

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14856 OF 2024

Deepak S. Kavadiya

...Petitioner

V/s.

Additional Divisional
Commissioner, Konkan Division
and Ors.

... Respondents

Mr. Surel Shah, Senior Advocate with Mr. Ashwin Shete, Mr. Abhay Dhadiwal and Ms. Vidhi Karia i/b. M/s. Jaykar & Partners for Petitioner.

Mr. Anil Singh, Senior Advocate with Mr. D.D. Singh, Mr. Rushikesh S. Kekane, Mr. Shivam J. Singh, Mr. Adarsh Vyas, Mr. Rama Gupta and Ms. Ruchita Verma for Respondents.

CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 24 October 2024.
Judgment pronounced on : 12 November 2024.

Judgment:

1) The issue involved in the present Petition is about jurisdiction of the Competent Authority under the provisions of Section 24 of the Maharashtra Rent Control Act, 1999 (**MRC Act**) to try and entertain application for eviction filed by Petitioner-Licenser for eviction of Respondent No.3-licensee in the light of dispute amongst them about the exact purpose for which the license is granted. Under Section 24 of the MRC Act, the Competent Authority has jurisdiction to order eviction of licensee where the license is granted only for residential purpose. If the license is granted for purpose other than residential, the Competent Authority loses

jurisdiction under Section 24 of the Act and the Licensor would then need to institute a Suit before Small Causes Court for eviction of licensee. While it is the contention of Petitioner-Licensor that the license was granted purely for residential purpose, it is the contention of Respondent No.3-licensee that the license was for commercial purpose, thereby ousting the jurisdiction of the Competent Authority under Section 24 of the MRC Act. The short issue that therefore arises for consideration is whether license has been granted by Petitioner-Licensor in favour of Respondent No.3-licensee for residential or commercial purposes.

2) The issue arises in the light of challenge set up by the Petitioner to order dated 19 September 2024 passed by the Additional Divisional Commissioner, Konkan Division allowing Revision Application by Respondent No.3-licensee and setting aside the eviction order passed by the Competent Authority on 6 August 2024 in Eviction Application No.178 of 2023. The Competent Authority had rejected the application filed by Respondent No.3-licensee for grant of leave to defend under the provisions of Section 43 of the MRC Act on the ground that the premises are let out for residential purposes. Simultaneous with the rejection of leave to defend vide order dated 6 August 2024, the Competent Authority proceeded to allow Eviction Application by separate order passed on the same day directing Respondent No.3 -licensee to handover possession of the licensed premises to the Petitioner -Licensor with further direction to pay damages @ Rs.2,00,000/- per month from 2 April 2022 till the date of handing over of possession of the premises. The eviction order dated 6 August 2024 passed by the Competent Authority has been set aside by the Revisional Authority by allowing the Revision preferred by Respondent No.3-licensee vide order dated 19 September 2024 by holding that the license was granted for

commercial purposes. Order dated 19 September 2024 passed by the Revisional Authority is the subject matter of challenge in the present Petition.

3) Facts of the case as pleaded in the Petition are that the Petitioner is the owner in respect of Flat No. A/1102, Juhu Griha Swapna CHSL, JVPD, Juhu, Vile Parle West, Mumbai-400056 (**licensed premises**). According to Petitioner, Respondent No.3 needed residential premises in Juhu and approached the Petitioner through a real estate broker. A leave and license agreement dated 27 April 2017 was executed between Petitioner and Respondent No. 3 granting license in respect of the premises for the period from 1 May 2017 to 30 April 2019 on payment of monthly license fee of Rs. 40,000/- per month in addition to security deposit of Rs.2,00,000/-. As per the agreement dated 27 April 2017, the licensee was to use the premises for residential purpose. After expiry of the first license agreement, Petitioner and Respondent No.3 entered into three subsequent license agreements for the years 2019, 2020 and 2021. The last license agreement was executed on 5 May 2021 for the period from 1 May 2021 to 1 April 2022. According to Petitioner, even the last License Agreement dated 5 May 2021 granted license for use of the premises for residential purpose only. According to Petitioner, Respondent No.3 did not comply with the terms of the license agreement dated 5 May 2021 and did not pay license fees from the month of April 2021. Petitioner therefore served notice on Respondent No.3 on 25 July 2022 for payment of arrears of license fees of Rs. 14,00,000/- and for recovery of possession of the premises. On 1 September 2022, Respondent No.3 replied the notice raising a plea that an amount of Rs. 3,39,49,711/- was due to Respondent No.3 from the Petitioner towards business transaction. Petitioner addressed letter dated 4 October 2022 to the co-operative Society

informing it about expiry of the license and addressed complaint to the police on 8 October 2022. In the above background Respondent No.3 addressed demand notice dated 9 November 2022 demanding an amount of Rs. 3,40,00,000/- or return diamonds taken by the Petitioner from her or execution of sale deed of the licensed premises after accepting amount of Rs.80,00,000/- towards balance consideration. The husband of Respondent No.3 filed FIR against the Petitioner before Juhu Police Station. However, after conducting investigations police filed 'C' summary report in the said FIR.

4) In the above background, Petitioner filed Eviction Application No. 178 of 2023 against Respondent No. 3 before the Competent Authority under provisions of Section 24 of the MRC Act seeking recovery of possession of the licensed premises and damages for unlawful occupation thereof. After receipt of summons, Respondent No.3 appeared in the application and filed application seeking leave to defend under the provisions of Section 43 of the MRC Act, to which Petitioner filed reply. After hearing both the parties, Competent Authority proceeded to pass order dated 6 August 2024 rejecting the application for leave to defend holding that the premises were let out for residential use and that the alleged transaction of diamond was unrelated to the transaction of license. On 6 August 2024, the Competent Authority passed a separate order allowing the Eviction Application No.178 of 2023 and directed Respondent No.3 to handover possession of the licensed premises to the Petitioner with further direction to pay damages at double the amount of license fee i.e. Rs. 2,00,000/- per month from 2 April 2022 till handing over possession of the licensed premises.

5) Aggrieved by the orders dated 6 August 2024 rejecting leave to defend and allowing the eviction application, Respondent No.3

preferred Revision Application under the provisions of Section 44 of the MRC Act before the Additional Divisional Commissioner, Konkan Division. The Revisional Authority has allowed the Revision Application of Respondent No.3 holding that the license in respect of the licensed premises is granted for commercial purpose and that therefore the Competent Authority did not have jurisdiction to decide Eviction Application of the Petitioner under Section 24 of the MRC Act. Petitioner has filed this Petition challenging the order of the Revisional Authority dated 19 September 2024.

