

6th April, 2022 passed by the learned Competent Authority, Rent Control Act, Konkan Division Mumbai in Eviction Application no. 212 of 2021 as well as the Order dated 21st March, 2023 passed by the learned Additional Commissioner, Konkan Division, Mumbai in Revision Application No. 40 of 2023. By the impugned order dated 6th April, 2022 passed by the Competent Authority the present Petitioner has been directed to hand over the vacant and peaceful possession of the Bungalow standing on Plot No. 105 situated at Sector 21, Kharghar, Navi Mumbai-410 210 (hereinafter referred to as the "**said Bungalow**") within 30 days to the Respondent No. 3 and further directed the Petitioner to pay arrears of license fee of sum of Rs. 2,00,000/- within 30 days and license fee of Rs. 2,00,000/- per month from 1st April 2021 till handing over the vacant and peaceful possession of the premises in question. By the impugned order dated 21st March, 2023 the said Revision Application was dismissed for default. It is admitted position that in execution proceedings, possession of said bungalow has been taken by the Respondent No. 3 on 25th January, 2023 and only articles belonging to the Petitioner remain in said bungalow.

3. Ms. Bhatia learned counsel appearing for the Petitioner submitted that, the Petitioner was put in possession of said Bungalow on 1st December, 2019. She submitted that in fact the Petitioner and Respondent No. 3 agreed that the said Bungalow would be purchased by the Petitioner for an amount of Rs. 3,75,00,000/-. The said agreement was an oral agreement. She also submitted that on 30th June, 2020 Rs. 5,00,000/- were paid by the Petitioner and thereafter a leave and license agreement dated 25th September, 2020 was registered. The period as per the said leave and license agreement was from 1st May, 2020 to 31 March, 2021 and the agreed leave and license charges were Rs. 1,00,000/- per month. Thereafter on 8th December, 2020 the termination notice was issued by the Respondent No. 3 and accordingly said leave and license agreement was terminated. The said termination notice was replied to by the mother of Petitioner on 1st February, 2021. It is

submitted by Ms. Bhatia, learned counsel appearing for the Petitioner that in the meanwhile the Petitioner was arrested on 8th November 2020 and thereafter he was released on bail on 5th January 2022.

4. The Eviction Application No. 212 of 2021 was filed under Section 24 of Maharashtra Rent control Act, 1999 (hereinafter referred to as "**The Rent Act**") on 12th October, 2021. It is the main contention of Ms. Bhatia, learned counsel appearing for the Petitioner that the Petitioner did not receive the summons. However the learned competent authority discussed that aspect in paragraph No. 7 which reads as under :

"7. The summons (Exh.6) were sent to respondent through R.P.A.D. on both correct address and directed to appear before this authority on 11.11.2021. **The track consignments are at Exh. -9 & 10. The summons sent on alternative address is returned back as 'Left'. The postal article containing summons is at Exh.8 the summons sent on the address of application premises is returned back as 'Unclaimed'. The Postal article containing summons is at Exh. 7. As in the case of *K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Anr.*, the Hon'ble Supreme Court, held that a notice returned as unclaimed is presumed to have been served. The ratio laid down in the case cited supra does squarely apply to the facts of the instant case. In the Instant case also, summons to respondent set by R.P.A.D. on correct address is received as 'Unclaimed'."**

(Emphasis added)

5. The learned Competent Authority has relied on the Judgment of Supreme Court in the case of *K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr.*¹ wherein it has been held that, when the notice is returned as unclaimed the same is deemed to have

¹ (1999) 7 SCC 510

been served.

6. It is the main contention of Ms. Bhatia, learned counsel for the Petitioner that, the impugned order dated 6th April, 2022 as well as the impugned order dated 21st March 2023 were passed without following the principles of natural justice. She submitted that the petitioner has not been served properly. She submitted that there is an oral transaction by which the Petitioner agreed to purchase the said bungalow and therefore the Petitioner cannot be evicted.

