

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.79 OF 2019
WITH
MISC. CIVIL APPLICATION NO. 197 OF 2021

Mrs. Santana Pinto,
daughter of late tome Jose D'Souza,
wife of Thomas Pinto, major,
married, housewife, resident of
H.No.48, Cuxem, Aldona, Bardez,
Goa. Appellant.

Versus.

Mr. Mario Dias,
major, married, service, resident
of H.No.134, Quirnina, Quitla,
Aldona, Bardez, Goa. Respondent.

Mr. Sudin Usgaonkar, Senior Advocate with Mr. Kishan C. Padgaonkar, and Mr. Shukr Usgaonkar, Advocates for the Appellant.

Mr. Nigel da Costa Frias, with Mr. Gauresh Malik, Advocates for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 10th November 2022

ORAL JUDGMENT: -

1. Heard Mr Sudin Usgaonkar, learned Senior Advocate, who appears along with Mr Kishan C. Padgaonkar, Mr Shukr

Usgaonkar for the Appellant, and Mr Nigel da Costa Frias, who appears along with Mr Gauresh Malik for the Respondent.

2. On 24th February 2022, this Court made the following Order:

"CORAM: MANISH PITALE, J

DATED: 24th February 2022

P.C.

1. Heard Mr. Usgaonkar, learned Senior Counsel appearing for the Appellant.

2. On 18.12.2019, notice was issued to the Respondent, who has entered appearance through Counsel. Today, this Appeal was taken up for consideration on the aspect as to whether any substantial question of law arises for consideration.

3. Having heard the learned Senior Counsel for the Appellant, issue notice, returnable on 11.04.2022, for final disposal at admission stage, on the following substantial questions of law :

(a) Whether the finding of the first Appellate Court that admission of the execution of the Agreements is not enough in the facts and circumstances of the case is perverse without specifying the said fact and circumstances ?

(b) Whether the Courts below overlooked that in the absence of clear denial of last Agreement of leave and Licence dated 04/06/2014 in the Written Statement, the same was to be taken as admitted as per Order

VIII R.5 of Civil Procedure Code ?

(χ) Whether the Courts below misconstrued the two Agreements of Leave and License, failing to realize that the contractual relation was only between the executants of the Agreements i.e. the Appellant and the Respondent and therefore, instead of concentrating on the Appellant and the Respondent, the Courts fell into error in shifting focus on the occupation of the house by Francis, father of the Respondent, who was neither a party to the Agreement nor his name was mentioned therein?

(d) Whether the first Appellate Court committed illegality in holding that Notary evidence was essential in view of Defence of cheating/misrepresentation when function of a Notary as per section 8(1)(a) of the Notaries Act, 1952 is to attest the signature which in the present case was admitted by the Respondent?

(e) Whether the Courts below erred in declining prayer (b) only because no demand was made under Order 15A during the pendency of the Suit?

4. Mr. G. Malik, Advocate, waives notice on behalf of sole Respondent. "

3. This Appeal was taken up for final hearing on 6th October 2022. After hearing the Counsel for some time, the following Order was made on 6th October 2022.

"CORAM: M. S. SONAK, J.

DATE : 6th OCTOBER 2022

P.C. :

1. After hearing the learned Counsel for the parties for some time, according to me, the following main substantial questions of law arise in this matter:

(a) Whether the agreements dated 23.05.2013 and 04.06.2014 constitute a lease or a license?

(b) Whether considering the other evidence on record, the relationship between the Appellant and the Respondent can be styled as one of the lessor-lessee?

2. Accordingly, in exercise of the powers conferred by Section 100(5) of C.P.C., the above additional substantial questions of law are hereby framed.

3. At the request of Mr. Costa Frias, learned Counsel for the Respondent, the matter is now adjourned to 10.11.2022 so that the Respondent has reasonable time to address the above substantial questions of law.

4. Stand over to 10.11.2022. Considering the earlier Order dated 24.02.2022, the matter to appear at the end of the admission board.

5. The learned Counsel to circulate compilation of decisions at least a week in advance.

6. Mr. Usgaonkar files the paper book and a copy of the same is already furnished to Mr. Nigel Da Costa Frias.

4. Accordingly, today the learned Counsel for the parties have argued this second Appeal finally on the substantial questions of law referred to in the orders dated 24th February 2022 and 6th October 2022.