6) Mr. Surel Shah, the learned Senior Advocate appearing for Petitioner would submit that the Revisional Authority has erred in holding that the license in respect of the premises is granted for commercial use ignoring the specific covenant of the first as well as the last agreement specifically providing for use of the premises for residential purposes. That the suit premises comprise of residential flat situated in co-operative housing society. That it is unlawful under the provisions of Section 30 of the MRC Act to let out residential premises for commercial use. Respondent No.3 himself has admitted in various correspondence that he has been residing in the premises. That in addition to specific covenants of the licensed agreement, there are several other documents on record containing clear admissions on the part of Respondent No.3 -licensee that she always resided in the suit premises. That stray references to commercial use in the last agreement cannot be construed to mean that there was any intention on the part of the parties to create license for commercial use. That those clauses suggesting commercial use can, at best, be interpreted to mean that business could be carried in the premises after acquiring necessary licenses. That not even a single license is procured by Respondent No.3 or her husband for commencing any business in the premises. That several

bills sought to be relied upon by Respondent No.3 clearly reflect the address of her establishment at Dhavalgiri building and not at the licensed premises.

7) Mr. Shah would further submit that the Revisional Authority has erred in misreading the provisions of Section 55 of the MRC Act. That if the license agreement is unregistered, landlord is also entitled to disprove the terms and conditions of license suggested by tenant. That therefore the Revisional Authority ought to have considered various other documents in conjunction with the covenant of last license agreement for arriving at a conclusion that license was granted for residential use.

8) Mr. Shah would rely upon judgment of the Apex Court in ***TEXCO Marketing Private Limited V/s. Tata AIG General Insurance Company Limited and others***¹ in support of his contention that offending clauses in a contract can be struck off by invoking the doctrine of blue pencil. That few stray references of commercial use in the last agreement being repugnant to the main clause of granting license for residential use, the same are required to be ignored. He would also rely upon judgment of the Apex Court in ***Shin Satellite Public Co. Ltd. V/s. Jain Studios Ltd.***² in support of his contention that it is the duty of the Court to sever and separate trivial and technical parts of the contract by retaining the main or substantial part by giving effect to the latter if it is legal, lawful and otherwise enforceable. Mr. Shah would accordingly pray for setting aside order passed by the Revisional Authority.

9) Petition is opposed by Mr. Anil Singh, the learned Senior Advocate appearing for Respondent No.3- licensee. He would submit

¹. (2023) 1 SCC 428

². (2006) 2 SCC 628

that all the license agreements are unregistered and therefore, the terms and conditions suggested by licensee would prevail as per the provisions of Section 55 of the MRC Act. He would take me through various clauses of the last License Agreement dated 5 May 2021 to demonstrate that the license was granted for the purpose of conduct of business in the premises. He would submit that as against reference of residential use at only one place in Clause 1 of the License Agreement, there are multiple covenants permitting use of the licensed premises for business /commercial purpose. That even Clause 1 of the License Agreement states that the premises would be used for residential 'and lawful activities'. That thus, even in Clause 1 there is no prohibition on use of the premises for commercial purposes, which is lawful activity. Mr. Singh would submit that all the previous license agreements have been superseded by the last agreement dated 5 May 2021 and that therefore the covenants of the earlier License Agreements are irrelevant for deciding the purpose of licenses under the last agreement. He would submit that the license agreement has to be read as a whole and upon holistic reading thereof, the inescapable conclusion that emerges is that the license is for commercial use. That the case does not involve any intentional mistake in a stray clause of the license agreement permitting commercial use, but parties have consciously agreed to grant licenses for commercial use in favour of Respondent No.3. Mr. Singh also relied upon provisions of Section 24(3)(b) of the MRC Act in support of his contention that the last license agreement becomes a conclusive proof of the arrangement between the parties. Mr. Singh would rely upon judgment of this Court in **Amarjit Singh Vs. R.N. Gupta**³ in support of his contention that Court cannot go beyond the document to find out the intention of the parties. He would also rely upon judgment of this Court in **Rekha Promodrao Deshmukh V/s.**

³. 1995 SCC Online Bom 191

Gajanan Maharaj Sanstan, Shegaon and Ors.⁴ holding that only such landlord, who has given license for residence can file proceedings for recovery of possession under Section 24(1) of the MRC Act. Mr. Singh would pray for dismissal of the Petition.

10) Rival contentions of the parties now fall for my consideration.

11) As observed above, the hotbed of controversy between the parties is about the exact use for which license in respect of the premises is granted. The purpose of grant of license assumes significance in the light of legislature making available speedy remedy of eviction of licensee by filing an application before the Competent Authority under Section 24(1) of the MRC Act. Section 24 of the MRC Act provides thus:

24. Landlord entitled to recover possession of premises given on licence on expiry

(1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on license for residence shall deliver possession of such premises to the landlord on expiry of the period of license; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of the license, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of license has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

⁴. 2016(2) Mh.L.J. 813

Explanation.- For the purposes of this section,-

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

12) Thus, an application under sub-section (1) of Section 24 of the MRC Act can be made to the Competent Authority only if the license is granted for residence. Section 42 of the MRC Act lays down special provisions for making application to the Competent Authority for eviction of a licensee and provides thus:

42. Special provisions for making application to Competent Authority by landlord to evict tenant or licensee.

Notwithstanding anything contained in this Act or any other law for the time being in force or any contract to the contrary or any judgment or decree or order of any court, but subject to the provisions of section, 22 or 23 or 24 as the case may, be; a landlord may submit an application to the Competent Authority, signed and verified in a manner provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908, as if it were a plaint, to the Competent Authority having jurisdiction in the area in which the premises are situated, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be.

13) Section 43 deals with the procedure for disposal of application filed before the Competent Authority and provides thus:

43. Special procedure for disposal of applications.

(1) Every application by a landlord under this Chapter for the recovery of possession shall be accompanied by such fees as may be prescribed. The Competent Authority shall deal with the application in accordance with the procedure laid down in this section.

(2) The Competent Authority shall issue summons in relation to every application referred to in sub-section (2) in the form specified in Schedule III.

