

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4445 OF 2022
WITH
WRIT PETITION NO.4446 OF 2022

1. Shaikh Mansur Ajij,
Age : 53 years, Occ.: Business,
R/o.: House No.1560, Shani Lane,
Zendigate, Ahmednagar. ... Petitioner.
(Ori. Judgment Debtor)

Versus

1. Puranamal Ravatmal Sakhala,
Age : 55 years, Occ.:Business,
R/o.3058, Parshakhunt, Ahmednagar.
2. Ravi Subhash Sakhala,
Age : 33 years, Occ: Business,
R/o. 3058/59, Parshakhunt,
Ahmednagar.
3. Avinash Subhash Sakhala,
Age:31 years, Occ.: Business,
R/o. 3058/59, Parshakhunt,
Ahmednagar. ... (Ori. Decree-holders)
4. Chandanmal Raghunath Sakhala
Age: 65 years, Occ.: Business,
R/o. In front of S.T. Stand, Shirur,
Tal. Shirur, Dist.Pune.
5. Naresh Chandanmal Sakhala,
Age:48 years, Occ.: Business,
R/o.: In front of S.T. Stand,
Shirur, Tal. Shirur, Dist.Pune.
6. Subhash Ravatmal Sakhala (Dead).

7. Shantabai Ghewarchand Sakhala,
Age : 57 years, Occ.: Household work,
R/o. 3058/59, Parshakhunt, Ahmednagar.
8. Dilip Ghewarchand Sakhala,
Age: 42 years, Occ: Business,
R/o.: 3058, Parshakhunt, Ahmednagar.
9. Atul Ghewarchand Sakhala,
Age: 40 years, Occ: Business,
Respondent Nos.7 to 9 R/o.3058/59,
Parshakhunt, Ahmednagar.
10. Kishor Devandas Narang,
Age : 52 years, Occ: Business,
R/o. C/o. Lovely Stores, 11, Mochi Lane,
Ahmednagar.
11. Gangaram Devandas Narang,
Age: 41 years, Occ.: Business,
R/o. Mochi Lane, Ahmednagar.
12. Santosh Hiralal Goyal,
Age: 44 years, Occ.: Business,
R/o. Mochi Lane, Ahmednagar.
13. Satish Ranuji Dalvi,
Age: 47 years, Occ.: Business,
R/o.Mochi Lane, Ahmednagar.
14. Fakirchand Kesarimal Songagra,
Age: 59 years, Occ: Business,
R/o. Mochi Lane, Ahmednagar.
15. Jayshree Narayan Joshi,
Age: 49 years, Occ: Household work,
R/o.: H.No.2731, Mochi Lane,
Ahmednagar.

... Respondents.
(Ori. Judgment debtors.)

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Mr. Nikhil Santosh Jaju, Advocate for the Petitioner.

Mr. S.S. Bora, Advocate for Respondent Nos.1 to 3.

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CORAM : SHARMILA U. DESHMUKH, J.

Reserved on : JANUARY 13, 2023.

Pronounced on : JANUARY 23, 2023.

JUDGMENT :

1. Rule. With the consent of the parties, rule made returnable forthwith and heard finally.

2. These two writ petitions challenge orders arising out of Regular Darkhast No.361 of 2023 and hence are being disposed of by the common judgment.

3. Writ Petition No.4445 of 2022 has been preferred challenging the order dated 22nd March, 2019 passed by the Executing Court, whereby the objections raised by the Petitioner to the executability of the decree on the ground of lack of jurisdiction has been rejected.

4. Writ Petition No.4446 of 2022 has been preferred against the order dated 7th March, 2022, whereby the application filed by the Respondents for issuance of possession warrant has been allowed.

5. The facts of the case are as under:

. RCS No.8 of 2004 came to be filed seeking partition and possession of the suit property by the Respondent Nos.1 to 3, initially, as against the Respondent Nos.4 to 15. During the pendency of suit, the Petitioner was impleaded as defendant no.7 to the said proceeding and subsequently, the other defendants came to be deleted and the suit proceeded with the Petitioner as sole Defendant. The Respondent Nos.1 to 3 and Petitioner herein, resolved their dispute and compromise terms were tendered which was made decree of the Court being compromise decree dated 27th November, 2009. As the Petitioner failed to comply with his obligation under the compromise decree, Regular Darkhast No.361 of 2013 came to be filed by the Respondent Nos.1 to 3 for execution, in which the objection raised as to the executability of the decree by the Petitioner under Section 47 read with Order XXI Rule 3 of the Code of Civil Procedure, 1908 (for short, “the Code”) came to be rejected by order dated 22nd March, 2019 and subsequently, the application of the Respondent Nos.1 to 3 for possession warrant came to be allowed by order dated 7th March, 2022.