7. However it is to be noted that the said oral agreement of sale is dated 1st December, 2019. It is admitted position that till date the suit for specific performance with respect to the said oral agreement is not filed. In any case, it is also admitted position that the leave and license agreement dated 25th September 2020 is subsequent to the said oral agreement by which the Petitioner agreed to purchase the said bungalow. Therefore, the said aspect cannot be taken into consideration. With respect to said contention raised by Ms. Bhatia regarding oral agreement, it is significant to note the relevant contentions raised by the Respondent in Application filed under section 24 of the Rent Act which reads as under :

3. That the Respondent was in need of temporary accommodation for the residential purpose of himself and his family members. Somewhere around November, 2019, the Respondent approached and requested the Applicant to grant him permission to use and occupy the said Application Premises for residential purpose only on Leave and License basis. **The applicant acceded the request of the Respondent and granted him the permission to use and occupy the Application Premises on monthly license basis of Rs. 1,00,000/- per month and a security deposit of Rs. 3,00,000/-.**

4. The Applicant states that accordingly the Respondent paid the part security deposit of Rs. 1,00,000/- and promised to pay the balance security deposit of Rs. 2,00,000/- within 30 days. The Applicant further states that it was also decided between the Applicant and the Respondent that the leave and license agreement would be executed at the time of payment of the remaining security deposit. The Respondent occupied the Application Premises on a temporary basis with effect from 01.12.2019.

5. The applicant further states that thereafter the Respondent showed interest in buying the Application Premises and gave a token/earnest money of Rs. 5,00,000/- on 30.06.2020 and the Respondent agreed to complete the proposed transaction by 31.08.2020 and promised to make payment of the entire consideration within the agreed timelines. However, the Respondent could not arrange the requisite funds and could not complete the proposed transaction.

6. The applicant states that **the Respondent therefore requested the applicant to adjust the sum of Rs. 5,00,000/- towards the outstanding license fees, i.e., from 01.12.2019 until 30.04.2020 and requested to execute the leave and license agreement for the subsequent period. Accordingly, a leave and license agreement was executed on 24.09.2020 for a period of 11 months commencing from 01.05.2020 to 31.03.2021 on the same terms and conditions as agreed earlier. The Leave and License Agreement dated 24.09.2020, was duly registered**, before the, sub-registrar, Panvel-2, Navi Mumbai, vide Registration No. 7149 of 2020. The copy of the said Registered

Leave and License Agreement dated 24.09.2020 is annexed and marked as Exhibit "B".

(Emphasis added)

Thus, it is clear that the oral agreement was admitted by both the parties. The Respondent No.3 specifically stated in the Application filed under Section 24 of the Rent Act that although the Petitioner expressed desire to purchase the suit property but failed to arrange for the funds and therefore registered leave and license was executed as the Petitioner was in the need of residence for temporary period. It is admitted position that after the said oral agreement dated 1st December, 2019 the Petitioner and Respondent No. 3 executed the leave and license agreement on 24th September 2020 and the said agreement has been registered. Thus the said aspect of oral agreement of sale is irrelevant due to subsequent execution and registration of the leave and license agreement.

8. The period of said registered agreement of leave and licence was from 1st May 2020 to 31st March, 2021 and the same was terminated by notice dated 8th December, 2020 and the present proceedings under Section 24 of the Rent Act were filed on 12th October, 2021 i.e. about more than six months after the expiry of period of leave and license. Explanation (b) of section 24 of the Rent Act provides that, an agreement of licence in writing shall be conclusive evidence of the facts stated therein. Therefore, even if it is assumed that the petitioner could not remain present and his constituted attorney was not aware about the filing of the proceeding, still in view of the registered leave and licence agreement and explanation (b) of section 24 which provides that an agreement of license in writing shall be conclusive evidence of the fact stated therein, no other evidence could have been brought before the competent authority. Therefore, the Petitioner has not suffered any prejudice.