(3) (a) The Competent Authority shall, in addition to, and simultaneously with; the issue of summons for service on the tenant or licensee, as the case may be, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or the licensee or agent empowered by such tenant or licensee to accept the service at the place where the tenant or licensee or such agent actually and voluntarily resides or carries on business or personally works for gain;

(b) When an acknowledgment purporting to be signed by the tenant or licensee or their agent received by the Competent Authority or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or licensee or their agent had refused to take delivery of the registered article, the Competent Authority may proceed to hear and decide the application as if there has been a valid service of summons.

(4) (a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty 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 eviction and obtains leave from the Competent Authority as hereinafter provided, 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 tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid,

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24;

(c) Where leave is granted to the tenant or licensee to contest the application, the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.

(5) The Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a court of small causes, including the recording of evidence.

14) Thus, the summary procedure is contemplated before the Competent Authority under Section 43 of the MRC Act, under which the licensee is not entitled to defend the eviction application in absence of leave granted by the Competent Authority. Section 43(4) (c) postulates hearing of eviction application on day-to-day basis and

decision thereof within six months from the date of grant of leave. Though recording of evidence is also contemplated under Section 43(5) of the MRC Act, the procedure for eviction of licensee is of summary nature requiring the licensee to secure leave from the Competent Authority to defend the eviction application. The order of the Competent Authority passed under Section 24(1) of the MRC Act by following procedure specified under Section 43 is not appealable. However, special remedy of revision is made available before the State Government or an officer not below the rank of Additional Commissioner of Revenue Division. Section 44 of the MRC Act provides thus:

44. Order of Competent Authority to be non-appealable and revision by State Government.

(1) No appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 43.

(2) The State Government or such officer, not below the rank of an Additional Commissioner of a Revenue Division, as the State Government may, by general or special order, authorise in this behalf, may, at any time suo motto or on the application, of any person aggrieved, for the purposes of satisfying itself that an order made in any case by the Competent Authority under section 43 is according to law, call for the record of that case and pass such order in respect thereto as it or he thinks fit:

Provided that, no such order shall be made except after giving the person affected, a reasonable opportunity of being heard in the matter:

Provided further that, no powers of revision at the instance of person aggrieved shall be exercised, unless an application is presented within ninety days of the date of the order sought to be revised.

15) Under Section 45 of the MRC Act, the Competent Authority is invested with power to execute the eviction order upon failure to comply with the same within a period of 30 days. Section 45 reads thus:

45. Effect of refusal or failure to comply with order of eviction.

If any person refuses or fails to comply with the order of eviction made under section 43 within thirty days of the date on which it has become final, the Competent Authority or any other officer duly authorized by the Competent Authority in his behalf, may evict that person from, and take possession of, the premises and deliver the same to the landlord and for that purpose, use such force as may be necessary.

16) Thus, the MRC Act provides for a special package for eviction of licensee by filing application under Section 24(1) by the Licensor. The object of the legislature is to encourage homeowners to make available housing stock for home users through the arrangement of license. To encourage the activity of release of adequate housing stock in the market, especially in the urban areas, it becomes necessary for the legislature to instill confidence among home owners that they can recover possession from the home user by adopting speedy remedy after expiry of tenure of the license. However, this speedy remedy is made available by the Legislature only in respect of the license granted for residence. The speedy mechanism for recovery of possession of licensed premises is not made available where the license is granted for commercial use. It is not necessary to delve deeper into the exact legislative intent behind excluding licenses granted for commercial use from the sphere of speedy remedy under Section 24 of the MRC Act. Possible reason could be the ability of commercial property owners to undertake lengthy and complex litigation before Small Causes Courts/ Rent Courts for recovery of possession of premises let out for commercial use. Therefore, the legislative intent behind making available speedy remedy of eviction before the Competent Authority under Section 24 of the MRC Act must be borne in mind while deciding the controversy at hand. The fact that License granted for commercial use is not covered by provisions of Section 24 of the MRC Act, the

necessary corollary is that the Licensor in respect of the premises let out for commercial use is required to file a Suit for eviction of licensee in Small Causes Courts, wherever they are established, or before a Rent Court.

17) Having examined broadly the statutory scheme of the MRC Act to recover possession of the licensed premises from a licensee under Section 24 of the MRC Act, it is time to go back to the moot issue of the exact purpose for which licensed premises are let out in the present case for examining whether jurisdiction of the Competent Authority under Section 24 of the MRC Act is retained or ousted.

18) Petitioner and Respondent No.3 executed first Leave and License Agreement dated 27 April 2017 for the period from 1 May 2017 to 30 May 2019. Clause 6 of the said license agreement dated 27 April 2017 provides thus:

6. Use: That the Licensed premises shall only be used by the Licensee for Residential purpose. The Licensee shall maintain the said premises in its existing condition and damage, if any, caused to the said premises, the same shall be repaired by the Licensee at its own cost subject to normal wear and tear. The Licensee shall not do anything in the said premises which is or is likely to cause a nuisance to the other occupants of the said building or to the prejudice in any manner to the rights of Licensor in respect of said premises or shall not do any unlawful activities prohibited by State or Central Government.

(emphasis added)

19) There is no dispute to the position that apart from specific covenant in Clause 6 of the Agreement dated 27 April 2017 that the licensed premises shall be used by the licensee for residential purpose, there is no other covenant in the agreement suggesting use of the premises for business/commercial purposes. Petitioner has not

placed on record second and third License Agreements covering the period from 1 April 2019 till 30 April 2021. However, there is no dispute amongst the parties that two separate License Agreements were executed during that period as well. The last License Agreement was executed between the parties on 5 May 2021, and it is this agreement, which is at the heart of the controversy, especially about interpretation of its covenants about the purpose of license. It would therefore be necessary to reproduce the relevant covenants of License Agreement dated 5 May 2021, relied upon by both the sides. The relevant clauses are as under:

C. The Licenser represents and confirms to the Licensee that:

(i). ...

(ii) On the Licensee paying the Licenser, the License Fees and on observing and performing all the terms, conditions and covenants hereof, the **Licensee shall be entitled to peacefully conduct business from the Licensed Premises during the License Period.** The Licensee has not paid the rent due to covid lockdown from two years and is liable to pay the same within two three months. If not paid, legal action can be taken against them by the Licenser.