6. Heard Mr.Nikhil Santosh Jaju, learned counsel appearing for the Petitioner and Mr. S.S. Bora, learned counsel appearing for Respondent Nos.1 to 3.

7. Mr. Jaju submits that in the execution proceedings, the Petitioner was sought to be evicted from the premises which was

occupied by him as a licensee and the compromise decree without any implied or expressed inclusion of any of the grounds under Section 16 of the Maharashtra Rent Control Act, 1999 (for short, “**the Rent Act**”) cannot be put into execution resulting in his eviction. He submits that irrespective of the compromise terms entered into between the Petitioner and the Respondent nos.1 to 3, no proceedings for eviction, by way of possession warrant in execution proceedings, can be taken out. He submits that the suit was filed for partition and separate possession in the Civil Court and the matters arising out of the tenancy would be the subject matter of the Special Court and hence, the Civil Court had no jurisdiction to entertain and try the tenancy matters. He would further submit that the decree is a preliminary decree and was sought to be put into execution before the final decree is obtained. Petitioner has placed reliance on the following decisions :

- (i) *Abedali Khan s/o Rahematali Khan vs. Devidas s/o. Dhonduji Poghe*, reported in *2012 (1) LJSOFT 65*;
- (ii) *Alagu Pharmacy and Ors. v. N. Magudeswari*, reported in *AIR Online 2018 SC 156*;
- (iii) *Raosaheb Bhikaji Tambe Vs. Namdeo Eknath Tambe & Anr.*, reported in *2000 (9) LJSOFT 90*;
- (iv) *Enventa Fischer GmbH & Co., K.G. vs. Polygenta Technologies Ltd.*, reported in *2005 (4) LJSOFT 162*.

8. *Per contra*, Mr. Bora submits that in the suit for partition and separate possession, the Petitioner came to be impleaded as defendant no.7, as the defendant no.2 had sold his

$\frac{1}{4}$ th share to the defendant no.1 admeasuring 24.25 sqr. mtrs. of the western portion of the property. He would further submit that in the said proceedings, the Petitioner had himself filed an application for taking on record the compromise terms and is now seeking to resile from the compromise terms. He submits that the Petitioner has suppressed material facts in as much as during the execution of possession warrant, the Petitioner's son has objected to the possession and filed obstructionists application claiming independent rights in the property. He would further submit that that the Petitioner has taken steps to assert his rights under the compromise decree by applying to the Revenue Authorities to mutate the petitioner's name in respect of part of the property, which came to his share in the compromise terms, but has failed to comply with his obligation to hand over part of the property occupied as a licensee. In support of his contentions Mr. Bora has relied upon the following decisions:

- (i) ***Caetano Souza vs. Augusto Souza and Ors.***, reported in ***MANU/MH/1327/2016***;
- (ii) ***Pawan Kumar Arya and Ors. vs. Ravi Kumar Arya and Ors.***, reported in ***MANU/SC/0253/2020***;
- (iii) ***R.Rajanna vs. S.R. Venkataswamy***, reported in ***MANU/SC/1060/2014***.

9. I have considered the rival submissions of the parties.

10. The submissions of the Petitioner can be broadly categorized as under:

- (a) As the compromise decree does not reveal existence of any of the grounds contemplated under Section 16 of the Rent Act, possession warrant for eviction of the Petitioner from the premises which he occupied as a licensee cannot be permitted;
- (b) Civil Court which was not a Special Court having jurisdiction to decide the matters of tenancy, the decree itself is a nullity;
- (c) Compromise decree is a preliminary decree and before attaining finality, the same is sought to be put into execution.

