

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

WRIT PETITION NO.12033 OF 2018

New Shivam Co-op. Hsg. Society
Ltd. Mumbai

... Petitioners

V/s.

M/s. Raj Publicity, Bandra (W),
Mumbai

...Respondents

Shri Suraj Gothwal for the petitioners.
Shri Kunal Bhanage for respondents.

CORAM: DAMA SESHADRI NAIDU, J

JUDGMENT RESERVED ON	: 26th June 2019
JUDGMENT PRONOUNCED ON	: 3rd July 2019

JUDGMENT

The petitioner is a co-operative housing society, and the respondent a partnership Firm. In 1986 the Society let the Firm erect an advertisement-hoarding structure within its premises. Thus, the Society is the licensor and the Firm the licensee. From time to time, this arrangement has continued with the renewal of the Leave and License Agreement (“LL Agreement”). Eventually, when the final phase of the agreement stood renewed on 28th October 2010, it was for eight years, that is, till 31st March 2018. As the period was about to expire, there arose differences between the licensor and the licensee. And that has led to this litigation.

2. The facts stated ever so briefly, the licensor and the licensee initially, in 1986, entered into an LL Agreement, which was renewed with suitable modifications in 1993, 1996, and in 1998. Finally, the licensor and the licensee executed two separate agreements on 28th February 2010: one for maintenance charges and the other for the rental charges. Under them, the licensee agreed to pay Rs.46,000/- cumulatively towards the maintenance and the rental charges. As the license period was to end on 31st March 2018, the licensor and the licensee corresponded to have the license extended. The talks failed.

3. So the licensee filed Suit No.73/2018 in the Court of Small Causes, Mumbai, by invoking Section 41 of the Presidency Small Causes Court 1892. In that suit, the licensee, as the plaintiff, applied for an ad interim injunction to restrain the licensor from dispossessing it. But the Trial Court, through its order dated 7th August 2018, dismissed the application. Aggrieved, the licensee filed Ms. Appeal No.300/2018 before the Appellate Bench of the Small Cause Court.

4. Then, through its order dated 21st September 2018, the Appellate Bench reversed the Trial Court's order and granted an ad interim injunction. Thus the licensee secured an injunction not to be dispossessed without due process of law, pending the suit. Equitably, the Appellate Bench also observed that the licensor could claim interim compensation for the licensee's use and occupation.

5. Now, challenging the Appellate Bench's order, dated 21st September 2018 in Misc. Appeal No.300/2018, the licensor has filed this writ petition.

Submissions:

Petitioner's:

6. Shri Suraj Gothwal, the learned counsel for the petitioner, submits that the licensee is a chronic defaulter. According to him, all along the licensee continued on the strength of an agreement which was renewed from time to time, but beyond 31st March 2018, it was not renewed. About the licensee's intention to renew the agreements, Shri Gothwal contends that it showed no inclination towards it. Only in response to the Society's email on 6th March 2018, did the licensee dash a letter on the next day as if it sent the letter the previous day oblivious of the licensor's email.

7. About the possession, Shri Suraj Gothwal has contended that the licensee as a true owner has continued to possess the property; it only permitted the licensee to use the property for a specific purpose. In other words, the licensee's possession, if any, is permissive and it gives no independent right to the licensee to squat over the property beyond the license period.

8. Taking me through the plaint averments, Shri Gothwal has stressed that the pleadings are devoid of any assertion that the licensor had used force, or at least tried, to dispossess the licensee. In that context, he submits that Appellate

Bench of the Small Cause Court travelled beyond the pleadings and granted an ad interim injunction, disregarding the discretion exercised by the Trial Court—and with no justifiable reason, at that.

9. About the renewal clause, Shri Gothwal submits that the licensee, no doubt, was entitled to renewal. But that should be only when it complied with all the contract conditions, one of them being its regularly paying the monthly charges. The licensee has admittedly been, according to Shri Gothwal, in constant default; it paid the arrears only when the licensor expressed its desire not to renew the license. In the end, Shri Gothwal has submitted that the licensor kept in view the collective interest of its members, who wanted to get the best possible offer, so the amount thus earned could be used for the upkeep of the building. The licensee has established, he stresses, no cogent grounds to seek an equitable remedy of an interim injunction.