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1. LICENSEE:

The Licenser hereby grant to the Licensee a bare non-assignable and non-transferrable License to use and occupy the said Licensed Premises for a period of 11 months commencing from 01.05.2021 and ending on 01.04.2022. **The Licensee has agreed that the said Licensed Premises will be used for residential and lawful activities etc.**, at the sole risk, cost and expense of the Licensee and on the terms and subject to the conditions contained in this Agreement. The Licensee agrees that he will use and occupy the Licensed Premises on Leave and License basis (without in any manner creating tenancy/lease/sub tenancy right/title/interest and/or any other relation, except what is mentioned herein) subject to the terms and conditions of this Agreement.

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8. COVENANTS OF THE LICENSEE:

a. ...

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- n. The Licensee shall at its own costs, risks and expenses obtained all necessary approvals, clearances, permissions, licenses, permits, exemptions, NOCs sanctioned etc. (by whatever name called) as may be required by law (presently and from time to time) **for carrying on his said Business** (and/or in connection therewith or in relation thereto) in the Licensed premises in the manner contemplated by this Agreement; and as and when required by the Licensor produce such approvals, clearances, permissions, licenses, permits, NOCs, exemptions, sanctions etc. for inspection by the Licensor and give notarized copies thereof to the Licensor prior to commencing the said Business (i.e. commencing trading) in /from the Licensed premises. The Licensee further covenants that the Licensee shall at all times comply with all the terms and conditions, if any, of such approvals, clearances, permissions, licenses, permits, NOCs, exemptions, sanctions, and all laws, rules, regulations etc. without any delay, demur or default.

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- p. To allow and permit the Licensor, at all reasonable times, to enter the Licensed Premises during **office/business hours** to the Licensee and to view and/or make physical verification of the state and condition thereof and to direct the Licensee to set right any wrongful use, damage, repairs, etc.
- q. Not to claim any protection or any other right under the provisions of The Maharashtra Rent Control Act, 1999, (and/or any other statutory enactment there to and or any other acts, ruling, judgments and/or etc.), as it is the intention of both the Parties to this Agreement that this License is only a bare non-assignable and non-transferrable permissible personal license given by the Licensor to the Licensee **for the use and occupation of the Licensed Premises for commercial purposes during the subsistence of this Agreement.**
- r. To use the Licensed Premises with due care and diligently and to duly and regularly maintain the Licensed Premises in just and proper manner. The Licensee shall be responsible for all acts, deeds, actions, omissions, damages, losses, repairs, replacement etc. caused to the Licensed Premises whether by the Licensee, his **Authorized Associates, staff, employees**, guests during the continuance of this Agreement.

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- u. The Licensee hereby undertakes that he will not make changes to the Licensed Premises in the nature of permanent

alteration, permanent addition, modification, alteration, amendment of the structure including alteration/modification of columns, chiseling of the beams, excessive loading of the slabs by placement of water tanks, AC equipment etc., which in any manner howsoever threatens the integrity of the structure which houses the Licensed Premises. **However, the Licensee shall have the right to carry out additional furnishings and/or fitments in the Licensed premises, as required, so as to suit their business needs**, including any other non-structural alterations as are required by the Licensee with the prior written permission of the Licensor, which shall be granted within 5 days.

- v. The Licensee hereby indemnifies and keeps indemnified and defend and save harmless the Licensor and/or its agent (s) and/or its officers and/or its employees and/or its representatives against all actions, injury, claims, loss, damage, penalties, prosecutions, prejudice etc. that the Licensor and/or its agent(s) and/or its employees and/or its representatives and/or its property and/or the customers /visitors to the said Licensed premises may sustain and/or suffer as also for all amounts whether by way of costs, charges, expenses damages or otherwise, that the Licensor may incur and or for which the Licensor may be put to notice of or may become and or be held liable and/or responsible, including for such claims, loss, damage, prejudice etc. which arise in connection with and /or in relation to:
- (i) defect(s) and/or deficiency/deficiencies in and/or harmful effects of the goods and /or services of the Licensee and /or
 - (ii) act(s), deed(s), matter(s), things etc. omitted and/or committed by the Licensee and/or his employees and or his servants and/or his representatives and/or.
 - (iii) negligence, misrepresentation, default, breach, violation, contravention etc. on the part of the Licensee and/or its employees and/or his servants and/or his servants and/or his representatives, etc.

11. **FORCE MAJEURE:**

- a) Upon the occurrence of any of the force majeure events like fire, accident, riots, flood, earthquake, storm, terrorist activities, war, Act of God, which results in closure of business of the Licensee in the Licensed Premises, it shall be declared an event of force majeure. It is clarified that a force majeure event will be declared as such only if such an event affects the physical condition of the Licensed Premises resulting in the Licensee being not being able to use or have access to the Licensed Premises but such event shall not include any

other event such as but not limited to **business recession**, economic breakdown or strikes.

(emphasis and underlining added)

20) Thus, Clause 1 of the License Agreement provided that the licensed premises would be used for residential and lawful activities. Relying on Clause 1 of the Agreement Mr. Shah contends that even the last agreement is for residential purposes alone. As against this, Mr. Singh relies upon recital 'C (ii)' providing that licensee was entitled to peacefully conduct business from the licensed premises during the license period. Mr. Singh has also relied upon Clauses 8(n),(p),(q), (r),(u), (v) and 11(a) to submit that permission was granted for use of the premises for business and commercial purposes.

21) Thus, there are conflicting clauses in the last License Agreement dated 5 May 2021. While Clause 1 contemplates use of License Premises for residential and lawful activities, other clauses seem to suggest that premises could also be used for commercial purposes. For the purpose of the present Petition, the issue of 'use' is relevant only for the purpose of determining jurisdiction of Competent Authority under Section 24 of the MRC Act. The controversy relating to 'use' is not relevant for deciding the allegation of change of user for termination of license. Therefore, what needs to be found out is whether the license is granted for residence for invoking jurisdiction of Competent Authority under Section 24 of the MRC Act.

22) Mr. Singh would submit that under provisions of Clause (b) of Sub Section 3 of Section 24 of the MRC Act, only covenants of Agreement of License are required to be considered and the

extraneous material sought to be relied upon by Petitioner is irrelevant. Additionally, he has also relied upon 'Entire Agreement' clause in the agreement which reads thus:

17. ENTIRE AGREEMENT:

The Parties hereto acknowledge, declare and confirm that this Agreement embodies the entire agreement and understanding between the Parties hereto with regard to the subject matter and supersedes and cancels all the prior discussions negotiations and understandings between the Parties, whether written or oral.