11. For the reasons stated hereinafter I am not inclined to interfere with the impugned orders.

12. RCS No.8 of 2004 was instituted by the Respondent Nos.1 to 3, initially against the Respondent Nos.4 to 9 seeking partition and separate possession of $\frac{1}{4}$ th share of the Petitioner in suit property being Municipal House No.2711 bearing City Survey No.2731, admeasuring 96.1 sqr. mtrs. It was the case of the Respondent Nos.1 to 3 that the said property was purchased jointly by the Respondent Nos.1 to 3, Respondent Nos.4, 6, and husband of Respondent No.7 by a registered sale deed dated 31st December, 1973 and as such, they were joint owners. It is further the case of Respondent Nos.1 to 3 in the suit that the Respondent No.4 herein, without consent and without partition, sold his undivided $\frac{1}{4}$ th share to Respondent no.5 herein on 16th December, 1999 by a sale deed. In the said sale deed the property is described as " $\frac{1}{4}$ th share

of the western portion.”. Subsequently, the suit was amended, the other respondents including the Petitioner herein came to be added as defendants.

13. By the amended suit, the Respondent Nos.1 to 3 claimed that during the pendency of the suit, the Petitioner was gifted additional shares by the other co-owners, and as such, they became entitled to $\frac{3}{4}$ th share in the property. It was also claimed that during the pendency of the suit, the Respondent No.5 herein, sold the share which he had purchased from the Respondent No.4 to Petitioner herein on 26th February, 2007. In the amended plaint, for the first time, the possession of the Petitioner as the licensee in respect of area on the ground floor admeasuring 8 X 19 feet and 1 X 4 feet was mentioned and it was stated that the said area was given under a leave and license agreement, which period has not yet expired. It was also claimed in the amended plaint that the defendant nos. 4 to 13 were in possession of part of the property as tenants and the Petitioner herein is attempting to take possession of the property which is in occupation of tenants by way of sale deed, and therefore, sought a relief that till the partition of the property and handing over the share of the Respondent Nos.1 to 3, the Petitioner should be restrained from taking over possession of part of the property occupied by the defendant Nos.8 to 13 as tenants.

14. In the suit what was sought by the Respondent Nos.1 to

3, was partition and separate possession of their share of the suit property and for that purpose, the possession of the Petitioner as a subsequent transferee of part of the suit property, as also a licensee of part of the suit property has been put forth in the plaint. As there is a dispute, as far as the compromise deed are concerned, it is necessary to refer to the compromise terms, which are reproduced hereinafter.

“या कामी वादी व प्रतिवादी नं-७ शेख मनसूर अजीज यांच्या दरम्यान आपसात तडजोड सुलेनामा झाला तो येणेप्रमाणे-

१. वादी व प्रतिवादी नं. ७ शेख मनसूर अजीज यांनी आपसात संबंध चांगले रहावेत या हेतुने सदर दाव्यामध्ये आपसात तडजोड केली ती खालीलप्रमाणे.
२. दावा मिळकत सि. स. नं. २७३१ चा म्यु. घर नं. २७११ चे एकुण क्षेत्र ९६.१ चौ. मी. या मध्ये वादी नंबर २ व ३ यांचा दिनांक २८/०२/२००७ च्या रजिस्टर्ड बक्षीसपत्रावरून अविभक्त ३/४ हिस्सा म्हणजे ७२.०७५ चौ. मी. आहे. तसेच प्रतिवादी शे मनसूर अजीज यांनी १/४ हिश्याची मिळकत म्हणजे २४.०२५ चौ.मी. प्र. वादी नं. २ नरेश चंदनमल साखला यांचेकडून खरेदी केलेली आहे. म्हणून प्रतिवादी नं. ७ शेख मनसूर अजीज यांचा दावा मिळकतीमध्ये १/४ हिस्सा म्हणजे २४.०२५ चौ.मी. आहे. ही वादी व प्र. वादींना मान्य व कबूल आहे. वादी नं. २ व ३ व प्रतिवादी नं. ७ शेख मनसूर अजीज यांच्या दरम्यान आपसात सरस निरस मानाने वाटप झाले असून त्याचा नकाशा या सोबत जोडला आहे. सदरचा नकाशा या तडजोडीचा एक भाग म्हणून वाचण्यात यावा प्रतिवादी नं. ७ शेख मनसूर अजीज हा दावा मिळकतीमध्ये पुर्व भागात लायसेन्सी असून दावा मिळकतीपैकी पुर्वेकडील तळमजल्यावरील ८ फुट X १९ फुट क्षेत्र व १ फुट X ४ फुट क्षेत्राची मिळकत प्रतिवादी नं. ७ शेख मनसूर अजीज च्या ताब्यात लायसेन्सी माणून आहे.. दावा मिळकतीचे वादी, प्रतिवादी शेख मनसूर अजीज यांच्या दरम्यान सुलेनामा झाले असून दावा मिळकतीपैकी पश्चिमेकडील भाग सोबतच्या नकाशाप्रमाणे २४.०२५, चौ. मी. प्रतिवादी नं. ७ शेख मनसूर अजीज च्या हिश्यास दिला आहे व पुर्वेकडील बाकी सर्व मिळकत वादी नंबर २ व ३ यांच्या हिश्यास दिली आहे. प्रतिवादी नं. ७ शेख मनसूर अजीज यांनी त्यांच्या कब्जात लायसेन्सी म्हणून असलेल्या पुर्वेकडील भागाचा ताबा ३१-१०-२०१३ अखेरपावेतो वादी नंबर २ व ३ यांना द्यावयाचा” आहे. त्याप्रमाणे प्रतिवादी नं. ७ शेख मनसूर अजीज ने ताबा न दिल्यास वादी नं. २ व ३ यांनी या हुकूमनाम्यावरून दरखास्त दाखल करून प्रतिवादी शेख मनसूर अजीज कडून ताबा मे. कोर्टामार्फत घ्यावयाचा व

