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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO.141 OF 2014

Rajani W/o. Ramchandra Prabhu Patkar & Ors. ..Applicants.

V/s.

Krishna Mahadew Gawankar & Ors. ...Respondents.

Mr.Suhas Deokar for the Applicants.

Mr.Sandip Ghogare for Respondent Nos.2(a) to 2(d).

CORAM : N.M.Jamdar, J.

DATED : 15 February, 2017

ORAL ORDER

The Applicants have challenged the concurrent judgments and orders passed by the learned Small Cause Court Judge, Mumbai and the Appellate Bench of the Small Cause Court, Mumbai, whereby the suit filed by the Applicants for declaring that they have tenancy rights in respect of the suit premises, and the appeal, have been dismissed. The suit premises is a commercial premises in which a business of restaurant-cum-hotel was being run.

2. The Applicants filed a suit stating that since the year 1972, the Applicants are in possession of the suit premises. Respondent No.1 is the original tenant of Respondent No.2

landlord. It is the case of the Applicants that the suit premises was given on leave and licence by an agreement dated 1 December, 1972. It was contended that since Respondent No.1 started asserting that the Applicants have no right in the suit premises, the Applicants filed R.A.D. Suit No.2909/ 1981 for declaration that they have become the tenants by virtue of section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Respondents filed their written statements. Respondent No.2 landlord denied that any tenancy agreement exists between Respondent No.2 landlord and the Applicants. Both the Courts after analysing the evidence on record and the agreement dated 1 December, 1972 concluded that it was merely a conducting licence and no rights are created in favour of the Applicants. The learned Small Cause Court Judge dismissed the suit by order dated 22 August, 2006 and the Appeal 2(B)(II) No.674/2006 filed by the Applicants was dismissed by the Appellate Bench by the judgment and order dated 13 July, 2011.

3. Heard Mr.Suhas Deokar, the learned counsel for the Applicants and Mr.Sandip Ghogare, the learned counsel for the Respondent Nos.2(a) to 2(d).

4. The learned counsel for the Applicants submitted that the Applicants had paid the rent to the Respondent-landlord and right from the inception, Respondent No.1 was not in occupation. He submitted that under section 15A of the Act of 1947, even agreement such as the present one are covered and the Applicants are

entitled for statutory protection.

5. Both the Courts have analysed the agreement dated 1 December, 1972 and have found that the terms and conditions of the agreement merely stipulates that the business of running the restaurant was given to the Applicants on conducting basis. The documents in which the Applicants is shown as a conductor, were also referred to. The fact of payment of rent is heavily relied upon by the learned counsel for the Applicants. The learned counsel for Respondent Nos.2(a) to 2(d) pointed out that the receipts have been issued in the name of Respondent No.1. If the Applicants claimed themselves to be tenants of the suit premises, they would have objected to the rent receipts being issued in the name of Respondent No.1. Merely, because money may have been paid on behalf of Respondent No.1, it will not alter the character of the conducting licence. For protection under section 15A of the Act of 1947, a person must be 'licensee' in the first place. Section 5(4A) of the Act of 1947 defines 'licensee' and excludes a person conducting or running a business. Therefore, this arrangement whereby the original tenant had given only the right to conduct the business would not result in the Applicants being declared as tenant of the landlord. In these circumstances, the view taken by both the Courts cannot be stated to be without jurisdiction or perverse. The civil revision application is accordingly rejected.

(N.M.Jamdar, J.)