23) The Revisional Authority has accepted the contention of Respondent No.3 by refusing to take into consideration any other document other than covenants of License Agreement. The relevant findings recorded by the Revisional Authority in paragraphs 5 to 11 are as under:

5. The applicant raised various contention with documentary evidence of photographs and vouchers. As per the documents places on record it shows that commercial transaction is also involved between applicant's company and respondent. There are no demand notice places on record by the respondent regarding non payment of license fee by the applicant since 2017 to till date.
6. The Respondent even not places on record any ledger statements or any documents which showing that the applicant paying the license fee of from first leave and license agreement.
7. Perusal of subject leave license agreement number two clearly disclose that subject premises was license for commercial and not for residential, and this fact has been clearly agitated by the appellant before the competent authority in leave to defend application and several clauses of the subject leave license agreement were also incorporated under the said leave to defend application, but impugned order absolutely does not whisper any discussion therein nor there is any finding as well.
8. However, if the clauses are perused, it is crystal clear that the subject premises was licensed for the purpose of commercial. Section 24, subsection 3(b) of Maharashtra rent control act Provides that the agreement itself is the conclusive evidence of facts stated in the agreement and hence any other document other than the leave and license agreement cannot be looked into and to be taken into consideration.

9. Merely because certain documents referred by the respondent indicating that the premises is residential and is in residential building that itself does not mean that said leave and license agreement, was not license for commercial. section 24 of Maharashtra rent control act does not provide that merely because the premises which is licensed under leave and license agreement is residential that itself does not qualify the test of the purpose of giving the premises on leave and license.
10. The test qualifying the provisions of section 24 of the Maharashtra rent control act specifically provides that the premises shall be given for residential, which clearly means if the premises is not given for residential in that event section 24 cannot be invoked. Hence, in such circumstances, it is more than apparent on the face of record that, the subject premises under the subject leave and license agreement is not licensed for residential, but licensed for commercial purpose. It is clearly proved beyond doubt that since the premises was not licensed for the purpose of residential and hence ejection, application itself was not maintainable and on the ground of maintainability itself, the ejection application is liable to be dismissed. The same is accordingly dismissed.
11. The learned authority overlooked the subject leave license agreement number two. and though the same is not registered, but still Id. Authority below wrongly held that the subject leave & license agreement is registered which has also materially affected the result of the said eviction application. As per section 55 of Maharashtra control act, the said license agreement is not registered and hence also the contention of the appellant, about licensing the subject premises for commercial prevails over the contention of the respondent that the premises was licensed for residential.

As a result of the aforesaid discussion, I am inclined to exercise the discretion in favour of the Applicant and allow the Revision. Taking into consideration all these facts and circumstances I proceed to pass the following order:

ORDER

1. Revision Application is allowed.
2. The order of Competent Authority Konkan Division in case No.178 of 2023 dated 06.08.2024 is set aside.
3. The Parties be informed accordingly.

24) Thus, the Revisional Authority has relied upon Section 55 of the MRC Act for accepting the contention of the licensee that in absence of registration of the licence agreement, her version of

licence being granted for commercial use would prevail. Section 55 of the Act provides for providing for compulsory registration of tenancy agreement and consequences of non-registration. Section 55 provides as under:

55. Tenancy agreement to be compulsorily registered

- (1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.
- (2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.
- (3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both.

25. Thus, under Sub Section (2) of Section 55, where there is no written registered agreement, the contention of the tenant about the terms and conditions, subject to which a premises have been given to him by the landlord on leave and license or have been let to him, shall prevail, unless proved otherwise. According to Mr. Singh since the agreements are unregistered contention of Respondent No.3-Licensee that license is granted for commercial purpose would prevail. On the other hand, Mr. Shah contends that use of the word '*unless proved otherwise*' under Section 55(2) entitles landlord to prove that the contention of licensee in respect of unregistered licensed agreement is incorrect. I find considerable force in the submission of Mr. Shah. The intention of legislature behind incorporating Sub Section (2) of Section 55 is mainly to encourage registration of Licensed Agreement and to provide for consequences

of non-registration by creating a right in favour of the tenant/licensee to set forth exact terms and conditions of tenancy/license. However, such entitlement of the tenant/licensee is curtailed by creating right in favour of landlord to prove the suggestion of tenant to be factually incorrect. Thus, the Legislature has not provided for acceptance of version of tenant/licensee to be gospel truth. On the contrary, it has recognised the right of the landlord/licensor to prove the version of tenant/licensee to be incorrect. Therefore, in a given case, where tenant contends that licensed premises are given for commercial purposes on account of non-registration of license agreement, landlord can prove that the same are granted for residential purposes. For proving such use, landlord can lead evidence by relying upon external documents. Thus, the broad scheme of Section 55 read with Section 24(3)(b) of the MRC Act is such that when there is a registered Leave and License Agreement, parties are bound by the terms and conditions of such registered agreement. In case the Leave and License Agreement is either reduced to writing or is not registered, tenant's interpretation of terms and conditions would prevail subject to the right of the landlord to prove such interpretation to be incorrect. This is not to suggest that unregistered agreement creates a higher right in favour of landlord as compared to a registered agreement. However, at the same time, it cannot be contended that in respect of an unregistered agreement, everything that tenant says must be accepted as gospel truth. The Legislature has consciously protected landlord's right to prove tenant's contention wrong. The Revisional Authority, while relying on provisions of Section 55, has completely ignored this right of the licensor and has blindly accepted the version of the licensee that the license is granted for commercial use.

