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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 290 OF 2022

**SUHAS JANARDAN CHAVAN AND
ANR**

....APPLICANTS

V/s.

**BIKRAMPAL HARICHAND MEHRA
AND ORS**

.....RESPONDENTS

**Mr. Mandar Limaye a/w Susmit Phatale i/b Sagar Kasar Advocate for
the Applicant**

CORAM : NITIN W. SAMBRE, J.

DATE: JUNE 30, 2022.

P.C.:

- 1) Heard. Impugned in the present Revision is, Judgment delivered in L. E. Suit No. 71/84 of 2008 which is for eviction on the ground of termination of licence.
- 2) Decree in the said Suit came to be confirmed by Appellate Bench of the small causes Court, Mumbai in 41/23 by dismissing the claim of the present Applicant on 05/05/2022. As such, this Revision.
- 3) Counsel appearing for the Applicant-tenant would invite

attention of this Court to the document which is titled as 'leave and licence agreement' dated 01/10/1998. According to him, intention of the parties while executing the said document is that of creation of lease and not leave and licence agreement. So as to substantiate his claim, he has invited my attention to renewal clause as spelt out in clause 1 of the said agreement. He would claim that renewal was to be granted in perpetuity for a period of 9 terms of 5 years each and as such, the only intention of the parties as could be inferred is of execution of long term lease and not the leave and licence agreement. He would further claim that so as to substantiate the said claim Defendant no. 1 has entered into witness box and sought to established the same by virtue of contention that agreement was for transferring the property in the form of lease.

4) He would claim that finding recorded by both the courts below are contrary to the Judgment of the Apex Court in the matter of **Associates Hotels of India Limited V/s. R. N. Kapoor**¹ particularly paragraph 27.

5) I have appreciated the said submissions in the light of provisions of Section 105 and Section 108 of the Transfer of property Act, so also

¹ AIR 1959 SC 1262

Section 52 of the Indian Easement Act which defines licence.

6) The fact that aforesaid document in the form of leave and licence was executed and the intention was to of grant licence could be inferred from the recitals of the such documents. No permanent rights are created in favour of Revision-Applicant.

7) Merely because there exist a clause of renewal that by itself will not lead to infer that the document cannot be termed as leave and licence agreement pursuant to provisions of Section 52 of the Indian Easement Act. It was for the Applicant to establish the same by satisfying ingredients of Section 105 r/w Section 108 of the Transfer of Property Act in the aforesaid document to infer the same as lease agreement.

8) I have gone through the oral evidence of the Applicant with the assistance of the counsel for the Applicant. Applicant who is Defendant in the Suit is at liberty to raise contradictory defence, however, while doing so, this Court is required to be sensitive and appreciative of the very fact to the mode and manner in which Applicant has tried to establish his case as that of long term lease and not the leave and licence agreement.

9) Applicant in his cross-examination has stated that he has not gone through the aforesaid document before signing the same but has gone through contents thereafter. He has further stated that intention was to transfer the ownership and not creation of leave and licence agreement.

10) If the aforesaid piece of evidence is appreciated, Applicant at no point of time challenged the very legality of the aforesaid document by filing independent suit for declaration, injunction and specific performance.

11) Apart from above, to establish that there exist long term lease agreement between the parties, applicant has failed to bring on record any material in the form of oral or documentary evidence.

12) This has rightly so prompted both the Courts below to record a finding of existence of leave and licence agreement.

13) In this background, support drawn from the Judgment in the matter of **Associates Hotels of India Limited** [cited supra] will be of hardly any assistance. That being so, no case for interference in Revisional jurisdiction is made out as no error of jurisdiction could be noticed.

- 14) Revision as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]