9. During the hearing, I specifically asked Ms. Bhatia, learned counsel appearing for the Petitioner about the contentions which the Petitioners could have raised before the competent authority in view of registered leave and license agreement and her only answer was that the principles of natural justice were not followed and therefore, the case be remanded back. However, this is a case where although the leave and license agreement was terminated, the same has come to an end by the efflux of time on 31st March, 2021 and thereafter only eviction proceeding under Section 24 were filed.

10. It is further significant to note that, the said order dated 6th April, 2022 of the Competent Authority was challenged by filing Revision Application No. 40 of 2023 before the Additional Commissioner, Konkan Bhavan, Mumbai and the same was dismissed as the Petitioner's Advocate failed to remain present on two dates. It is the submission of Ms. Bhatia that, the concerned Advocate has played fraud on the Petitioners. It is also admitted position that, the possession of the said Bungalow has been taken from the Petitioner in execution on 25 January, 2023 and the same has been handed over to the Respondent No. 3 and only articles belonging to the Petitioner remain in the said Bungalow.

11. Mr. Chavan, learned counsel appearing for Respondent No. 3 stated that, the arrears are of about Rs. 45,00,000/- and if the said arrears are paid to the Respondent No.3, then he has instructions to consent for remanding back the matter before the Additional Commissioner, Konkan Division. However, Ms. Bhatia, learned counsel appearing for the Petitioner after taking instructions stated that, the Petitioner is not ready to pay the said amount of Rs. 45,00,000/-. Thus, this is a case where the period of registered leave a license agreement dated 24th September, 2020 has come to an end even by efflux of time on 31st March 2021. Admittedly, the

Petitioners were in occupation of the said Bungalow till 25th January, 2023 and admittedly since January, 2021 till 25th January 2023 the Petitioners have not paid anything to the Respondent No. 3 who is the owner of the said Bungalow. Thus even said fair suggestion given by the Respondent No.3 is not accepted by the Petitioner.

12. This is a case where the Petitioner was not represented through an Advocate before the Competent Authority and the Revision filed by him has also been dismissed for default. Therefore it is necessary to consider whether remand to the Competent Authority is necessary in the facts and circumstances of this case.

13. The Supreme Court in its decision in **State of U.P. Vs. Sudhir Kumar Singh and Others**², discussed the aspect whether mere non-observance of principles of natural justice is sufficient for aggrieved person or is he also required to show prejudice caused to him. After analysing the various decisions of the Supreme Court on this point, the Supreme Court summarised the legal position in paragraph 39 as follows:

"39. An analysis of the aforesaid judgments thus reveals:

- (1) **Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.**
- (2) **Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the**

² 2020 SCC OnLine 847

orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

- (3) **No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.**
- (4) **In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.**
- (5) **The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."**

Thus, a person claiming violation of the principles of natural justice has to also show the prejudice that he has suffered as a result of said violation. If a person is not able to dispute the case of the other side, then in that case it cannot be said that any prejudice is caused to such person. The present case is required to be examined in the light of above legal position.

14. The Explanation (b) to Section 24 of the Rent Act provides that, an agreement of license in writing shall be conclusive evidence of the facts stated therein. The same is special rule of evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and license agreement from the proof of another.

15. Explanation (b) to Section 13A(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is similar provision as Explanation (b) to Section 24. The said provision is subject matter of consideration of various judgments of this Court. This Court in the decision of ***Ramesh Ramrao Hate vs. Parvez B. Bhesania***³ has held as follows.