26. In the present case, there are voluminous documents to suggest specific admissions on the part of Respondent No.3 that license has been granted for residential use. When Petitioner addressed notice dated 25 July 2022 to Respondent No.3 seeking recovery of arrears of license fees and calling upon Respondent No.3 to vacate the premises, Respondent No.3 gave a reply through her Advocate on 1 September 2022 stating in the opening part of the reply that she was presently residing at a licensed premises. Additionally, she has specifically admitted in clause 6.4 of the reply that *'our client states that he has been residing in the said flat for the past 5 years and there has never been any complaint against our client.'*

27. Respondent No. 3 thereafter addressed notice dated 9 November 2022 to the Petitioner for demanding either return of diamonds or Rs. 3,40,00,000/- or execution of sale deed in respect of licensed premises. Referring to the alleged transaction of delivery of diamonds to the Petitioner in paragraphs 1 to 3 and 5 of the said demand notice, it was repeatedly admitted that husband of Respondent No.3 was looking for residential accommodation, that Petitioner provided residential accommodation and that they started residing in the licensed premises. Para 2 to 3 and 5 of the Notice dated 9 November 2022 read thus:

- 1) **My client states that in the year 2017 my client was in the need of residential accommodation in JVPD, Vile Parle West area.**
- 2) **My client states that through some broker he got information that you noticee have got good residential premises within JVPD area as well as in other part of Mumbai. Hence, my client approached you for residential accommodation in JVPD area on Leave and License basis.**

- 3) My client states that you have consented to provide your **residential premises** at A/1102, Juhu Griha Swapna CHS Ltd., Gulmohar Road, Road No.4, JVPD, Vile Parle West, Mumbai- 400 056, to my client for the period of 24 (Twenty Four) months, It is part of terms and condition of the Leave and License agreement that my client will pay a Security Deposit of Rs.2,00,000/- (Rs. Two Lakhs only) and monthly compensation of Rs.40,000/- (Rs. Forty Thousand only) per month. That you have presented while communication with my client that you noticee are dealing in diamonds in United States of America.

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5. **My client states that when my client started residing at A/1102, Juhu Griha Swapna CHS Ltd, Gulmohar Road, Road No.4, JVPD, Vile Parle West, Mumbai-400 056, the good cordial family as well as business relation was established amongst the family of my client and your family, as my client is having Jewellery Shop at Lokhandwala, under the style of Om Shilpi Jewels and Gems Private Limited, and deals in Gold, Gold Jewellery Diamond Jewelry, Diamonds, Colour Stones ETC.**

(emphasis and underlining added)

28. Simultaneously, the husband of Respondent No.3 lodged police complaint dated 13 October 2022 and in paragraph 6 thereof he stated that *'I have been residing in the said flat for the last Five years as per the Mutual Understanding and Business Arrangement between the Opponent and me. ...'* Husband of Respondent No.3 also filed criminal complaint before the Court of Metropolitan Magistrate, Andheri, in which he disclosed his residential address as that of licensed premises. Contrary to his claim of licenced premised being let out for commercial purposes, he declared that *'I say that I am doing the business under the name and style as Omshilpi Jewels And Gems Pvt. Ltd., having office at Dhaval Giri Building, Shop no.6 & 7 Opp. Mc Donald's, Lokhandwala, Andheri West, Mumbai-53.'* Husband of Respondent No.3 made solemn statement on oath before the Metropolitan Magistrate that he was residing at licensed premises and carried out business at altogether different premises at Lokhandwala Complex. Also, in support of his contention of business deal relating to sale of diamonds, husband of Respondent No.3 relied

upon several delivery challans of Omshilpi, in which the Firm's address is shown as Dhavalgiri building, Lokhandwala Complex, Andheri (west) and not of licensed premises.

29. The above documents would clearly indicate repeated admissions on the part of Respondent No.3-licensee that she alongwith her husband have been residing in the licensed premises. Thus, there are following three sets of material in favour of Petitioner to indicate that the license was granted to Respondent No.3-licensee for residential use of the premises:

(i) First License Agreement dated 27 April 2017 containing specific covenant for use of the premises for residential purpose only. There is nothing on record to indicate any special reason for converting such residential use to commercial one at the time of execution of the last License Agreement.

(ii) Covenant in Clause 1 of the last License Agreement dated 5 May 2021 specifying use of the licensed premises for residential and lawful activities.

(iii) Several admissions given by Respondent No.3 and her husband about they searching for residential accommodation, Petitioner granting license for residence and they actually residing in the licensed premises.

30. If the above material is pitted against few inconsistent clauses in the last Licensed Agreement dated 5 May 2021, it is difficult to hold that the intention of the parties was to grant license for commercial use of the premises. In view of inconsistent clauses in the last License Agreement, the Revisional Authority ought not to have ignored the admissions given by Respondent No. 3 and her husband about procuring license for residential purpose and they actually residing therein while carrying out business in different premises in Lokhandwala Complex.

31. Mr. Shah has contended that Petitioner could not have otherwise granted license in respect of the premises for commercial use since the premises are sanctioned for use as residence. He has accordingly relied upon provisions of Section 30 of the MRC Act, which puts a prohibition on the landlord to put residential premises to commercial use. Section 30 of the MRC Act provides thus:

30. Conversion of residential into commercial premises prohibited

- 1) A landlord shall not use or permit, to be used for a commercial purpose any premises which, on the date of the commencement of this Act, were used for a residential purpose.
- (2) Any landlord who contravenes the provisions of sub-section (1) shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

32. There is no dispute to the position that the licensed premises are sanctioned by the planning authority for use as residence. They are not authorised to be used for commercial purposes. Licensed premises comprise of a flat in a co-operative housing society. However, the language employed in Section 24(1) of the MRC Act contemplates 'license for residence' and not 'license of residential premises'. Therefore, the use for which the premises are sanctioned by the planning authority becomes irrelevant for deciding the issue of jurisdiction of the Competent Authority. What is material is the purpose for which the license is granted. In normal circumstances, residential premises cannot be used for commercial purposes. However, for deciding the issue of jurisdiction of the Competent Authority, one cannot go by the purpose for which the premises are sanctioned, but the purpose for which they are licensed becomes the determinative factor. In that sense, reliance by Mr. Shah on provisions of Section 30 of the MRC Act does not cut much ice. However, provisions of Section 30 can be taken into consideration in

the facts of the present case only as an additional, and not the sole, determinative factor. Therefore, in addition to the above discussed three factors, the Court cannot turn complete blind eye to the position that the licensed premises are ultimately a residential flat and there is specific prohibition on Petitioner in letting them out for commercial purposes under Section 30 of the MRC Act.