10. Shri Gothwal has further submitted that the licensee, besides establishing no prima facie case, has also failed to establish any irreparable loss if no injunction is granted. In other words, no injunction granted, the alleged loss the licensee would suffer could be compensated in monetary terms.

Respondent's:

11. *Per contra*, Shri Kunal Bhanage, the learned counsel for the licensee, has submitted that the Appellate Bench's order suffers from no legal infirmities.

According to him, it has considered all relevant factors and has only intended to preserve the *status quo* until the *lis* concludes. To hammer home his contention why the licensee is entitled to a prohibitory injunction, Shri Bhanage has, first, submitted that the licensee has been in settled possession since 1986; second, it has raised permanent structures with the licensor's leave; and, third, the licensee has never terminated the license by any express notice. On the contrary, the licensor, he continues, itself has asked the licensee to give its offer. In that context, Shri Bhanage would have this Court conclude that the licensor's communication to the licensee inviting its offer for renewal would amount to its condoning the licensee's lapses if any.

12. Referring to the statutory provisions governing the issue, Shri Bhanage has submitted that the license has become irrevocable both by the terms of the agreement and by the conduct of the parties. Coupled with the permanent structures the licensee raised, the contractual terms, he also submits, unmistakably suggest that the license is irrevocable. By the same reckoning, the Court should conclude that the licensee has been in settled possession of the property, he urges.

13. Shri Bhanage has also submitted that even if the Court concluded that the license expired by efflux of time, still the licensee's possession could not be disregarded, much less could it be termed illegal. According to him, it is too well

established a legal principle to be contradicted that a person in settled possession cannot be dispossessed except by recourse to due process of law. To support his contentions, Shri Bhanage has relied on *Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao*^[1] and *Rame Gowda (dead by Lrs. vs. M. Varadappa naidu (dead) By Lrs. and anr.*^[2]

Licensor's Reply:

14. In reply, Shri Gothwal submits that the licensee has not pleaded about the alleged permanent structure in the plaint, to bring the suit within the purview of Section 60(b) of the Easements Act. He has relied on *Pursuhottam Das Bangur and ors. Vs. Dayanand Gupta*^[3] to underline the judicial interpretation of permanent structure and its impact on any license. According to him, a compendious reading of the 2010 agreement would lend no scope to interpret that the license is irrevocable. Shri Gothwal has also again frontally attacked the lack of specific pleading that there was any imminent threat the licensee faced in the licensor's hands, to be dispossessed illegally. Thus, the relief for an ad interim injunction and its grant by the Appellate Bench are without any justification.

1[] (1989) 4 SCC 131

2[] 2004 (1) SCC 769

3[] AIR 2013 SC 465

15. Heard Shri Suraj Gothwal for the petitioner and Shri Kunal Bhanage for the respondents.

Discussion:

16. This is a case that emanates from an interlocutory order, and the nature of redressal is revisional—under Article 227 of the Constitution. The scope is narrow. But, here, the decisional deliberations may meander because the problem of the licensee's claiming possession and its seeking injunction against the true owner is a Sisyphean burden that refuses to roll up the decisional hill.

17. Not in dispute is the fact that the petitioner, a society, is the licensor and the respondent, a company, is the licensee. After entering into an agreement, the licensor permitted the licensee to erect, what the agreement describes, a permanent steel and iron hoarding structure on an area measuring 30 ft x 10 ft, for a monthly fee of Rs.2000/-. The first phase of the contract ended in March 1989. Thereafter, both parties periodically entered into fresh agreements—with no break, though—until recently. To be specific, the last LL Agreement was executed in February 2010, eight years being the license period. And that period ended in March 2018.