5. The Appellant is the original Plaintiff, and the Respondent is the original Defendant in Regular Civil Suit No.122/2015/F, seeking, *inter alia*, the eviction of the Respondent from the suit house.

6. The Appellant's case is that the Respondent was permitted to use the suit house for residential purposes as a licensee on the terms and conditions set out in the Agreement of Leave and License dated 23rd May 2013 for 11 months from 1st May 2013 provided the License is not terminated earlier for any reason. The parties entered into another Leave and License agreement on 4th June 2014, allowing the Respondent to continue in occupation up to 1st May 2015, provided the License is not terminated earlier for any reason. The Appellant alleged that the Respondent failed to pay the license fee and, in any case, declined to vacate the suit house post-1st May 2015. Therefore, the Suit seeks a decree of eviction, mesne profits, and other reliefs.

7. The Respondent filed a written statement, claiming that

his parents have been residing in the suit house for more than 25 years as tenants of the Appellant. The Respondent contended that the Appellant hatched up a plan to evict the Respondent and his family members from the suit house based upon the Agreement dated 23rd May 2013. The Respondent alleged that the Suit was incompetent for non-joinder of necessary parties, i.e. the Respondent's parents.

8. The Trial Court dismissed the Suit by judgment and decree dated 9th February 2018. The Trial Court reasoned that the Respondent's father, Francis, was allowed to occupy a portion of the suit house in 1994, and there was no evidence about Francis vacating the suit house in 1997. The Trial Court also noted that there were documents that proved the continuous stay of the Respondent and his parents in the suit house from 1994 till date. Based on this, the Trial Court, without adverting to the terms and conditions of the leave and license agreements, held that the Appellant had failed to prove that she had allowed the Respondent to occupy the suit house under the two agreements as a licensee. The Trial Court even declined to make an order to pay the license fee or compensation on the specious plea that the Appellant had not filed any application under Order XV-A of C.P.C.

9. The First Appellate Court dismissed the Appeal against the Trial Court's decree on 23rd May 2019. The Appellate Court, in paragraphs 10 and 11, only observed that the Trial Court had correctly recorded the findings on issues 1 and 2. However, the Appellate Court non-suited the Appellant on the specious ground that the Notary Public, before whom the two agreements were executed, was not examined. The Appellate Court suggests that in the absence of the examination of Notary Public, the two agreements or their contents were not proved. This was not even a plea taken by the Respondent in his written statement.

10. In the background of the above circumstances, the substantial questions of law formulated in the orders dated 22nd February 2022 and 6th October 2022 will have to be considered and decided.

11. In my judgment, the Trial Judge erred in not even advertng to the pleadings on record and, more particularly, the leave and license agreements dated 23rd May 2013 and 4th June 2014. The main issue before the Trial Court was whether the two agreements had created a relationship of Licensor and Licensee between the parties or whether the relationship between the parties was that of Lessor and Lessee. Although such an issue was

framed, the Trial Court proceeded to answer such issue against the Appellant without even adverting to the terms of the two agreements.

12. In the Plaint filed by the Appellant, the Appellant was quite definite, not only about the execution of the two agreements but also that the two agreements, in express terms, conveyed the intention of constituting a license and not a lease. In the written statement filed by the Respondent, there is no denial about executing two agreements in specific terms. Paragraph 7 of the written statement merely denies the contentions of paragraph 7 of the Plaint. In that context, there is a denial that on 23rd May 2013, the Respondent entered an alleged leave and license Agreement. There are no denials for the second Agreement dated 4th June 2014.

13. In the context of the agreements, the only plea raised by the Respondent is in paragraph 7 of the written statement, which reads as follows :

"7. WITH RESPECT TO PARA NO. 7

It is denied that on 23/05/2013 the Defendant entered into alleged Agreement of leave and License. It is stated that the Plaintiff has assured the Agreement is in respect of the lease/tenancy and not of leave and

License as alleged. It is stated that the Plaintiff has deceived the Defendant and his family members including the parents of the Defendant. It is denied that the Defendant was allowed on humanitarian grounds to occupy the said whole house for a period of 11 months as alleged. It is strongly denied that the Defendant had promised to vacate the said house as alleged. It is strongly denied that the Defendant promised to vacate the said house on 1/05/2015 as alleged.

It is submitted that the Plaintiff decided to hatch up the plan to evict the Defendant along with his family members from the said house and manipulated the story to do so. It is stated that the Defendant along with his family members has been occupying the said house since the last more than 25 years as the Lessee/tenant of the same and therefore, the question of vacating the said house does not arise as alleged."

