

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.237 OF 2017
IN
NOTICE OF MOTION NO.1814 OF 2016
WITH
NOTICE OF MOTION NO.1274 OF 2017
IN
APPEAL NO.237 OF 2017**

Afzal Haji Mohammed Appellant
versus
Khairunnisa Haji Mohammed Haji
Essa & Ors. Respondents

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- Mr.Vaibhav Krishna a/w Mr.Devang Lakhotia, a/w Hasan Shaikh, i/b. Maharashtra Law Associate, Advocate for the Appellant.
- Mr.Chetan Kapadia a/w Mr.Sunil T. Chandani a/w s.Darshana Mayekar i/b. Manilal Kher i/b. Ambalal & Co., Advocate for the Respondent No.1.
- Dr.M.S. Deshpande, OSD Court Receiver present.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 30th OCTOBER, 2017.**

P.C. :

1. The above Appeal is directed against the order dated 19/04/2017 passed by a learned Single Judge of this Court. This is an unfortunate case where the mother i.e. the plaintiff is arraigned against her son i.e. the Defendant No.1. The

Defendant No.1 has laid a claim to the property in question, which is flat bearing No.601 on the 6th floor of a building known as Saba Palace, Plot No.23-24, Fourth Road, Khar (West), Mumbai – 400 052 on the basis of a Registered Gift Deed executed by the Plaintiff. There is no dispute that the said flat was purchased by the plaintiff by a registered agreement dated 23/03/2006 between herself and the developer, Saba Enterprises. The Plaintiff has executed a Registered Gift Deed dated 19/10/2015 in favour of the Defendant No.1, the legality and validity of which is in contention in the suit. The suit has been filed for a declaration in respect of the Gift Deed as also claiming permanent injunction. The Plaintiff has filed the instant motion seeking interim reliefs, which are in pursuit of the final reliefs, which the Plaintiff is seeking in the suit. In the context of the challenge raised in the above Appeal, which is to the directions in paragraph No.18 of the said order, as also the direction as contained in paragraph No.19 of the impugned order, it would be relevant to refer to the Affidavit-in-Sur-Rejoinder filed on behalf of the Defendant No.1. In the Affidavit-

in-Sur-Rejoinder in paragraph No.23, the Defendant No.1 deals with the averments in paragraph No.12 of the Rejoinder filed by the Plaintiff and has stated to the following effect;

“With reference to para 12, it is correct that the suit property has a separate room which is not licensed. It is correct that the suit property is occupied by Ajay Verma.”

It would also be relevant to refer to the description of the licensed property as mentioned in the Leave and License Agreement dated 19/03/2014 executed by the Plaintiff in favour of the licensor i.e. Ajay Verma. Clause No.1 of the said Agreement reads thus;

“That this agreement shall never be constituted or construed as any tenancy agreement or lease agreement or otherwise creating any other right or interest in the property in favour of “THE LICENSEE” which is not at all the intention of parties but or the contrary it will constitute merely a temporary agreement or arrangement only to allow “THE LICENSEES”, to use and occupy the said Flat No.601-A, 6th Floor, Saba Palace, 4th Road, Khar (West), Mumbai – 400 052, C.T.S. No.E/839, Village Bandra ad-measuring 1608 square feet carpet area part of which

i.e. 804 square feet carpet area will be occupied by “THE LICENSEE” for a period 36 (thirty six) months and the same has already commenced from 1st April, 2014 and shall end on 31st March, 2017. There shall also be a lock-in period of 24 (twenty four) months for the Licensed Premises, which means that the Licensee cannot end/terminate the Leave and License Agreement before the lock-in period is over. The monthly compensation for the Licensed premise is Rs.1,27,950/- and will have escalation of 10% after 12 months i.e. 31st March, 2015 and also 10% for the period of remaining twelve months.

2. In the context of the aforesaid facts that the contention of the learned counsel appearing for the Appellants Mr.Krishna that the licensed premises is the entire Flat No.601 admeasuring 1608 sq.ft. would have to be considered. The averment in the Affidavit-in-Sur-Rejoinder filed by the Defendant No.1 i.e. the Appellant belies the case of the Defendant No.1 that the Leave and License Agreement encompasses the entire flat No.601. The said fact of the entire flat being not let out is also fortified by the Leave and License Agreement dated 19/03/2014 executed by the Plaintiff in favour of the Defendant No.2. In our view,

therefore, there is no merit in the challenge in the Appeal in so far as the observations made in paragraph No.18 of the impugned order. In so far as, the directions as contained in paragraph No.19 is concerned, needless to state that the legality and validity of the Gift Deed executed by the Plaintiff would undoubtedly be gone into in the suit. However, in our view, the directions as contained in paragraph No.19, can be justified on the ground that, it is the Plaintiff, who is the original owner of the suit property and the claim of the Defendant No.1 is based on the Gift Deed executed by her, which is the subject matter of the suit. In our view, therefore, the said direction also does not merit any interference in our Appellate jurisdiction. We therefore do not find any merit in the above Appeal, which is accordingly dismissed.

3. In view of the dismissal of the Appeal, the Notice of Motion No.1274/17 does not survive and to accordingly stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)