33. It is the case of Respondent No. 3-licensee, which has been accepted by the Revisional Authority, that the covenants of the last License Agreement alone can be taken into consideration while deciding the issue of jurisdiction. But as discussed above, there appears to be some conflict in the clauses of the last License Agreement about the exact purpose for which the license was granted. There is no dispute to the position that initial 3 agreements were for residential purposes alone. There is no material on record to indicate that parties made a conscious departure from earlier purpose and decided to change the purpose from residential to commercial. Faced with the position that there are few clauses in the last License Agreement providing for commercial use of the premises, Mr. Shah has relied on judgment of the Apex Court in ***TEXCO Marketing Private Limited*** (supra). The Apex Court has considered the effect of exclusion clause in a contract of insurance when it is found to be offending the main contract. The Apex Court held in paragraphs 13, 23 and 24 as under:

13. An exclusion clause has to be understood on the touch-stone of the doctrine of reading down in the light of the underlining object and intendment of the contract. It can never be understood to mean to be in conflict with the main purpose for which the contract is entered. A party, who relies upon it, shall not be the one who committed an act of fraud, coercion or misrepresentation, particularly when the contract along with the exclusion clause is introduced by it. Such a clause has to be understood on the prism of the main contract. The main contract once signed would eclipse the offending exclusion clause when it would otherwise be

impossible to execute it. A clause or a term is a limb, which has got no existence outside, as such, it exists and vanishes along with the contract, having no independent life of its own. It has got no ability to destroy its own creator, i.e. the main contract. When it is destructive to the main contract, right at its inception, it has to be severed, being a conscious exclusion, though brought either inadvertently or consciously by the party who introduced it. The doctrine of waiver, acquiescence, approbate and reprobate, and estoppel would certainly come into operation as considered by this court in *N. Murugesan v. Union of India* (2022) 2 SCC 25.

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Doctrine of blue pencil

23. In such a situation, the doctrine of “blue pencil” which strikes off the offending clause being void ab initio, has to be pressed into service. The said clause being repugnant to the main contract, and thus destroying it without even a need for adjudication, certainly has to be eschewed by the Court. The very existence of such a clause having found to be totally illegal and detrimental to the execution of the main contract along with its objective, requires an effacement in the form of declaration of its non-existence, warranting a decision by the Court accordingly.

24. The aforesaid principle evolved by the English and American Courts has been duly taken note of by this Court in ***Beed District Central Coop. Bank Ltd. v. State of Maharashtra***,

“10. The “doctrine of blue pencil” was evolved by the English and American courts. In Halsbury’s Laws of England, (4th Edn., Vol. 9), p. 297, para 430, it is stated:

“430. Severance of illegal and void provisions.—A contract will rarely be totally illegal or void and certain parts of it may be entirely lawful in themselves. The question therefore arises whether the illegal or void parts may be separated or ‘severed’ from the contract and the rest of the contract enforced without them. Nearly all the cases arise in the context of restraint of trade, but the following principles are applicable to contracts in general.”

11. In *P. Ramanatha Aiyar's Advanced Law Lexicon*, 3rd Edn. 2005, Vol. 1, pp. 553-54, it is stated:

“Blue pencil doctrine (test).—A judicial standard for deciding whether to invalidate the whole contract or only the offending words. Under this standard, only the offending words are invalidated if it would be possible to delete them simply by running a blue pencil through them, as opposed to changing, adding, or rearranging words. (Black, 7th Edn., 1999) This doctrine holds that if courts can render an unreasonable restraint reasonable by scratching out the offensive portions of the covenant, they

should do so and then enforce the remainder. Traditionally, the doctrine is applicable only if the covenant in question is applicable, so that the unreasonable portions may be separated. E.P.I. of Cleveland, Inc. v. Basler [12 Ohio App 2d 16].

Blue pencil rule/test.—Legal theory that permits a judge to limit unreasonable aspects of a covenant not to compete.

Severance of contract; ‘severance can be effected when the part severed can be removed by running a blue pencil through it without affording the remaining part’. Attwood v. Lamont [(1920) 3 KB 571 :

1920 All ER Rep 55 (CA)] . (Banking) A rule in contracts a court may strike parts of a covenant not to compete in order to make the covenant reasonable. (Merriam Webster) Phrase referring to severance (q.v.) of contract. ‘Severance can be effected when the part severed can be removed by running a blue pencil through it’ without affording the remaining part. Attwood v. Lamont [(1920) 3 KB 571 : (1920) 3 KB 571 (CA)] . (Banking)”

12. The matter has recently been considered by a learned Judge of this Court while exercising his jurisdiction under sub-section (6) of Section 11 of the Arbitration and Conciliation Act, 1996 in Shin Satellite Public Co. Ltd. v. Jain Studios Ltd. [(2006) 2 SCC 628]”

34. Thus, the Apex Court invoked the doctrine of ‘blue pencil’ for striking off the offending clause when the same is found repugnant to the main contract and sought to destroy it. The Apex Court has held that such offending clause is required to be eschewed by the Court by invoking the doctrine of blue pencil.

35. In ***Shin Satellite Public Co. Ltd.*** (supra) the Apex Court has held in paragraphs 19, 26 and 28 as under:

19. In Attwood v. Lamont, (1920) 2 KB 146, the plaintiff was carrying on business as a draper, tailor and general outfitter at Kidderminster. By a contract for employment, the defendant agreed with the plaintiff that he would not, at any time thereafter "either on his own account or on that of any wife of his or in partnership with or as assistant, servant or agent to any other person, persons or company carry on or be in any way directly or indirectly concerned in any of the following grades or businesses, that is to say, the trade or business of a tailor,

dressmaker, general draper, milliner, hatter, haberdasher, gentlemen's, ladies' or children's outfitter at any place within a radius of ten miles of" Kidderminster. The defendant, however, subsequently set up business as a tailor at Worcester, outside the ten miles limit, but obtained and executed tailoring orders in Kidderminster. When the plaintiff brought an action, it was contended by the defendant that the agreement was illegal and could not be enforced. The Court, however, held that various parts of the contract were severable and valid part thereof could be enforced. Upholding the argument of the plaintiff and granting relief in his favour, the Court observed that the Courts would sever in a proper case, where the severance can be made by using a 'blue pencil'. But it could be done only in those cases where the part so enforceable is clearly severable and not where it could not be severed. By such process, main purport and substance of the clause cannot be ignored or overlooked. Thus, a covenant "not to carry on business in Birmingham or within 100 miles" may be severed so as to reduce the area to Birmingham, but a covenant "not to carry on business within 100 miles of Birmingham" will not be severed so as to read "will not carry on business in Birmingham". The distinction may appear to be artificial, but is well-settled.