14. In his examination in Chief, the Respondent admitted to signing the two agreements at his residence. But according to him, they were signed without reading the same. In paragraph 9 of the affidavit-in-lieu of Examination-in-Chief, the Respondent stated that the Appellant took his signature on the agreement paper at his residence, saying that the documents were tenancy agreements. Thus, the execution of the two agreements is admitted by the Respondent. The plea about the Respondent not having read the two agreements or that his signature was taken on

the two agreements by misrepresenting the said documents as tenancy agreements was not even raised in the written statement. The pleadings in paragraph 7 of the written statement, or for that matter other pleadings in the written statement, do not even constitute any such specific defence.

15. It is well settled that ordinarily, there can be no variation between the pleadings and proof. Therefore, any plea not backed by any pleadings is not even required to be considered, much less accepted. Be that as it may, even if the evidence is considered and evaluated, it is not sufficient to displace the presumption that arises from the execution of the written documents. As noted earlier, the Respondent has admitted to executing the two agreements. Though the Appellate Court has referred to some illiteracy of the Respondent, there is no such plea ever taken by the Respondent, and the findings of the Appellate Court in this regard are in the realm of apparent perversity. Except for the bare statement that the Appellant took his signature on the agreements saying that the documents were tenancy agreements, there is no evidence to suggest any fraud, coercion, or misrepresentation. As noted earlier, there are also no pleadings in the context of fraud, misrepresentation, or coercion.

16. In *Bihar State Electricity Board, Patna and ors. vs. M/s. Green Rubber Industries and ors.* - (1990) 1 SCC 731, the Hon'ble Supreme Court has stated that it is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them or even though he is ignorant of the precise legal effect. Similarly, in *Grasim Industries Limited and anr. vs. Agarwal Steel* – (2010) 1 S.C.C. 83, the Hon'ble Supreme Court has held that when a person signs a document, there is a presumption, unless there is proof of force or fraud, that he has read the document properly and understood it and only then he has affixed his signatures thereon. Otherwise, no signature on a document can ever be accepted.

17. Both the Courts ignored the pleadings on record and the principles which emanate from the above rulings of the Hon'ble Supreme Court on the subject. Both the Courts seriously erred in not even advertng to the two agreements styled as "Agreement of Leave and License". The main issue involved in this case was whether the two agreements spelt out a relationship of License or lease. Suppose there was any ambiguity in terms of the document. In that case, evidence about surrounding circumstances could always have been looked into to determine

whether the only relationship between the parties was that of a license or a lease. However, both the Courts failed to undertake this exercise and non-suited the Appellant on the grounds which, in my judgment, are patently unsustainable.

18. The Agreement of leave and License dated 23/5/2013 commences with the recital that the Appellant is the owner in possession of the suit house consisting of various rooms. The second recital is about the Respondent approaching the Appellant with a request to give him a place to live in the suit house (whole house), which is bearing No.134. The third and final recital speaks about the Appellant's willingness to allow the Respondent to live in the suit house as a licensee against payment of a license fee of ₹1,000/- per month. However, the Agreement states that the License shall be subject to certain terms and conditions set out in the Agreement in clauses (A) to (Q).

19. Clauses (F) and (N) of the Agreement of Leave and License dated 23rd May 2013, read as follows :

“(F). The Licensee is permitted only to reside in the Premises for a period of 11 (eleven) months only, and the Licensee shall not claim any right over the premises like that of Lease, Tenancy, or a mundkar.

(N) The Licensee shall have no objection if the Licensor

inspects the Premises once in a month to check-up the good repairs of the same. However, such inspection will be carried out during day time and in the presence of the Licensee after informing the Licensee a day earlier".

20. The Leave and License Agreement, dated 4th June 2014, also has similar recitals. This leave and license agreement are subject to certain conditions numbered 1 to 16. Clauses 6 and 14 are almost identical to clauses (F) and (N) quoted above. However, even clauses 6 and 14 are reproduced below for the convenience of reference :

"6. The Licensee is permitted only to reside in the Premises for a period of 11 (eleven) months only, and the Licensee shall not claim any right over the premises like that of lease, tenancy or as a mundkar.