18. The 2010-agreement fixed the rental charges and maintenance charges together at 46,000/- per month, with a 10% increase every two years. The licensor asserts that the licensee had accumulated rental arrears of 3,01,059/-by

the end of the license period, that is 31 March 2018. As the license period was soon to expire, the licensor on 6 March 2018 emailed to the licensee underlining that the license was about to expire and that they wanted to know whether the licensee was interested in extending it. True, the licensor also underlined the fact that it had been raising the issue of license renewal with the licensee's employees, but with little success. On the very same day, the licensee replied. It apologised for the lapses and assured the licensor that they could negotiate the terms.

19. Without reference to the email communication, dt.06.03.2018, the licensee sent a notice on the same day to the licensor, who received it the next day. The notice reads as if the licensee were reminding the licensor about the need to negotiate the license renewal. The licensor claims that it was sent to dilute the effect of its email and to deflect the blame. Besides that, the licensor alleges that the licensee did not offer any concrete proposal. Then, on 17 March 2018, in its Special General Body Meeting, the licensor Society resolved “not [to] engage in further talks with the licensee for contract renewal unless and until all the pending choose have been paid by [the licensee]”. Once again, on 19 March 2018, the licensor sent another notice to the licensee demanding it to pay the outstanding dues before the license would expire.

20. But through their letter, dated 6 April 2018—claimed to have been received by the licensor on 12 April 2018—the licensee sent the cheque for the

outstanding amount, besides requesting for the renewal of the license. Thereafter, on 29th April, the licensee orally communicated about its willingness to renew the licence and about the revised charges it could pay: Rs.85,000/-. In response, on 10th May 2018, the licensor emailed, informing the licensee that the quote was low. Then it insisted that the licensee should send its formal proposal in the next two days, failing which it would entertain no further negotiations.

21. Once again, on the same day, that is 10th of May, the licensee sent another letter to the licensor, without reference to the licensor's email, that it would enter into a fresh LL Agreement, with revised rental/maintenance charges of is Rs.85,000/-per month. On 11th May, the licensor acknowledged the licensee's formal offer. On 18th the licensee sent a reminder email. Then, on 22nd May, the licensor informed the licensee that they have started, as per their SGM mandate, to invite bids from other interested parties too and that "the selection of the party will happen on the merits of the proposals." The licensor wanted to close the issue fast.

22. Finally, on 25 May 2018, the licensee addressed a letter to the licensor, and it reads:

"[P]lease note that by virtue of various arguments, that is Memorandum of Understanding, Agreements, et cetera, we hold an irrevocable license for the purpose of construction and display of the caption Hoardings in your society's compound, more specifically mentioned in the various documents signed by and between as since 1986.

In view of the above, you are requested to conclude the arrangement with us failing which, we will have no option but to seek legal remedies, both criminal and civil, as may be advised by our legal advisers, at your cost and consequences. We are sure, looking to our past cordial relations, you will not force us to such a situation.”

23. Finally, the licensor replied on 6 June 2018. It denied that the license is irrevocable; it complained about how often it had to demand the dues from the licensee; it also declared that the licensee’s quote is lower than those from others. Then, it requested the licensee to remove the hoarding structure from the licensor’s premises in 15 days.

24. In the above factual backdrop, the licensee filed LD Suit No. 70 of 2018 before the Presidency Small Cause Court. It sought a declaration that it holds an irrevocable license, besides seeking a permanent injunction restraining the licensor from dispossessing it. Notified about the case, the licensor filed its defence. Then the Trial Court, on 7 August 2018, rejected the licensee’s application for the ad interim injunction. Aggrieved, the licensee filed Appeal Memo No. 300 of 2018. The Appellate Bench of the Small Cause Court, on 21 September 2018, reversed the Trial Court’s decision; it injected the licensor from dispossessing the licensee. Then it was the licensor’s turn to be aggrieved. So it filed this writ petition.

25. Much turns on the contractual terms between the parties. And the last LL Agreement, dated 28 February 2010, assumes importance. To begin with, the

licensor permits the licensee to use a portion of its land, measuring 30 ft x 10 ft, to put up “a permanent structure including that of iron and steel embedded on the earth... To do their business of display of advertisement through two hoarding boards 40 ft. x 40 ft. each.”

