

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

**SECOND APPEAL NO.185 OF 2024
WITH
INTERIM APPLICATION NO.6950 OF 2024
IN
SECOND APPEAL NO.185 OF 2024**

Amit Ashok Moholkar
V/S

....Appellant/Applicant

Basavraj Suryakant Sharnarthi

....Respondent

Mr. Ashok B. Tajane *for the Appellant/Applicant.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 26 MARCH 2024.**

P.C.:

1 By this Appeal, Appellant challenges judgment and decree dated 15 September 2023 passed by the District Judge-2, Solapur, dismissing the Regular Civil Appeal No.29 of 2022 and confirming the decree dated 13 January 2022 passed by the Civil Judge Senior Division, Solapur in Regular Civil Suit No.414 of 2019.

2 I have heard Mr. Tajane, the learned council appearing for the Appellant and I have considered the submissions canvassed by him.

3 It appears that the Plaintiff and the Defendant executed Leave and License Agreement dated 17 October 2013, by which licence in respect of the suit premises was granted in favour of the Defendant for the period from 17 October 2013 to 16 October 2015. At the end of the tenure of the Licence, Plaintiff sought recovery of the suit premises by filing suit before the Trial Court.

4 Defendant adopted a defence in the Written Statement that though the Leave and License Agreement was executed on 17 October 2013 the suit premises themselves were not in existence at that time and that the construction thereof was completed only in December 2016. The Defendant further contended in the Written Statement that the suit premises were granted to the Defendant from January 2017 as per oral agreement for which Defendant has paid rent of Rs.2,000/- per month till March 2019.

5 Mr. Tajane would submit that the first question of law involved in the present Appeal is about maintainability of the suit on the count of non-availability of the premises as on the date of filing of the suit and accordingly non-applicability of provisions of section 24 of the Maharashtra Rent Control Act. The second question, according to Mr. Tajane, is whether license executed in respect of non-existent premises can be termed as legal or valid and whether it could attract the provisions of Maharashtra Rent Control Act.

6 Appellant/Defendant has not denied signature on the Leave and License Agreement dated 17 October 2013 under which the possession of the

licensed premises is shown to have been handed over to the Defendant on 17 October 2013. Once the Defendant signed a written agreement regarding handing over possession and commencement of license period from 17 October 2013, the Defendant cannot subsequently be permitted to lead evidence contrary to the said document under provisions of Sections 91 and 92 of the Indian Evidence Act. If the premises were indeed not in existence, why Defendant would execute Leave and License Agreement and why he would pay security deposit of Rs.5,00,000 to the Plaintiff is incomprehensible. It is also admitted position that the Defendant paid license fees in pursuance of the Agreement to the Plaintiff during the period from 17 October 2013 to 16 October 2015. Therefore, the defence that the premises were not in existence cannot be accepted. Both the questions of law sought to be argued by Mr. Tajane, therefore do not really arise in the present Appeal.

7 It must be observed here that the Plaintiff made an entry in the licensed premises in his capacity as licensee and now wants to take a stand that he is a tenant in respect thereof from January 2017. Such a conduct on the part of the Appellant is required to be deprecated. The Appellant has been unauthorizedly holding on to the licensed premises for the last 9 long years. The Trial Court has rightly passed an order for recovery of possession of the licensed premises with further order for conduct of enquiry for determination of mense profits. No question of law, much less any substantial question of law, is involved in the Appeal. The Second Appeal is accordingly rejected.

8 In view of the disposal of the Second Appeal, nothing would survive in the Interim Application and the same is accordingly disposed of.

(SANDEEP V. MARNE, J.)

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