14. The Licensee shall have no objection if the Licensors inspects the premises once in a month to check-up the good repairs of the same. However, such inspection will be carried out during day time and in the presence of the Licensee after informing the Licensee a day earlier".

21. Clause (Q) of the Leave and License Agreement dated 23rd May 2013 and Clause 17 of the Leave and License Agreement dated 4th June 2014, state that the Licensors and the Licensee have fully understood the contents of the Agreement.

22. As noted earlier, there is a vague denial about the leave and License Agreement dated 23rd May 2013 by the Respondent

in the written statement. However, there is not even such a vague denial about the execution of the leave and License agreement dated 4th June 2014, which is the latest Agreement between the parties. That apart, the Respondent, in his evidence, admitted the execution of the agreements but claimed that he signed the agreements because the Appellant told him that they were tenancy agreements. Therefore, the Respondent cannot escape the consequences of executing these agreements based on such a plea considering the law in *Bihar State Electricity Board* (supra) and *Grasim Industries Limited* (supra).

23. Mr Costa Frias, however, relied upon *Smt. Rajbir Kaur and another vs. M/s. S. Chokesiri and Co.* (1989) 1 S.C.C. 19 to submit that an agreement between the parties cannot constitute a sole basis for determining the nature of the transaction. He offered that even if the two agreements did refer to the transaction of leave and License, the surrounding circumstances, coupled with the fact that the Respondent was given the right of exclusive possession, make it clear that the transaction, in reality, was that of a lease and not a mere license.

24. *Smt. Rajbir Kaur* (supra) holds that whether a transaction is a lease or a license turns on the operative intention

of the parties, and there is no single, simple litmus test to distinguish one from the other. Regard must be had more to the substance than the form of the transaction. It is determined by the law and not by the label the parties choose to put on it. The twin principal tests by which a lease is distinguishable from a license are (i) the right to exclusive possession involving the transfer of an interest in the property; and (ii) the rent stipulated by consideration for the grant. To give exclusive possession, there need not be express words to that effect. It is sufficient if the nature of the acts done by the grantee shows that he has and was intended to have the right of exclusive possession. The fact that the Agreement contains a clause that no tenancy is to be created will not preclude the instrument from making a lease.

25. *Smt. Rajbir Kaur* (supra) also holds that to ascertain the parties' intention, the deeds entered between the parties can be seen. However, the import, significance and conclusiveness of such documents making or evidencing the grants fall to be examined in two distinct contexts. First, the dispute may arise between the very parties to the written instrument, where on the construction of the deed, one party contends that the transaction is a 'licence' and the other that it is a 'lease'. The intention to be gathered from the document read as a whole has, quite obviously,

a direct bearing.

26. The Court held that in cases where the landlord alleges that the tenant has sublet the premises and where the tenant, in support of his own defence, sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged Licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed. At best, it is a piece of evidence, the weight to be accorded to which will necessarily depend upon all the other circumstances of the case. In such a case, the realities and substance of the transaction, not merely the deed, become the basis for determining the legal nature of the relationship. Again, the deed is a mere piece of evidence.

27. In this case, the leave and license agreements do not refer to any rent but clearly refer to the license fee. That apart, the ruling in *Smt. Rajbir Kaur* (supra) has been considered and explained by the Hon'ble Supreme Court in a later decision in *Delta International Ltd. vs. Shyam Sundar Generiwalla and another* A.I.R. 1999 SC 2607.

28. In *Delta International Ltd.* (supra), on a detailed consideration of several Indian and foreign precedents, the

Hon'ble Supreme Court in paragraph 15 observed as follows :

" 15. Learned Counsel for the respondent had also relied upon the decision of this Court in the case of *Sohan Lal Naraindas v. Laxmidas Raghunath Cadit*, [1971] 1 SCC 276, (paras 6 & 9) wherein the Court has observed as under :

"6. An attempt was deliberately made to camouflage the true nature of the agreement, by reciting in several clauses that the agreement was for lease and licence and it emphasise the pretence, it was also recited that the defendant was not to have any right as tenant or sub-tenant in respect of the loft.

9. Intention of the parties to an instrument must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operates as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instrument is intended to create or not to create an interest in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance," (Emphasis added)

...

From the aforesaid discussion what emerges is:-

(1) To find out whether the document creates lease or license real test is to find out 'the intention of the parties'; keeping in mind that in cases where exclusive

possession is given, the line between lease and licence is very thin.