26. Among other things, the agreement stipulates that the license “shall be initially for a period of eight years”. Clause 6 requires the licensee to pay to the licensor by the 10th day of every month Rs.41,000/-as maintenance charges. Of course, the second agreement executed on the same day concerns the rental charges. It is Rs.5,000/- per month. In both cases, there should be an increase by 10% every two years. As both agreements contain similar terms, we will focus on the agreement for maintenance. Clause 8 mandates thus:

“If the advertisers/licensees actually performed and observed the conditions mentioned herewith and have not caused any breach of the said conditions, they will have the first option of renewing the sacrament for a further period of five years, which is mutually negotiated and agreed upon by both the parties.”

27. Culled out from its pleadings and arguments, the licensee’s principal contentions are these: that the license is irrevocable, that it has raised permanent structures, and that it has exercised its option of having the license renewed for a further period.

28. The Trial Court in its order rejecting injunction has held that the possession has remained with the licensor, which merely permitted the

licensee to erect advertisement hoardings. About the permanent structure, the Trial Court has held that the structure was merely to support the hoardings, so its nature “cannot be blown out of proportion”. Eventually, the Trial Court has also held that the contract is commercial and that the licensee could be compensated if it succeeded in the suit. The injunction was denied.

29. On the other hand, the Appellate Bench of the Small Cause Court has ruled that the licensee possessed the property; it has relied on many decisions on that count. Then it has held that the licensee’s possession must be protected because it is not a trespasser. It has noticed from the licensor’s pleadings that it had the maximum offer of Rs.1,50,000/- from a prospective licensee as the maximum fee. In that context, the Appellate Bench felt that the licensor could claim interim compensation, and the Trial Court could very well determine the amount.

30. Compendiously viewed, this dispute has raised, *prima facie* though, these questions:

- (a) Has the licensee been processing the property?
- (b) Has the licensee exercised its option of renewal in tune with the contract terms?
- (c) Has it raised permanent structures?
- (d) And is the license irrevocable?

31. Now, for determining the licensee's rights to an ad interim injunction, we need to focus on the questions of possession and irrevocability of the license. Of course, to answer the latter question, the nature of structure may have some bearing.

What is Licensee's Possession?

32. Put it differently, is the licensee's possession independent or permissive? As I observe, the Appellate Bench of the Small Cause Court has relied on a host of decisions all of which were rendered in the context of lease, rather than license. At any rate, now, the licensee's counsel has relied on a set of decisions, which I will address first.

33. There is a marked distinction, declares the Supreme Court in *Associated Hotels of India Ltd. v. R.N. Kapoor*^[4], between a lease and a license. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property, made for a certain time, in consideration for a price paid or promised. Under Section 108 of that Act, the lessee is entitled to be put in possession of the property. A lease is, *R.N. Kapoor* stresses, a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

⁴A.I.R. 1959 S.C. 1262

34. Taking the above discussion forward, K. Subba Rao J (as his Lordship then was) in his concurring opinion, has also noted the statutory contours of Section 52 of the Indian Easement Act (“the Act”), which defines a license thus:

"Where one person grants to another, or to a definite number of other persons, 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, and such right does not amount to an easement or an interest in the property, the right is called a license."

35. After analysing the above provision, *R.N. Kapoor* observes that if a document gives only a right to a person to use the property in a particular way or under certain terms while the property remains in the owner’s possession and control, it will be a license. The legal possession, therefore, continues to be with the owner, but the licensee is permitted to use the premises for a particular purpose. “But for the permission, his occupation would be unlawful.” *R.N. Kapoor* observes that the license does not create in the licensee’s favour any estate or interest in the property.

