land and if he is not voluntarily quitting, then it is open to the plaintiff to take recourse to due process of law for such eviction. In the light of these aspects,

this Court is of the considered opinion that the concurrent findings made by both the courts below that in view of the specific agreement arrived at between the parties as per Ext.A-1 fixing and limiting the period of operation of the licence to a temporary period of 11 months would clearly place the said arrangement outside the scope and ambit of Sec.60(b) of the Easements Act. In the light of the aforestated discussion and in view of the legal position settled by the aforestated court rulings, the aforestated question of law stands answered against the appellant/defendant. Accordingly, it is only to be held that both the courts below were fully right in holding that the defendant is not entitled to resist eviction on the basis of the plea under Sec.60(b) of the Easements Act and the appeal is liable to be dismissed.

15. The learned counsel for the appellant/defendant submits that an amount of Rs.19,500/- was already paid by the defendant to the plaintiff towards arrears of damages payable after the expiry of the licence agreement. The learned counsel for the respondent/plaintiff fairly submits that receipts in respect of the aforestated amount of Rs.19,500/- has already been given by the counsel for the respondent to the counsel for the appellant. These

are matters left for determination in the appropriate execution proceedings.

In the light of these aspects, the Regular Second Appeal is devoid of any merit and the same stands dismissed. However, there shall be no order as to costs.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. To Judge.