

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

**CIVIL APPLICATION NO.733 OF 2019
IN
SECOND APPEAL NO.846 OF 2019**

Hemal Shah S/o Laxmichand Shah & Ors. ..Applicants
Vs.
Meena W/o Bhimashankar Nagmoti ..Respondent

Mr. Darshit Jain i/b Mr. Varun Mamniya for the Applicants.
Mr. Nilesh Wable for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 10th FEBRUARY 2021

P.C.

1. There was a parent agreement dated 23.11.2012 executed between the parties, by which the suit property was agreed to be given to the applicants (original Plaintiffs) on leave and licence basis for a period of 11 years on an agreed monthly licence fee of Rs.40,000/- with appropriate escalations. The agreement contemplated execution of separate leave and licence agreements for a period of 33 months each.

2. Accordingly, the first leave and licence agreement was executed on 26.11.2012 after which, according to the applicants, there was refusal to execute a leave and licence agreement as

contemplated in the parent agreement. This led the applicants/appellants to file a suit for specific performance of the agreement dated 23.11.2012. The specific performance has been refused by the courts below *inter alia* on the ground that the agreement dated 23.11.2012 is insufficiently stamped and is an unregistered document. It has also been held that the said agreement was never acted upon.

3. The learned counsel for the applicants pointed out that the agreement is executed on a stamp paper of Rs.500/-. The learned counsel placing reliance on Section 17 of the Registration Act, submitted that the said agreement is not a compulsorily registrable document. It is submitted that the applicants have paid the security amount of Rs.5,00,000/- and even the leave and licence agreement was executed and registered on 26.11.2012. Thus, according to the learned counsel for the applicants, there is sufficient material to show that the parent agreement was acted upon.

4. The learned counsel for the respondent supported the impugned judgment. It is submitted that the leave and licence agreement dated 26.11.2012 specifically mentions that there will not be any further renewal and applicants have undertaken to

handover vacant and peaceful possession at the end of 33 months, after removal of the furnitures and fixtures. He, therefore, submitted that agreement dated 26.11.2012 was executed in substitution of the parent agreement dated 23.11.2012. He, therefore, submitted that specific performance was rightly refused.

5. I have considered the circumstances and the submissions made. The second appeals are admitted. Insofar as the issue of stay of decree of possession obtained by the respondent, is concerned, the learned counsel for the applicants on instructions states that the applicants shall continue to deposit the licence fees/occupation charges at the rate of Rs.40,000/- per month during the pendency of the appeals. The statement so made is accepted.

6. In the result, the following order is passed:

(i) The applications are allowed.

(ii) There shall be interim stay of the delivery of the possession, subject to the appellants/applicants depositing or paying the respondent, the arrears of licence fees/occupation charges up to 28.02.2021 within four weeks from today.

(iii) The appellants/applicants, shall continue to pay/deposit the monthly licence fee, on and from March, 2021 on/or before 5th of each English calendar month.

(iv) The appellants/applicants shall not part with possession of the suit property and shall not create any third party interest in the same during the pendency of the appeal.

(v) In the event of default of payment/deposit in the matter of any two consecutive monthly occupation charges, the interim relief shall stand vacated without reference to the court.

(vi) Liberty to the parties to apply for modification, if any.

C.V. BHADANG, J.