



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 7330 OF 2024
IN
WRIT PETITION NO. 13693 OF 2022

1) Eliyas @ Samir Ahmed Hingora Age: 65 years, Occ: Business, Indian Inhabitant of Mumbai residing at Flat No. 10. Delight Apartment, Jogger's Park, Carter Road, Bandra (W), Mumbai-400 050 2) Motiwala Tanvir Mohammad Age: 42 years, Occ: Business, Indian Inhabitant of Mumbai Residing at Flat No. 1502, 15th Floor, Garden View Building, Opp. Rehan Towers, Jogeshwari (W), Mumbai-400 102 <u>IN THE MAIN MATTER OF</u> SHAKIR ABDUL LATIF PIPI Age: 45 years, Occ: Business, Email: pp.shakir@gmail.com Mobile No. 829139033 an Indian inhabitant of Mumbai having address at Flat No. 3A, 3rd Floor, Al Madina Building, Jacob Circle, Agripada, Mumbai - 400011	 Applicants
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and at Hotel Ambassador, Panchgani, Taluka: Mahabaleshwar, District: Satara		...Petitioner
Versus		
1. ELIYAS @ SAMIR AHMED HINGORA Age: 64 years, Occ: Business, E-Mail: Not known Mobile No. 9820354548 Indian Inhabitant of Mumbai residing at Flat No. 10, Delight Apartment, Jogger's Park, Carter Road, Bandra (West, Mumbai 400050). 2. MOTIWALA TANVIR MOHAMMAD Age: 42 years, Occ: Business, E-Mail: Not known Mobile No. 9870466617 Indian Inhabitant of Mumbai residing at Flat No. 1502, 15th Floor, Garden View Building, Opp. Rehan Towers, Jogeshwari (West, Mumbai 400102). 3. ABDULLA ABDUL LATIL ALOTHMAN WAKE, a registeredWakf, having its office at Bella Vista, Panchgani, Dist: Satara 412805 4. ABU SALEH ANDARI Age: 79 years, Occ: Managing Trustee, Indian Inhabitant of) Mumbai, residing at Al Hashmi, 7th) Floor, Moclibai Street, Agripada,) Mumbai-400011.		...Respondents.

Mr.Girish Godbole, Senior Advocate a/w. Ms.Priyanka Kothari i/b. Ms.Vinali Bhaidkar for the Original Respondent Nos. 1 and 2 and for the Applicant in IA/7330/2024.

Mr.Mutahhar Khan a/w. Mr.Ali Nanji i/b. Mr.Rahul Talreja for the Petitioner.

Mr.D.D.Madon, Senior Advocate i/b. Mrs.Eventa A. Gonsalves a/w. Mr.Reyden L. Gonsalves for the Respondent Nos. 3 and 4.

Mr.Anwar Hussain, Applicant in person in IA/7327/2024.

Mr.Abdul Ayaz Ansari – Trustee present in Court.

Mr.Shakir Abdul Latif Pipi – Petitioner present in Court.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 30 APRIL, 2024

PRONOUNCED ON : 10 MAY 2024

JUDGMENT:-

1. This Interim Application is filed on 14 February, 2023 by the *Licensor* of suit premises, who are the original Respondent nos.1 and 2, in the Writ Petition, seeking two major reliefs:

(a) appointment of the Court Receiver in respect of the suit premises to take possession and handover the possession to the applicants and

(b) to hold the original petitioner guilty of civil contempt under the provisions of order 39 Rule 2(A) of the Code of Civil Procedure.

2. The Petitioner is the *Licensee* of the suit premises. In the Writ Petition, on 2 February, 2024, following order was passed :-

. Mr.Godbole, Senior Counsel appearing for Respondent Nos.1 and 2 tenders a copy of the Pursis dated 1 February 2024 filed by the Plaintiff in Regular Civil Suit No.1 of 2022.

2. Mr.Godbole, submits that the Petitioner is Plaintiff in Regular Civil Suit No.1 of 2022, who has filed the Pursis dated 1 February 2024 before the Trial Court. The said Pursis states that the Plaintiff realized after filing of the suit (Regular Civil Suit No.1 of 2022), that the owner of the suit premises is not Respondent Nos.1 and 2 herein, but it is one "Abdulla Abdul Latif Al Othman Waqf Panchgani Registered Public Trust". The Pursis further states that the said "Abdulla Abdul Latif Al Othman Waqf Panchgani Registered Public Trust" has filed a suit being Regular Civil Suit No.69 of 2023 for recovery of possession of the suit premises. It further records that the consent terms were filed in Regular Civil Suit No.69 of 2023 between the said "Abdulla Abdul Latif Al Othman Waqf Panchgani Registered Public Trust" (Plaintiff therein) and the Petitioner herein. Pursuant to which, he has handed over possession of the suit premises to "Abdulla Abdul Latif Al Othman Waqf Panchgani Registered Public Trust". Therefore, the Pursis sought withdrawal of the suit (Regular Civil Suit No.1 of 2022).