"8. The controversy centers round the **Explanation (b) which makes a provision that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. Though the expression used in explanation is "conclusive evidence" it cannot be differentiated with the expression "conclusive proof".** In 1. Smt. Sonawanti and others v. The State of Punjab and others, the **Apex Court compared the expressions 'conclusive evidence' and held that there is no difference between the two expressions. The Supreme Court thus held---**

³ (1996)98 BOM LR 784

"18. A distinction is sought to be made between "conclusive proof" and "conclusive evidence" and it is contended that where a law declares that a fact shall be conclusive proof of another, the Court is precluded from considering other evidence once such fact is established. **Therefore, where the law makes a fact conclusive proof of another the fact stands proved and the Court must proceed on that basis.** But, the argument proceeds, where the law does not go that far and makes a fact only "conclusive evidence" as to the existence of another fact, other evidence as to the existence of the other fact is not shut out. In support of the argument reliance is placed on section 4 of the Evidence Act which in its third paragraph defines 'conclusive proof' as follows :

"When one fact is declared by this Act to be conclusive proof of another, the Court, shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it. This paragraph thus provides that further evidence is barred where, under the Evidence Act, one fact is regarded as proof of another. But it says nothing about what other laws may provide.

There are a number of laws which make certain facts conclusive evidence of other facts : (see Companies Act, 1956, section 132; the Indian Succession Act, 1925, section 381; Christian Marriage Act, 1872, section 61; Madras Revenue Act, 1869, Section 38; Oaths Act, 1873, section 11). The question is whether such provision also bars other evidence after that which is conclusive evidence is produced.

19. The object of adducing evidence is to prove a fact. The Evidence Act deals with the question as to what kind of evidence is permissible to be adduced for that purpose and states in section 3 when a fact is said to be proved. That section reads thus :

"Evidence" means and includes---

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

Since evidence means and includes all statements which the Court permits or requires to be made, when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact it implies that fact can be proved either by that evidence or by some other evidence which (sic) the Court permits or requires to be advanced. Where such other evidence is adduced it would be open to the Court to consider whether, upon that evidence, the fact exists or not. Where, on the other hand, evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. If that were not so, it would be meaningless to call a particular piece of

evidence as conclusive evidence. Once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. In substance, therefore, there is no difference between conclusive evidence and conclusive proof. Statutes may use the expression 'conclusive proof' where the object is to make a fact non-justifiable. But the legislature may use some other expression such as 'conclusive evidence' for achieving the same result. There is thus no difference between the effect of the expression 'conclusive evidence' from that of 'conclusive proof', the aim of both being to give finality to the establishment of the existence of a fact from the proof of another".

9. Once the legislature by Explanation (b) of section 13A(2) has provided that a written agreement of license shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13A(2) of the Bombay Rent Act. The intention of the legislature was to give finality to the existence of a facts occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence agreement from the proof of another. The argument of learned Counsel for the petitioner that

Explanation (b) only makes the written agreement of licence conclusive evidence as regards the licensor and not against the licensee is very difficult to be appreciated.

Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence.

The law laid-down by the Apex Court in Smt. Somavanti and others' case (supra), is clear answer to the contention of the learned Counsel for the petitioner wherein the Apex Court has held that **once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive.**

Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist. Same position holds good also in a case where the execution of written agreement of leave and licence is denied and the Competent Authority after recording

evidence reaches the conclusion that execution of such agreement for leave and licence has been proved by the licensor.”

(Emphasis added)

Thus, it is clearly held by this Court that, the intention of the legislature was to give finality to the existence of facts occurring in the written agreement of leave and license. In other words, legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression 'conclusive evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and license agreement from the proof of another.

16. This Court in Ramesh Ramrao Hate (supra) has relied on the Judgment of Hon'ble Supreme Court in the case of ***Somavanti & Others Vs The State Of Punjab & Ors***⁴, wherein it has been held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. The said observations of this court are squarely applicable to the present case.