36. Acknowledging the conceptual confusion about the nature of the licensee’s possession, *R. N. Kapoor* observes that “the dividing line [between a lease and license] is clear though sometimes it becomes very thin or even blurred.” Then, it refers to the once-favoured test of exclusive possession as an infallible measure to determine the nature of possession. After referring to a handful of English caselaw, *R. N. Kapoor* enlists the tests that can determine

whether a transaction is lease or license: (a) To ascertain whether a document creates a license or lease, the substance of the document must be preferred to the form; (2) to ascertain the intention of the parties—that is, whether they intended to create a lease or a license. Then, it rules that (a) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and (b) if under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

37. The licensee has insisted that *East India Hotels Ltd., v. Syndicate Bank*^[5], a Supreme Court's decision, squarely answers the controversy now before me. In that case, the bank is the company's tenant or licensee. The period expired, the bank did not vacate. But, as it continued, a fire broke out and destroyed a part of the building. The bank was forced to leave the place and start its office elsewhere, yet leaving all its belongings behind. Later, the bank wanted to come back. The company-licensor resisted. In that context, of the two Judges of the Supreme Court, one learned Judge upheld the company's stand and held that the bank could not have a decree for restoration of possession. On the converse, another learned Judge held that the bank must be put back in

⁵ 1992 Supp (2) SCC29

possession. Thus, the two learned Judges have rendered a split verdict. Then it was placed before a larger Bench. On its later fate, however, neither counsel could shed light. So I cannot treat *Syndicate Bank* as a precedent.

38. In *Krishna Ram Mahale (Dead), by his Lrs. v. Shobha Venkat Rao*^[6], another decision the licensee has relied on, the defendant No. 3, through an agreement, permitted the plaintiff to take over the existing restaurant business. The agreement was for five years, on paying royalty. Under the agreement, defendant No. 3 was referred to as the owner and the plaintiff as the conductor. Later, as the agreement permitted, the plaintiff contracted with defendant No. 1, who, then, took over the business, for the unexpired period.

39. After initial exchange of notices, the third respondent cancelled those notices. Then he and the plaintiff mutually extended “the period of the agreement.” Despite that, the defendant No. 3 claimed to have issued one month's notice to the plaintiff for resuming possession, the agreement period still remaining. He alleged he issued a reminder, too. The plaintiff denied his receiving notices. Eventually, as the finding goes, the defendant No.3 recovered possession “by colluding with defendant Nos. 1 and 2.” He contended that the plaintiff voluntarily gave up the possession. It was proved false. During the trial, defendant No.3 in his evidence gave different versions on how he had obtained

⁶(1989) 4 SCC 131

possession of the restaurant. “At one stage he even stated that he was entitled to take possession without recourse to law.”

40. On appeal, the High Court held that “the defendant No. 3 had acted high-handedly and had wrongfully taken possession of the said business and the premises behind the back of the plaintiff and the acts of defendant No. 3 were nothing short of trespass.” The High Court has also found that the license period was subsisting when the plaintiff was dispossessed. First , “it pointed out that it would amount to nothing short of a travesty of justice on the facts and circumstances placed before the court to allow defendant No. 3 to remain in possession of the restaurant in the suit.” And, crucially, the High Court has further found that *“although the agreements were termed as ‘licence’, they were really subleases and hence, the possession of the plaintiff even after the period of licence was not in any way unlawful or without authority of law.”* (italics supplied)

41. Further appealed, the Supreme Court has observed that the defendant No.3 does not deserve the Court’s indulgence under Article 136 of the Constitution for special leave, for he has played fraud and abused the process.

42. On facts, I reckon, this case does not even remotely accord with *Krishna Ram Mahale*. So the licensee’s reliance on this judgment does not benefit him.

43. Now we will examine another Supreme Court decision: *Rame Gowda v. M. Varadappa Naidu*^[7]. Here two persons owned neighbouring plots of lands. But who owned what extent was in dispute. At any rate, the plaintiff was raising construction over the piece of land in his possession, and that was obstructed by the defendant, claiming that the land formed part of his property. The plaintiff asserted his title as also his possession over the disputed piece of land. The Trial Court found that although the plaintiff had failed to prove his title, he had proven his possession over the property.

