

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2161/2017
IN
FIRST APPEAL NO.1205/2011

Vijay Chirnajilal Agarwal & Ors. ... Applicants

V/s.

Malvika Mukesh Agarwal ... Respondent

Mr. vishal Kanade with Mr. P. S. Ganesh Murthy i/b. K. V. Aiyar &
Associates for the Applicants
None for the Respondent

**CORAM: K.K. TATED &
N. J. JAMADAR, JJ.**

DATED : DECEMBER 12, 2018

P.C. :

1 Heard. In first session when the matter was called out, at the request of the learned counsel for the Respondent, the matter was kept back for being called out in second session.

2 In second session, none appeared for the Respondent.

3 By this Civil Application, the Applicant is seeking permission to let out the suit property as described in Schedule I and II on page 12 and 13 of the Civil Application on leave and license basis to third party. Schedule I and II read thus:

“SCHEDULE – I
Description of property No.1.

Building known as “Shanta Sadan” at Gokhale Road, bearing CTS No.40, village Chendani, Naupada, Thane (West) – 400602.

Details of individual premises and carpet area of the premises to be let out in Property No.1.

1. 1st floor, Backside admeasuring 925 sq.ft. Carpet area.
2. Ground Floor Back side of shop No.2 admeasuring 550 sq.ft. Carpet area.
3. First floor of building Shanta Sadan admeasuring 1700 sq.ft. Carpet area occupied by Birla Sun Life Insurance as per Exhibit- "A".
4. Shop No.4 admeasuring 1800 sq.ft. Leased to Dena Bank as per Exhibit- "D".

SCHEDULE - II

Description of property No.2.

Building known as "Malhar Theatre Compound" situated at Kopri Corner, Opp. Telephone Exchange, Gokhale Road, Naupada, Thane (West) - 400602.

Details of individual premises and carpet area of the premises to be let out in Property No.2.

- 1 Ground Floor admeasuring 3000 sq.ft. Carpet area on the back side.
- 2 First floor & Second Floor 8000 sq.ft. On the back side.

4 Considering the submissions made by the learned counsel for the Applicant and the reasons disclosed in the Civil Application, we are satisfied that the Applicant has made out a case for permitting them to let out those premises on leave and license basis without creating any ownership rights in favour of their party. The learned counsel for the Applicant further

submits that the Applicant is ready to deposit 1/3rd income out of these properties after deducting their expenses, in the Registry of this court, quarterly. The statement is accepted.

5 In view of these facts, following order is passed:

- a. The Applicant is permitted to let out the properties as described in Schedule 1 and 2 of the Civil Application, as reproduced hereinabove, on leave and license basis to third parties without creating any third party ownership rights.
- b. The Applicant to provide photocopy of the leave and license agreement to the other side immediately within a month from the date of execution.
- c. The Applicant to maintain the accounts of the income and expenses, out of leave and license agreements.
- d. The Applicant to deposit 1/3rd of the income out of the said properties, in the Registry of this court, quarterly.
- e. Liberty granted to the other side, if they so desire, to prefer appropriate Application for withdrawal of the said amount, which will be decided on merits.
- f. Civil application stands disposed off accordingly.
- g. No order as to costs.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)