(2) The intention of the parties is to be gathered from the document itself. Mainly, intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that document is a camouflage. If the terms of the document evidencing the Agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for ascertaining the real relationship between the parties.

(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in, the intention is to be gathered from the other evidence which may be available on record, and in such cases, exclusive possession of the property would be most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease.

(4) If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole. But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defence sets up the plea of a mere licensee and relies upon a deed enter into inter se, between himself and the alleged Licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; the tenant and the sub-tenant may jointly set up the plea of a license against the landlord which is camouflage. In such cases, the mask is to be removed or veil is to be lifted and the true intention behind a facade

of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances. Same would be the position where the owner of the premises and the person in need of the premises executes a deed labeling it as a license deed to avoid the operation of rent legislation.

(5) Prima facie, in absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant, in favour of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favour; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sublet or transfer the premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or licence is a matter of contract between the parties. Section 107 of the Transfer of Property Act inter alia provides that leases of immovable property may be made either by registered instrument or by oral Agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the lessor. This contract between the parties is to be interpreted or construed on the well laid principles for construction of contractual terms, viz, for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment one

which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do."

29. The Hon'ble Supreme Court, in the context of *Smt. Rajbir Kaur* (supra) referred to paragraph 22 of *Smt. Rajbir Kaur* (supra) itself, where it is observed that wherever there is exclusive possession, the idea of a license is not necessarily ruled out. Further, paragraph 22 of the *Smt. Rajbir Kaur* (supra) holds that the exclusive possession itself is not decisive in favour of a lease and against a mere license, for even the grant of exclusive possession might turn out to be only a license and not a lease where the grantor himself has no power to grant the lease. In the last analysis, whether a transaction is a lease or a license turns on the operative intention of the parties, and there is no single, simple litmus test to distinguish one from the other. The solution that would seem to have been found is, as one would expect, must depend on the parties' intention.

30. *Delta International Ltd.* (supra) makes it clear that the parties' intention is to be gathered from the documents. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that the document is a camouflage. Suppose the terms of the

document evidencing the Agreement between the parties are unclear. In that case, the surrounding circumstances and the parties' conduct must also be considered for ascertaining the actual relationship between the parties.

31. In the present case, the document is unambiguous. The document not only refers to the transaction as a license, but the clauses of the Agreement also make it clear that the transaction intended was that of a license. Even if the vague denial which was given up in the course of the evidence about the first Agreement is considered, there is no denial about the second Agreement, which is the latest Agreement before the Suit came to be instituted. There is no evidence that the Appellant held out to the Respondent that the document in question was a lease deed and not merely a license deed. Besides, it is too much to accept that the Respondent, after having executed the first Agreement, would execute an almost identical agreement after 11 months without being conscious of the contents of such agreements. There is no evidence of any illiteracy. Neither pleadings nor evidence about fraud, coercion, or misrepresentation exists. In the absence of such pleadings and further in the lack of ambiguity in the Agreement's terms and conditions, there is no question of advertent to the surrounding circumstances or the conduct of the

parties.

32. However, even if the surrounding circumstances or the conduct of the parties are to be considered, these factors do not spell out any relationship of a tenancy. The Respondent's defence is that his parents were, or rather his father, was a tenant of the suit house. Even the Appellant accepts that between 1994-1997, the Respondent's father was a tenant of the suit house. However, if the Respondent wishes the Court to believe that this tenancy continued until the institution of the Suit, or even beyond, then there is no explanation why the Respondent signed two agreements and that too in his own name, thereby purporting to jeopardize even any alleged right that his father or his parents might have had in the suit house.

33. The Respondent signed the agreements not once but twice. In the agreements, he conceded that the Appellant was in possession of the suit house at the time of the license creation. Therefore, the Respondent is estopped from now contending that his father or his parents were the tenants of the suit house. If the father or the parents have any independent right, that is a matter between the father/parents and the Appellant. Even Mr Usgaonkar clarified that the Appellant sought a decree against the

Respondent. Mr Usgaonkar also contends that the father or the parents were no longer tenants from 1997.

34. The parents of the Respondent are not parties to the Suit. Therefore, the alleged relationship between the Appellant and the Respondent's parents concerning the suit house is not an issue that can be gone into this Suit and, consequently, the Appeal and the Second Appeal. However, the Respondent is undoubtedly not a lessee in respect of the suit house, and the relationship between the Appellant and the Respondent was that of a licensor and the Licensee.