तसा त्यांना अधिकार राहिल.

४. प्रतिवादी नं. ७ शेख मन्सूर अजीज च्या हिश्यास दिलेल्या दावा मिळकतीपैकी पश्चिमेकडील तळमजल्यावरील भागामध्ये प्रतिवादी नं. ९ भाडेकरी नारंग यांचा असून नारंग यांच्याकडून प्रतिवादी शेख मन्सूर अजीज यांनी आपसात किंवा मे. कोर्टामार्फत ताबा घ्यावा. श्री. नारंग यांच्याकडून प्रत्यक्ष कब्जा मिळाल्यानंतर प्रतिवादी नं. ७ श्री. शेख मन्सूर अजीज यांनी त्यांचे हिस्स्याची मिळकत २४.०२५ चौ.मी. ठेऊन बाकी मिळकतीचा प्रत्यक्ष कब्जा वादी नं. २ व ३ यांना द्यावयाचा आहे. तसेच प्रतिवादी नं. ७ शेख मन्सूर अजीज यांच्या हिस्स्यात पहिल्या मजल्यावर जाणेकरीता पाठीमागून बोळीतून दक्षिण बाजूने जिना लावण्यास वादी यांची प्रतिवादी नं. ७ यांना हरकत करणार नाही. तसेच प्रतिवादी नं. ७ यांनी भविष्यकाळी दक्षिण बाजूस जिना काढण्यास प्रतिवादी नं. २ व ३ यांना प्रतिवादी नं. ७ हरकत करणार नाही.
५. वादी व प्रतिवादी शेख मन्सूर अजीज यांनी आपसात वाटप मान्य केल्यामुळे सदर सुलेनाम्याला फायनल डिक्रीचे हुकुमनाम्याचे स्वरूप द्यावे. कारण या मिळकतीबाबत कोणताही वाद राहिलेला नाही त्यामुळे सदर सुलेनाम्यास फायनल डिक्रीचे हुकुमनाम्याचे स्वरूप द्यावे.
६. प्रतिवादी शेख मन्सूर अजीज च्या हिश्यास दिलेल्या दावा मिळकतीपैकी पश्चिमेकडील पहिल्या मजल्यावरील भागाचा प्रत्यक्ष कब्जा सदर मिळकतीमध्ये भिंत बांधुन प्रतिवादी शेख मन्सूर अजीज यांना १० दिवसात सिटी सर्व्हेची मोजणी करून देण्याचे ठरले आहे. तसेच पहिल्या मजल्याचा राहिलेला भाग वादी नंबर २ व ३ यांच्या प्रत्यक्ष कब्जात दिला आहे.
७. वादी नंबर २ व ३ व प्रतिवादी शेख मन्सूर अजीज यांना वाटपाप्रमाणे दिलेल्या तळमजल्यावरील मिळकतीच्या दरम्यान दोन स्वतंत्र भिंती बांधावयाच्या असून व प्रतिवादीचे भिंतीचे बांधकामाचा खर्च प्रतिवादी शेख मन्सूर अजीज याने स्वतः करावयाचा आहे.
८. वादी नं. २ व ३ यांच्या हिश्यास आलेल्या भाडेकरी व लायसेन्सी यांचेकडून भाडे/लायसेन्स फी वादीने घ्यावयाचे आहे व त्याने आपसात किंवा कोर्टामार्फत ताबा घ्यावा.
९. वरील वाटपाप्रमाणे सिटी सर्व्हे रेकॉर्डला वादी नं. २ व ३ व प्रतिवादी नं. ७ शेख मन्सूर अजीज यांनी मोजणीसाठी अर्ज करावयाचा आहे व सदर मिळकतीचे सब डिव्हीजन करून घ्यावयाचे आहे. सिटी सर्व्हे मोजणीसाठी व सब डिव्हीजन साठी होणारा खर्च प्रतिवादी शेख मन्सूर अजीज यांनी करावयाचा आहे.
१०. वादी यांचा पश्चिमेकडून २४.२५ चौ. मी. या मिळकतीवर कोणताही हक्क राहिला नाही. या पुढील काळात ते श्री. मन्सूर अजीज शेख यांना कोणत्याही