17. A learned Single Judge in the decision of ***Jasmeet Hoon Vs. Smt Rita Johar & Ors***⁵, has held that Section 13A(2) of the Bombay Rent Act (i.e. same provision as contained in explanation (b) to section 24 of the Maharashtra Rent Control Act) lays down a special procedure for eviction of licensees before the Competent Authority which is a special

⁴ (1963) 2 S.C.R. 774

⁵ (2001) 1 BOMLR 82

forum constituted under Part IIA of the Act. Explanation (b) to Section 13A(2) prescribes a special rule of evidence. It provides that an agreement of license in writing shall be conclusive evidence of the facts stated therein. In view of this special rule of evidence, this Court has held that it is not permissible for the Court to go behind the document to find out the real intention of the parties or to arrive at a conclusion that the document is of a lease and not of leave and license. The licensee cannot lead evidence to establish that the real transaction was of tenancy or is not what it professes to be. The agreement is conclusive evidence that the transaction is of leave and license.

18. In view of the above legal position the contention of Ms. Bhatia that the real transaction between the parties is sale of the said Bungalow in favour of the petitioner cannot be looked into. Although the Competent Authority by giving reasons on the basis of Hon'ble Supreme Court's Judgment in the case of **K. Bhaskaran (supra)** has held that the petitioner has been properly served, however, even if it is assumed that the Petitioner has not been properly served still, in view of the admitted position that there is a registered leave and license agreement, the Competent Authority could not have gone into the aspect that the real transaction between the petitioner and Respondent No. 3 is of sale of the said bungalow and therefore no prejudice has been caused to the petitioner.

19. Mr. Chavan, learned counsel appearing for the Respondent No.3 has also relied on the decision of a learned Single Judge in the case of **Raj Prasanna Kondur Vs. Arif Taher Khan & Ors⁶**, and more particularly on paragraph no. 20 of the said judgment. The said paragraph no. 20 reads as under.

20. Clause (a) of Sub-section (4) of [Section 43](#) of the said Act provides that the licensee on

6 2005(4) Bom.C.R. 383

whom the summons is duly served in the ordinary way or by registered post in the manner laid down in Sub-section (3) of [Section 43](#), shall not contest the prayer for eviction for the premises, **unless, within 30 days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for evidence and obtains leave from the competent authority in the manner provided in the said Act**, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the licensee, and the applicant shall be entitled to an order for eviction on the ground aforesaid. The Apex Court in Prakash Jain's case (supra) has clearly ruled that :-

"Clause (a) of Sub-section (4) of [Section 43](#) mandates that the tenant or **licensee on whom the summons is duly served should contest the prayer for eviction by filling, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the competent authority to contest the application for eviction as provided therefor**. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filling an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for

eviction of the ground so stated by him in his application for eviction."

(Emphasis added)

In view of Section 43 of the Rent Act read with explanation (b) to Section 24, it is important to note that the Petitioner should disclose factual aspects by which he will be entitled for leave to defend. Except the contention regarding oral agreement of purchase of said bungalow, there is no other contention raised. Admittedly, the said oral transaction is prior transaction and as per the contention of the Respondent No. 3 as the Petitioner has failed to arrange for funds for purchase of said bungalow and as the Petitioner wanted to stay in said bungalow temporarily, the leave and license agreement was executed. Thus, the terms and conditions of said registered leave and license agreement dated 24th September 2020 are the conclusive evidence of the facts stated therein.

20. Ms. Bhatia the learned counsel appearing for the Petitioner also stated that the Petition was arrested from 8th November, 2020 to 5th January, 2022 and therefore, it cannot be said that he has been served properly. However the factual position on record clearly shows that the Petitioner's mother is his constituted attorney and in fact she replied to the said notice on 1st February, 2021. It is admitted position that the said Bungalow was occupied by all the family members of the Petitioner including his mother. Therefore there is no substance in the said contention also.

21. For the above reasons, there is no substance in the contentions raised by the Petitioner. Accordingly, this is not a case wherein the interference in the impugned order is required by this Court under Article 226 and 227 of the Constitution of India.