35. *Delta International Ltd.* (supra) refers to the document's clauses that it was considering. First, the document provided that it was a license deed. Further, the parties had made it clear that they were not executing a lease deed but only a license deed, and it should not be construed as a lease deed or a deed creating a relationship of landlord and tenant between them. A similar clause is found in clauses (F) and 6 of the two agreements we are concerned about. In the context of such clauses, *Delta International Ltd.* (supra) holds that the document will have to be construed as a license deed and not as a lease deed in the absence of pleadings and proof about camouflage.

36. The Appellant, in his evidence, at one stage has referred to receipt of "rent" from the Respondent's father between the years 1994-1997 and also from the Respondent under the two agreements. The reference to the word "rent" in his evidence cannot be literally construed to mean rent in so far as the Respondent is concerned. The parties have signed two agreements relating to a license fee. Merely because in the evidence, the Appellant referred to "rent"; based on this singular statement, the entire relationship between the parties cannot be styled as the relationship of landlord and tenant. The context is important.

37. Further, the fact that any monthly payment for permitting some person to occupy the premises is loosely called "rent" is also important. For example, in *Delta International Ltd.* (supra), the Agreement had referred to the Suit premises as "demised premises". In ordinary or even legal parlance, demised means rented. However, the Hon'ble Supreme Court held that such terminology is not decisive and the Agreement has to be construed holistically. The Appellant, in his evidence, has deposed about the Respondent being a mere licensee and not a tenant. Merely because at one place, the Appellant referred to the amount received from the Respondent as rent, his entire deposition cannot be ignored.

38. Thus, the additional substantial questions of law framed on 6th October 2022 will have to be answered in favour of the Appellant and against the Respondent. The Agreements dated 23rd May 2013 and 4th June 2014 had created only the relationship of Licensor and Licensee between the Appellant and the Respondent and not the relationship of lessor and the lessee. Therefore, after considering the other evidence on record, the relationship between the Appellant and the Respondent will have to be styled as the relationship between the Licensor and the Licensee, not the lessor and the lessee.

39. In so far as the substantial questions of law framed on 24th February 2022 are concerned, considering the law laid down in *Bihar State Electricity Board* (supra) and *Grasim Industries Ltd.* (supra), coupled with the evidence on record, the finding of the First Appellate Court about the admission of the execution Agreement not being enough, will have to be held as perverse finding.

40. Further, both Courts overlooked that the Respondent had never denied the execution of the leave and License Agreement dated 4th June 2014. Therefore, the same should have been taken as an admission, given the provisions of Order VIII,

Rule 5 of C.P.C. This Agreement was the latest Agreement between the parties. Pleadings apart, in evidence, the Respondent admitted executing both agreements.

41. Since the Respondent admitted the execution of the two agreements, there was no necessity to examine any Notary Public. This plea about non-examination of the notary was neither raised in pleadings nor at least in arguments before the Trial Court. The denial of compensation in terms of the two agreements was also an error apparent on the face of the record. The two Courts failed to appreciate that the provisions of Order XV-A apply only during the pendency of the Suit.

42. Considering the above, even the substantial questions of law framed on 24/2/2022 will have to be answered in favour of the Appellant and against the Respondent. Accordingly, based upon the same and the circumstance that the two agreements constitute a licence and not a lease, this Appeal will have to be accepted.

43. In conclusion, therefore, this second Appeal is allowed. The impugned judgments and decrees made by the Trial Court and the Appeal Court are set aside, and the Suit is decreed. The Respondent and all persons who claim under him, like his wife,

children or employees, are ordered to vacate and hand over the possession of the suit house to the Appellant within three months. After three months, they are restrained from interfering with the Suit house. The Respondent is also directed to pay arrears of the licence fees up to 1st May 2015 and mesne profits for the period beyond 1st May 2015 that shall not be less than the agreed licence fee.

44. However, it is clarified that the Appellant, based upon the wide wordings of the prayers in the Suit, cannot prejudice the rights, if any, of the Respondent's parents since they were never impleaded as parties in the Suit. Therefore all issues concerning the alleged relationship between the Appellant and Respondent's parents qua the suit house are kept open.

45. In view of the disposal of the Second Appeal, Misc. Civil Application No.197/2021 does not survive and the same also stands disposed of.

46. There shall be no order for costs.

M. S. SONAK, J.

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