प्रकारचा हरकत अडथळा करणार नाही तसेच पोटहिस्सा करतेवेळी जेथे जेथे सहा लागतील तेथे तेथे सहा देतील. सदर मिळकती वरील बोजा प्रतिवादी शेख मन्सूर अजीज यांच्यावर राहणार नाही व त्यांचा सिटी सर्व्हे उतारा व पोट हिस्सा करून घ्यावयाचा आहे.

११. येणेप्रमाणे वादी नं.१ ते ३ व प्रतिवादी शेख मन्सूर अजीज यांचे दरम्यान आपसात वाटप झाले असून एकमेकांनी एकमेकांच्या कब्जास हरकत अडथळा करावयाचा नाही. सदर वाटपाप्रमाणे ज्याने त्याने आपआपल्या हिश्याचे नगरपालिका व इतर सरकारी कर भरावेत व सिटी सर्व्हे रेकॉर्डला व नगरपालिका रेकॉर्डला योग्य त्या नोंदी करून घ्याव्यात. ज्याने त्याने आपापल्या हिश्याच्या मिळकतीचा मर्जीनुरूप उपभोग घ्यावा अथवा विल्हेवाट लावावी.
१२. येणेप्रमाणे तडजोड /सुलेनामा झाला त्याप्रमाणे हुकुमनामा करण्यात यावा, नियमाप्रमाणे कोर्ट फी व रिफंड वादीला मिळावा. दाव्याचा खर्च ज्याने त्याने आपापला सोसावा.”

15. The Compromise terms record that the respondent Nos.1 to 3 are entitled to $\frac{3}{4}$ th share admeasuring 72.75 sqr.mtrs. and the Petitioner is entitled to $\frac{1}{4}$ th share admeasuring 24.25 sqr.mtrs. of the suit property, that the suit property be divided in this proportion between the Petitioner and the Respondent Nos.1 to 3 as per the map annexed, the eastern portion of the property on the ground floor admeasuring 8 feet x 19 feet and 1 feet x 4 feet was occupied by the Petitioner and by reason of this compromise, the Petitioner was entitled to $\frac{1}{4}$ th share of the western portion of the suit property and the balance $\frac{3}{4}$ th share was of the Respondent nos.1 to 3, and as such, the portion which is in occupation of the Petitioner as a licensee i.e. the eastern portion shall be handed over to the Respondent Nos.2 and 3 on 31st October, 2013, and in event the possession is not handed over the compromise decree can be put into execution. It was also recorded that the Petitioner was

entitled to initiate necessary proceedings as against the defendant no.9, named Narang for possession, who was occupying the western portion of the suit property and hence, after taking possession of the share of 24.25 sqr. mtrs. which was allotted to the Petitioner in the compromise deed, the balance portion to be handed over to the Respondent Nos.2 and 3. Clause (5) of the compromise deed records that these proceedings should be considered as a final decree proceeding as the Petitioner and the Respondent nos.1 to 3 have agreed to the partition.