22. Therefore the Writ Petition is dismissed with cost. The stay granted by this Court is vacated forthwith."

II. After the above order was dictated in the open Court, on 16th June 2023, on the same day, Ms. Priyanka Pardeshi, learned Advocate, colleague of Ms. Rita Bhatia, learned Counsel appearing for the Petitioner mentioned the matter in the evening by giving notice to the learned Counsel appearing for Respondent No.3 and submitted that the Petitioner is ready to remove all articles, personal belongings, furniture, fixtures etc. which are belonging to the Petitioner and his family members from the suit premises within a period of two weeks and the Petitioner is ready to pay a sum of Rs.23,00,000/- to the Respondent No.3 towards full and final payment for the use and occupation of the Suit premises from 1st February 2021 to 24th January 2023 i.e. at the rate of Rs.1,00,000/- per month. Therefore, on 16th June 2023 (Friday), in the evening, I directed that the matter be again placed on board on 19th June 2023 (Monday).

III. On 19th June 2023, Ms. Bhatia, learned Counsel appearing for the Petitioner appeared and stated that she has taken instructions from the Petitioners and confirmed the statement made by her colleague, Ms. Priyanka Pardeshi on

16th June 2023. Ms. Bhatia, learned Counsel appearing for the Petitioner also stated that due to some medical emergency of Respondent No. 3, some more time will be required to file affidavit-cum-undertaking in terms of the said statement of the Petitioner and therefore the matter was adjourned to 26th June 2023. Said order dated 19th June 2023 is reproduced hereinbelow for ready reference:

"1. "This matter was argued by Ms.Rita Bhatia, learned counsel appearing for the Petitioner, Ms. V. S. Nimbalkar, learned AGP appearing for Respondent Nos.1&2 and Mr. Chaitanya Chavan, learned counsel appearing for Respondent No.3 on 16th June, 2023.

2. I have dictated the order in open Court on 16th June, 2023 dismissing the Writ Petition. However, thereafter the matter was mentioned by Ms. Priyanka Pardeshi, colleague of Ms. Rita Bhatia, learned counsel. She made a statement that, the Petitioner has decided to accept the impugned order dated 6th April, 2022 and withdraw the Petition. She further stated that, the Petitioner is ready and willing to remove all articles, personal belongings, furniture, fixtures etc. which are belonging to the Petitioner and his family members from the suit premises within a period of two weeks and the Petitioner will pay sum of Rs.23,00,000/- to the Respondent No.3 towards full and final payment for the use and occupation of the suit premises from 1st February, 2021 to 24th January, 2023 at the rate of Rs.1,00,000/- per month. Therefore, the matter has been directed to be placed on today's board.

3. Today, Ms. Bhatia, learned counsel of the

Petitioner appears and states that she has again taken instructions from the Petitioner and confirms the statements made by her colleague Ms. Priyanka Pardeshi on 16th June, 2023. She states that, due to some medical emergency, it will take some time for filing affidavit cum undertaking. She further submitted that, on the next date, affidavit cum undertaking of the Petitioner as well as her Constituted Attorney i.e. Salma Salim Qureshi-mother of the Petitioner will be filed in the Court.

4. Stand over to **26th June, 2023** [first on board]."

IV. On 26th June 2023, again time was sought by Ms. Rita Bhatia, learned Counsel appearing for the Petitioner and therefore the matter was adjourned to 27th June 2023 and thereafter on 28th June 2023.

V. Today Ms. Bhatia, learned Counsel appearing for the Petitioner has placed on record her own affidavit dated 27th June 2023 explaining the circumstances in which the said statement was made on 16th June 2023 in the evening and on subsequent dates and that the Petitioner is not ready to file affidavit-cum-undertaking in terms of said statement. In view of the said affidavit of Ms. Rita Bhatia, Advocate of the Petitioner, order dated 19th June 2023 is recalled and the order dictated in open Court on 16th June 2023 is restored.

VI. Accordingly, the Writ Petition is dismissed with costs in terms of order dated 16th June 2023.

(MADHAV J. JAMDAR, J.)

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