44. In the above context, the Supreme Court has held that even if a trespasser is in settled possession of the property, its rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands.

45. In *Rame Gowda*, as we can see, the title remained obscure; and the plaintiff did not acknowledge the defendant's title. Nor has he been in permissive possession of the true owner. Conspicuously absent is the question of license, which would have made all the difference.

What is Due Process of Law?

⁷ (2004) 1 SCC 769

46. Indeed, the licensee sought an injunctive relief; it has asserted that the licensor should not dispossess it without taking recourse to due process of law. Then, what is due process of law? Usually, in most tenancy cases, leaving aside the cases of license, the tenancy may expire by efflux of time, or may stand terminated, or the tenant may even acknowledge that he has no right to continue; yet he sets up a plea that he has been in “peaceful, settled possession” of the property. Peaceful he may not, but settled he is. He gets characterised as, say, a tenant at sufferance. There are jurisprudential rumblings about the nature of his possession—legal or illegal. That said, he claims an indefeasible right to possess and enjoy the property until he is evicted—evicted by due process of law, at that. In other words, the tenant—again if we defer our discussion on a licensee—proclaims, “I have no right to be in possession, yet I am in possession. I commit an illegality, but you have no right to match my illegality. You must be law abiding; you take recourse to due process of law.” This common law concept having its hoary origins has, in a country like India with abnormal decisional delays, engendered kangaroo courts and muscle men’s bailiwicks. In a place like Mumbai, any eviction proceeding—even if you are very optimistic—on an average takes two decades, even three.

47. So what is due process of law? Does it necessarily mean that the landlord should go to a court of law and secure a decree for eviction? In other

words, is due process of law synonymous with a court decree? It is not. I am afraid it is a misconception that gets perpetuated. Due process of law, I reckon, is nothing more than following the procedure that is legally ordained or permitted. If a statute provides a method, and somebody follows that method, that suffices. Even if, say, a contract provides for a method of eviction—and that method does not conflict with any law—then the party's following that method should amount to due process of law. For a contract is the law between the parties.

48. Now, let us examine the statutory significance of due process of law. In the neighbouring front, *Sakkeer v. The Director of Panchayath*^[8] is the decision the Kerala High Court has rendered, per me. In that case, the gravamen of the dispute is that the petitioners, though continued to be duly inducted tenants in peaceful possession as the tenements, had been forcefully evicted by the Grama Panchayat, without its following the due process of law. In other words, though the petitioners' possession always remained legal, they were treated as trespassers and were subjected to summary eviction, which is impermissible in law.

49. In that background *Sakkeer* has held that 'due process' is a facet of fairness, for justice is fairness in action. But fairness, as an essential concomitant of the principles of natural justice, is neither nebulous nor boundless: It runs its writ where the statute is silent. It is axiomatic that any common law principle of whatever vintage has to give way to the statutory stipulations. If we examine the

Easements Act, Section 63 speaks of the licensee's rights on revocation; it is profitable to extract it:

"63. Licensee's rights on revocation.--Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property."

50. From the above statutory extract, it is clear that a licensee, on revocation of license, is entitled to a reasonable time to leave the property. It does not contemplate eviction by due process. And, in fact, that waiting period is the due process, so to speak. The reason for this proposition, even *de hors* the statutory support, is not far to seek: a license creates no interest in the property; the seisin remains with the owner. In other words, the licensee only may use the immovable property, with no actual transfer of the very property.

51. Then, *Sakkeer* quoted with approval *Chandu Lal v. MCD*^[9], a Full Bench decision of Delhi High Court. In fact, *Chandu Lal*, as noted by *Sakkeer*, has held that a bare licensee having no interest in the property cannot maintain an action for its possession. A mere licensee has only a right to use the property. Such a right does not amount to an easement or an interest in the property, but is only a personal privilege. The license terminated, the licensor may deal with the property as he likes. This right he gets as the owner in possession of his property. He need not secure a decree of the Court to obtain this right.

