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

CIVIL REVN. APPLICATION NO. 1128 OF 2014
with
CIVIL REVN. APPLICATION NO. 1126 OF 2014

Dr. Indur Devdas Advani.

... Applicant.

V/s.

Smt. Kamaladevi Diwan
(Since deceased) through LRs.

... Respondents.

Mr. R.A. Thorat, Senior Advocate i/b. P.B. Gujar for the Applicant in both Applications.

Mr. Atul Damle, Senior Advocate a/w. Durgesh Kulkarni i/b. S.W. Kulkarni for the Respondents in both Applications.

CORAM : N.M. Jamdar, J.

11 January, 2017.

Oral Order :-

These two Revision Applications challenge the judgment and order passed by the Appellate Bench of Small Causes Court, Mumbai disposing off the Appeal No. 149 of 2005 arising from L..E. & C. Suit No.35/42 of 1992, Appeal No. 150 of 2005 arising from R.A.D. Suit No. 2571 of 1988 and the cross-objections therein.

2. By the impugned judgment and order the Appellate Bench has allowed the Appeals, set aside the decree passed in the suits and has decreed the suit filed by the Respondent – landlady and has directed the Applicant to hand over vacant and peaceful possession of the suit premises. The suit premises are a garage situated at Kamal Vishranti Kutir, 24th Road, Bandra, Mumbai. The first agreement was executed by the Respondent in favour of Devdas J. Advani, as a leave and license agreement for the period 4 October 1984 to 30 August 1985. The second agreement was executed for the period 1 September 1985 to 30 July 1986 in favour of Devdas J. Advani. The third agreement for the period 1 August 1986 to 30 June 1987 was executed in favour of Dr. Indur Devdas Advani, the Applicant. The fourth agreement was executed for the period 1 July 1987 to 30 May 1988 in favour of the Applicant. After 30 May 1988, no further agreements were executed. A notice of revocation was issued and the Applicant filed a Suit bearing No. 2571 of 1988 on 1 July 1988. The Respondent filed a Suit bearing No. 35 of 1992 for eviction of the Applicant in the year 1992. By the Suit filed by the Applicant, the Applicant sought declaration and injunction that the Applicant is the tenant of the suit property, and the suit was filed by the Respondent for eviction of the Applicant. The learned Small Causes Court Judge, by the judgment and order dated 2 May 2005, partly decreed the suit, declared the Applicant as a tenant of the suit premises, dismissed the claim of the permanent injunction. The suit

of the Respondent – landlady was decreed only in respect of arrears of rent and the claim for eviction was negated. Thereafter, the Appeals were filed by the Respondent – landlady in the Appellate Bench, which has been allowed by the impugned order.

3. Heard Mr. Thorat, learned Senior Advocate for the Applicant and Mr. Damle, learned Senior Advocate for the Respondents.

4. Mr. Thorat, learned Senior Advocate for the Applicant submitted that even though the agreements have been styled as leave and license agreement, it was essentially a lease and intention between the parties was to create a lease. It was submitted that merely because a agreement is styled as leave and license agreement, an enquiry to ascertain the intention of parties is not shut out. Various parameters which have been considered by the Trial Court such as, option for renewal for longer period, the compensation having not been increased, no clause for inspection by the landlady, deposit of amount commensurate with market rate and reduced amount of rent. The possession of the present Applicant in the premises and using it as a dispensary of a Dentist from the beginning, which expressly permitted by the Respondent – landlady, and the fact that in a normal circumstances heavy investment will not be made by the Doctor for a leave and license agreement of 11

months, all cumulatively indicate that intention was to create a tenancy. The learned Counsel submitted that this aspect of the matter has not been considered by the Appellate Bench. Reliance was placed on the decisions of the Apex Court in the case of *C.M. Beena and Anr. v/s. P.N. Ramachandra Rao* reported in (2004) 3 SCC 595 and the learned Single Judge of this Court in the case of *Parvati Kewalram Moorjani v/s. Anand Mohan Kundu* reported in (1991) 2 Mah.L.J. 1379. The learned Counsel for the Respondents on the other hand submitted that gathering the intention of parties would arise if there was any case of long standing possession and in the present case the agreement is only for period of two years in respect of the present Applicant. It was contended that the Applicant had initially challenged the leave and licence agreement on the ground that they were obtained by coercion which has not been proved.

5. Firstly, the agreements will have to be noticed. The agreements contain a specific clause that no right of tenancy will be claimed. The agreements are specifically for period of 11 months. The Applicant had taken a stand that these agreements have been executed under coercion, however in the cross-examination the Applicant accepted the fact that no such objection was raised in writing and only oral objection was raised. This aspect of the matter therefore has been rightly considered by the Appellate Bench. The

question further arise what would be the effect of these four agreements. It has to be noted that first two agreements are in favour of the father and the subsequent two agreements are in favour of the Applicant. It is sought to be contended that the Applicant was occupying the premises right from the inception and the Trial Court has also held that normally a Doctor would not take a premises on leave and license agreement basis of eleven months. If a realm of conjecture be entered into, then it is equally surprising that investment has been made even though the leave and license agreement were not initially in favour of the Applicant. After the leave and license agreements was executed for the first year in favour of the father, the Applicant allowed the landlady to execute another agreement in favour of the father. Thereafter, similar are the agreements were permitted to be entered into by the Applicant, with a clause that no tenancy right would be created.

6. The Appellate Bench has taken note of various admissions of the Applicant in which the Applicant has accepted that receipt for monthly compensation was standing in the name of the father till 1986. The Appellate Bench has also taken note of the affidavit executed by the father of the Applicant on 4 August 1986 which reiterates that the agreement of leave and license was executed in respect of the suit premises and that he has no objection if a leave and license agreement is executed in favour of his son against

depositing a renewal of existing agreement. In the case of *C.M. Beena*, the Apex Court, while laying down the test for determination as to how the intention of the parties is to be culled out, had taken note of the facts of that case that the licensee therein was in possession of twenty years before the deed of license and inspite of the license having been expired in 1982, continued in the premises for a long time. Similar are the facts in the case of *Parvati Kewalram Moorjani*, wherein the tenant continued for ten years. In the present case there is no such long standing possession as rightly contended by Mr. Damle. Two agreements are in favour of the father, two agreements are in favour of the Respondent and after the expiry of the licenses, suit for eviction has been filed. Even otherwise, the circumstances which have been considered, then no error can be found in the approach of the Appellate Bench in relying on the affidavit of the father.

7. Factum of the Applicant not insisting for second agreement to be executed in his favour and failure of the Applicant to justify the initial stand that the agreements are under coercion, are relevant. It is not possible to re-appreciate the evidence. The Appellate Bench having taken note of the above facts, has come to a possible conclusion that the intention of the parties was never to create a lease and that the Applicant was not a tenant of the suit premises. Considering the limited jurisdiction under Section 115 of

the Code of Civil Procedure, no interference is warranted in the Revision Application. The Revision Applications are accordingly dismissed. No failure of justice has occasioned. Failure of justice is in fact for the Respondent, who, inspite of the licence expiring 28 years back, is yet to get the possession of the suit premises.

8. Request is made by Mr. Thorat for continuation of the ad-interim relief for twelve weeks. Mr. Thorat on instructions states that the Applicant alone is in possession and will not create third party rights or part with possession. These statements are accepted. Though I am inclined to grant ten weeks' time, considering that some time will be necessary for obtaining the copy of this order, ad-interim relief granted on 12 December 2014, is continued for period of twelve weeks from today.

(N.M. Jamdar, J.)