16. There is no dispute as regards the execution of the compromise terms between the parties. In the background of the compromise terms, the submissions of the Petitioner are required to be considered. Learned Counsel for Petitioner has assailed the executability of the compromise decree as regards the eviction of the Petitioner from the portion occupied by him as licensee due to non existence of any of the grounds of eviction contemplated under Section 16 of the Rent Act. In the present case, the compromise decree has been passed in a suit for partition and separate possession. The Petitioner was occupying part of the suit property as licensee and at the same time due to purchase of $\frac{1}{4}$ th undivided share of the property had become co-owner of the property, by reason of which he was impleaded in the suit for partition. The Compromise deed recognizes this fact and the parties have arrived at a settlement whereby it was agreed that $\frac{1}{4}$ th share of the western portion of the suit property should be allotted to the Petitioner and

the balance $\frac{3}{4}$ th share will be the share of the Respondent Nos.1 to 3. It is for the purpose of the partition and separate possession of $\frac{1}{4}$ th share of the western portion of the property, the property occupied by the Petitioner albeit as a licensee and which now by reason of the compromise decree has been allotted to the share of the Respondent Nos.1 to 3 was called upon to be vacated and handed over.

17. RCS No 8 of 2004 proceedings were not instituted under the provisions of the Rent Act seeking eviction and the compromise terms was executed between the parties as co-owners of the suit property. There is another aspect of this matter which militates against the case of the Petitioner. In the affidavit-in-rejoinder the Petitioner has annexed the copy of leave and license agreement, which has been executed by the Petitioner with the Respondent Nos.1, 6, 7, 8 and the wife of Respondent No.9, and by virtue of this license agreement, a license was granted to the Petitioner to use and occupy the shop on the ground floor for a period of 60 months effective from 1st July, 2005 to 30th June, 2010. At this stage, it is necessary to resort to the provisions of the Rent Act and the definition of licensee contained in Section 7(5), and the definition of a tenant contained in Section 5(15), which is reproduced as under:

7(5) "Licensee", in respect of any premises or any part thereof, means the person who is in occupation of the premises or such part, as the case may be, under a

subsisting agreement for licence given for a licence fee or charge; and includes any person in such occupation of any premises or part thereof in a building vesting in or leased to a co-operative housing society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1960; but does not include a paying guest, a member of a family residing together, a person in the service or employment of the licensor, or a person conducting a running business belonging to the licensor or a person having any accommodation for rendering or carrying on medical or para-medical services or activities in or near a nursing home, hospital, or sanatorium or a person having any accommodation in a hotel, lodging house, hostel, guest house, club, nursing home, hospital, sanatorium, dharmashala. home for widows, orphans or like premises, marriage or public hall or like premises, or in a place of amusement or entertainment or like institution, or in any premises belonging to or held by an employee or his spouse who on account of exigencies of service or provisions of residence attached to his or her post or office is temporarily not occupying the premises, provided that he or she charges licence fee or charge for such premises of the employee or spouse not exceeding the standard rent and permitted increase for such premises, and any additional sum for service supplied with such premises or a person having accommodation in any premises or part thereof for conducting a canteen, creche, dispensary or other services as amenities by any undertaking or institution; and the expressions "licence", "licensor" and "premises given on licence" shall be construed accordingly."

.....

.....

5(15) "tenant" means any person by whom or on whose

account rent is payable for any premises and includes,-

(a) such person,-

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;

(b) a person who is deemed to be a tenant under section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,-

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court.

Explanation- The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.”

18. Provisions of Section 16 of the Rent Act contained in Chapter IV of the Rent Act, contemplates the situations in which the landlord may recover the possession from the tenant. Chapter V of the Rent Act, deals with recovery of possession from the licensee on expiry of period of license. Considering the distinction as regards the recovery of possession from the tenant and licensee contained in the statute, the protection afforded to the tenant under Section 16 of Rent Act is not extended to the licensee, who is liable to be evicted on expiry of the license period. The submission of the learned counsel for Petitioner as regards the executability of the compromise decree on the ground of section 16 of the Rent Act, which protection is available to tenants is therefore legally unsustainable.

19. At this stage, it may be worthwhile to take note of the provisions of Order XXIII of the Code, which deals with the “*withdrawal and the adjustment of the suit*” and in particularly Order XXIII Rule 3, which reads as under:

“3. Compromise of suit.- *Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as*

the subject matter of the suit: -

Provided that where it is alleged by one party and denied by the other than an adjustment or satisfaction has been arrived at, the court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation: An agreement or compromise which is void or avoidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

20. Order XXIII Rule 3 permits the compromise between the parties to travel beyond the subject matter of the suit and in facts of the present case, the compromise terms included the handing over of the licensed premises.