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26. In the present case, clause 23 relates to arbitration. It is in various parts. The first part mandates that, if there is a dispute between the parties, it shall be referred to and finally resolved by arbitration. It clarifies that the rules of UNCITRAL would apply to such arbitration. It then directs that the arbitration shall be held in Delhi and will be in English language. It stipulates that the costs of arbitration shall be shared by the parties equally. The offending and objectionable part, no doubt, expressly makes the arbitrator's determination "final and binding between the parties" and declares that the parties have waived the rights of appeal or objection "in any jurisdiction". The said objectionable part, in my opinion, however, is clearly severable as it is independent of the dispute being referred to and resolved by an arbitrator. Hence, even in the absence of any other clause, the part as to referring the dispute to an arbitrator can be given effect to and enforced. By implementing that part, it cannot be said that the Court is doing something which is not contemplated by the parties or by 'interpretative process', the Court is re-writing the contract which is in the nature of 'novatio'. The intention of the parties is explicitly clear and they have agreed that the dispute, if any, would be referred to an arbitrator. To that extent, therefore, the agreement is legal, lawful and the offending part as to the finality and restraint in approaching a Court of law can be separated and severed by using a 'blue pencil'.

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28. The agreement in the instant case can be enforced on an additional ground as well. As already noted, clause 20 (Severability) expressly states that if any provision of the agreement is held invalid, illegal or unenforceable, it would not prejudice the remainder. In my view, clause 20 makes the matter free from doubt. The intention of the parties is abundantly clear and even if a part of the agreement is held unlawful, the lawful parts must be enforced. Reference of a dispute to an arbitrator, by no means can be declared illegal or unlawful. To that extent, therefore, no objection can be raised by the respondent against the agreement.

36. It is urged by Mr. Shah that by applying the law expounded by the Apex Court in ***TEXCO Marketing Private Limited*** and ***Shin Satellite Public Co. Ltd.*** (supra) and by invoking the doctrine of blue pencil, the clauses of the last License Agreement dated 5 May 2021 seeking to suggest commercial/business use of licensed premises, which are repugnant to main clause of use for residential purpose, are required to be eschewed. In my view, it is not really necessary to consider application of doctrine of blue pencil in the facts of the present case. As observed above, the object behind undertaking an enquiry into the exact use for which premises are let out is not to consider the allegation of change of user. The enquiry is directed for a limited purpose of examining the jurisdiction of Competent Authority under Section 24 of the MRC Act. Upon consideration of cumulative effect of the three factors discussed above coupled with prohibition under Section 30 of the MRC Act for letting out residential premises for commercial purpose, the inescapable conclusion that emerges is that the license is granted for residential use and that Respondent No. 3 and her husband actually reside in the same.

37. If the broad legislative objective behind making available speedy and summary remedy to a house owner to evict house user is borne in mind, I do not see any difficulty in ruling in favour of

retention of the jurisdiction of the Competent Authority under Section 24 of the MRC Act in the present case, when the licensed premises are not only a residential flat but are being actually used by Respondent No.2 and her husband for their residence. They do not actually conduct any business in the premises and the business of her husband is carried out in different premises at Lokhandwala Complex.

38. The Court cannot turn a blind eye to the real objective of Respondent No.3 in setting up the defence of commercial use of the licensed premises. By setting up the said defence, all that is sought to be achieved by the third Respondent is to merely delay her eviction by getting eviction proceedings before the Competent Authority set aside on technical ground of jurisdiction and then drive Petitioner-Licenser to a lengthy litigation before the Small Causes Court by filing eviction suit, thereby enabling her to retain possession of the suit premises for much longer time. As observed from various documents on record, the husband of Respondent No.3 apparently has serious dispute with Petitioner-Licenser in respect of the alleged business of delivery of diamonds. The husband of Respondent No. 3 claims to have delivered diamonds worth Rs.3,40,00,000/- to Petitioner and claims that Petitioner has failed to pay the value of the said diamonds. The husband of Respondent No.3 may have a valid cause against Petitioner in respect of the alleged delivery of diamonds. However, the alleged claim towards diamonds cannot be a reason to hold Petitioner for ransom for squatting on the licensed premises. Respondent No.3 must hand back possession of the licensed premises to the Petitioner and adopt necessary legal remedy for return of the diamonds or for recovery of value thereof. Respondent No.3 /her husband also claim right to purchase the licensed premises by paying the balance consideration of Rs.

80,00,000/- after adjusting price of diamonds of Rs. 3,40,00,000/-. In her application for leave to defend, Respondent No.3 has referred to filing of Suit (L) No. 294 of 2023 by the husband of Respondent No.3 against Petitioner for non-compliance of notice dated 9 November 2022. Respondent No.3 and her husband are free to prosecute the said litigation. In case there is any agreement for sale of the flat and if Respondent No. 3 can prove existence of such agreement, it is for her to secure appropriate reliefs in respect of the flat in the Suit. However, she cannot retain possession of the licensed premises till her alleged claims get settled through Civil Court. In that view of the matter, the technical plea of jurisdiction raised by Respondent No. 3 to delay her eviction needs to be repelled in the light of specific admissions given by her and her husband that they reside in the licensed premises and the business is conducted in altogether different premises at Lokhandwala Complex.

39. The conspectus of the above discussion is that the order passed by the Revisional Authority dated 19 September 2024 is palpably erroneous and deserves to be set aside. Writ Petition accordingly succeeds and I proceed to pass the following order:

- (i) Order dated 19 September 2024 passed by the Additional Divisional Commissioner, Konkan Division in Revision Application filed by Respondent No.3 is set aside.
- (ii) Eviction Order passed by the Competent Authority on 6 August 2024 in Eviction Application No.178 of 2023 is confirmed.

- (iii) Nothing observed in the Judgment shall affect the rights of the parties in respect of any litigations already instituted or to be instituted with regard to their respective claims against each other.

40. With the above directions Writ Petition is allowed. Rule is made absolute. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]

41. After the judgment is pronounced, the learned counsel appearing for the Respondents seeks stay of the order for a period of eight weeks. The request is opposed by the learned counsel appearing for the Petitioner. Considering the facts and circumstances of the present case, the order shall stand stayed for a period of four weeks.

[SANDEEP V. MARNE, J.]