⁹ AIR 1978 Delhi 174 (FB)

52. *Chandu Lal* notes that a licensor can use reasonable force to secure or protect his possession. If he, however, uses excessive force, he may make himself liable to be punished under a prosecution, but he will infringe no right of the licensee. Then, it acknowledges that a person in exclusive possession of the property, no doubt, is *prima facie* considered a tenant, but he would not be held to be so if the circumstances negative any intention to create a tenancy.

53. Settled as the above proposition of law has been, if we further examine, Section 64 of the Easements Act provides for the consequences that follow forceful eviction. It is profitable to extract Section 64:

"64. Licensee's rights on eviction. - Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor."

54. It is explicit from Section 64 of the Easements Act that if a licensee has been evicted by the grantor for no fault of his, the remedy of the licensee is not restoration, but only restitution. Thus, the common law cannon of restoration ends in the face of statutory stipulation.

55. Now, let us examine the LL Agreement the parties entered into in 2010, the last in the series. Under the caption "Tenure of Agreement", it stipulates:

"The Owners have agreed and decided to give a portion of the land admeasuring 30 ft x 10 ft, belonging to them (for short the "said site")

to the Advertisers/Licensees initially for a period of eight years from the date of Municipal permission for Hoardings or 1st April 2010 whichever is earlier. Immediately on the execution of these presents *the Owners have put the Advertiser/Licensee in possession of the said site with a right to put up or erect permanent structure* inter alia comprising iron and steel embedded on the earth, one board facing traffic coming from Sion/City and the other facing traffic from Chmbur.

(italics supplied)

56. When we talk about license, ‘possession’ and ‘permanent structures’ ring alarm bells for both block all interpretative pointers to hold something to be a license. But what is this possession for? It is, as third paragraph of the L L Agreement reveals, to enable the Licensee “to put up two Boards in the dimension of 40 ft x 40 ft.” Nothing else. A possession with restrictions as to its user in the narrowest terms possible compels us to conclude that it is permissive possession. Here it is no different. After all, if one person grants to another a right to do, or continue to do, on his immovable property something which would otherwise be unlawful or impermissible, that grant of right becomes a license.

57. On the other hand, Clause 17 records that the parties have “clearly understood . . . that any breach of violation of any term or act or action expressly and/or impliedly done or caused to be done by the Licensees “will render the agreement void per se or construed to have come to an end with no liability affecting the Owners.”

The Permanent Structures & Possessory Problems:

58. Indeed, the LL Agreement lets the licensee build a permanent structure; that permanent structure is a steel and iron hoarding structure. The nomenclature does not make a structure permanent, its nature will. So it is for the trial Court to determine whether the steel and iron hoarding structure amounts to permanent structures in terms of Section 60 of Easements Act and whether that affects the rights or the relationship between the parties. This includes the question whether the plaintiff has pleaded about this aspect.

59. I do not think the nature of possession has been seriously disputed; it is permissive. It is for the plaintiff to establish how the license becomes irrevocable.

Prima Facie Observations:

60. Prima facie, I reckon the LL Agreement, dated 28th February 2010, is a license; it has come to an end; and the licensee's possession is permissive. The licensee's claim that it has exercised its option of renewal is a matter for trial. The property belongs to a society, which pleads that it has gone for the best, most lucrative offer of license from a third party and that is in the interest of the society, whose structures need, as it puts, much upkeep. Thus, the balance of convenience, too, lies in the licensor's favour. About the irreparable loss, first the licensee cannot be said to be possessing the property; in fact, it has not even

alleged that the licensor has tried to dispossess it. And any loss it may sustain without its having the injunctive relief is a matter of reparation: it can be compensated. That is, it is no irreparable loss.

61. Thus, all the three cardinal principles of injunctive relief—prima facie case, balance of convenience, and irreparable loss or hardship—are not in the licensee's favour.

So I reverse the findings of the Appellate Bench of the Small Cause Court and set aside the Order, dated 21st September 2018. As a result, the licensee's application for injunction stands rejected.

[DAMA SESHADRI NAIDU, J.]

.S. Panjwani, P.S.