21. In the case of ***Abedali Khan (supra)*** relied upon by the Petitioner, the facts of that case were that the Petitioner therein was a tenant and the Respondent was the landlord and hence considering the protection which is afforded by Section 16 of the Rent Act, it was held that while submitting the terms of the compromise, it is mandatory that at least one of the grounds for eviction which is available in Section 16 of the Rent Act, ought to have been mentioned in the compromise pursis. In the case of ***Alagu Pharmacy and Ors. (Supra)***, in the facts of that case a compromise decree was entered into before the Rent Controller, District Coimbatore in a petition filed under the provisions of Tamil

Nadu Buildings (Lease and Rent Control) Act, 1960, wherein it was held that where protection under the Rent Act is available, no eviction can be ordered, unless grounds seeking eviction is made out even if parties had entered into compromise.

22. In the case of ***Caetano Souza (supra)***, relied upon by Shri Bora, this Court has held that while passing the consent decree, the Civil Court had not decided any tenancy claim or its surrender and it was difficult to accept that the decree be branded as nullity as being passed in breach of the provisions of the Act.

23. In the case of ***Raosaheb Bhikaji Tambe (supra)***, relied upon by the Petitioner, this Court in the facts of that case has observed that as per the compromise terms entered into between the parties, it was agreed that the land be measured and the boundaries of the land fixed through the District Inspector of Land Records and encroached area was to be asserted and if found encroached, the encroacher to hand over that area to the other party. This Court held that as the Court has to come to a definite conclusion whether there was encroachment on land of the plaintiff and if found so, particularly demarcating the encroached area the final decree could have been passed directing that the possession of the encroached area be given and if no encroachment found then final decree to be passed.

24. At this stage, it is necessary to refer sub-section (2) of Section 2 of the Code, which reads as under:

“(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation-A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;”

25. Sub-section (2) Section 2 of the Code makes it clear that decree is final when the adjudication completely disposes of the suit and it is preliminary when further proceedings had to be taken before the suit can be completely disposes of. In the present case, the terms of the compromise decree declares the shares of the parties as per the plan annexed and one of the compromise terms was that compromise is to be accepted as a final decree proceedings. In my view, considering the terms of the compromise declaring the share of the parties as per the plan, except for building the walls demarcating the shares, there was nothing further remaining to be done.

26. Another aspect which supports my view that no

interference is called for in exercise of writ jurisdiction is the conduct of the Petitioner. The Petitioner has suppressed the fact that his son has taken out obstructionist claiming to have an independent right in the property. This fact was brought to the notice of this Court by the learned counsel for the Respondent. Upon a query by this Court, the learned counsel for the Petitioner was unable to submit any explanation, apart from stating that he does not support the case of his son as an obstructionist. Obstructionist application of the petitioner's son was filed on 25th March, 2022 and the present writ petition was filed on 4th April, 2022. The Petitioner at the time of filing of the petition was well aware that his son was claiming independent rights in the licensed premises and has suppressed this fact in the petition. Every attempt is being made to assert the rights flowing from the compromise decree but to obstruct the compliance of the obligation under the compromise decree. The powers of writ Court are to be exercised, if the Court is satisfied that the exercise of writ jurisdiction would further equity, good conscience and justice.

27. Learned counsel for the Petitioner has relied upon the judgment of this Court in the case of ***Enventa Fischer GmbH & Co., K.G. (supra)***, which laid down that the conduct may be or may not be blame worthy and are apprehensible but ultimately if the Court does not jurisdiction and proceedings are not maintainable then it is wholly irrelevant. The reliance of the Petitioner on the said decision is misplaced, as the same arose in an arbitration

petition whereas in the present case, this Court has been called upon to exercise its writ jurisdiction under Article 227 of the Constitution of India.

28. For the reasons aforesaid, Writ petitions are dismissed.

29. Rule stands discharged.

30. At this stage, the learned counsel for the Petitioner sought a stay for a period of four weeks, which was vehemently opposed by the learned counsel for the Respondent Nos.1 to 3. The implementation of the orders dated 7th March, 2022 and 22nd March, 2019, are stayed for a period of four weeks from the date of uploading of this order.

(SHARMILA U. DESHMUKH, J.)