3. The present Writ Petition is filed by the Plaintiff challenging the order passed in Miscellaneous Civil Appeal No.148 of 2022 by the District Judge, Satara, being impugned orders dated 11 April 2022 and 20 October 2022. The said suit (Regular Civil Suit No.1 of 2022) was filed by the present Petitioner thereby seeking an injunction against the Licensor (Defendant therein) that they should follow the due process of law and the Plaintiff should not be evicted from the suit premises, without following the due process of law. Since Exhibit - 5 application was rejected by the Trial Court and by the District Court. The present Writ Petition was filed in this Court and on 18 November 2022, status-quo was granted. The said status-quo was continued till 30 October 2023, as the Petition could not be taken up for hearing for one or other reason. On 30 October 2023, this Court recorded

the undertaking given by the Petitioner that he will deposit a sum of Rs.23,00,000/- before the Trial Court within eight weeks from 30 October 2023 and pursuant to the undertaking given earlier, ad-interim relief was continued till 15 January 2024. 4. Mr.Godbole. Senior counsel appearing for Respondent Nos.1 and 2 on instructions submits that the directions given in the order dated 30 October 2023 has not been complied with till date. Mr.Godbole further submits that thereafter to defeat the rights of Respondent Nos.1 and 2, the Licensor / Defendant, a Pursis has been filed before the Trial Court only yesterday i.e. 1 February 2024 in Regular Civil Suit No.1 of 2022. 5. In the light of above events, I am hereby passing following order : 6. The further proceedings in Regular Civil Suit No.1 of 2022 is stayed till further orders of this Court. 7. Mr.Godbole seeks liberty to file appropriate application in the present Writ Petition. 8. Liberty as prayed is granted. The matter to come up on board on 12 February 2024. H.O.B. Mr.Godbole, Senior Counsel appearing for Respondent Nos.1 and 2 is directed to serve a copy of this order to the parties appearing before this Court by 6 February 2024.

3. The case of the Applicant-Licensor of suit premises, in the Interim Application is as under :

3.1 The subject matter of present proceeding is the Land bearing C.T.S.No. 172, in Final Plot No. 169, in TP Scheme No.3, situated at Panchgani, Taluka Mahabaleshwar, District Satara admeasuring 3969 sq.mtrs. along with

structure standing thereon known as Hotel Ambassador (for short “suit premises”).

3.2 The suit premises is a part of the larger property which admeasures 5696 sq.mtrs. owned by the Municipal Council, Panchgani.

3.3 The suit property was leased to the Applicants herein by the Panchgani Municipal Council vide resolution dated 25 August 2009. The respondent no.3-trust has filed a Regular Civil Suit No. 308 of 2010 against the Municipal Council and the applicants herein before the Civil Judge, Senior Division, Satara, challenging the Resolution dated 25 August 2009.

3.4 During the pendency of RCS No.308 of 2010, the original petitioner approached the applicants requesting to allow them to run Hotel Ambassador and accordingly the applicants and the original petitioner entered into conducting agreement dated 1 February, 2021. However, pursuant to further negotiations between the applicants and the petitioner, the conducting agreement was not given

effect to and the parties entered into a registered *Leave and License Agreement* for the suit premises on 1 February 2021. Accordingly, pursuant to the *Leave and Licence Agreement*, the petitioner was put in possession of the suit premises and was permitted to use the suit premises for a period of 36 months commencing from 1 February, 2021 and ending on 31 January, 2024, at the compensation of Rs.75,000/- per month for the first year, and Rs.82,500/- per month for the second year and Rs. 90,000/- for the third year.

3.5 Since the petitioner-licsee did not pay compensation amount to the applicants-licensors hence the applicant issued notice dated 1 September 2021 of their intention to terminate the *Leave and License Agreement* after three months from the date of the notice.

3.6 Pursuant to the said notice dated 1 September 2021, the applicants-licensor, received Rs.4,10,000/- in installment from September 2021 to November 2021, for the petitioner-licensee.

3.7 No payments were received by the applicants after November 2021. However in January 2022, the petitioner-licensee filed Regular Civil Suit No. 1 of 2022 before the Civil Judge, Junior Division, Mahabaleshwar against the applicants-licensors, praying for permanent restraining order against the applicants-licensors from creating any impediments or obstructions in the peaceful possession of the suit premises on the basis of the notice dated 1 September 2021. In the said suit, the petitioner-licensee on 3 January 2022 filed an application for interim relief (Ex.5).

3.8 The applicants-licensors after receiving the copy of Ex.5, immediately filed their reply to the said application. The said application Ex.5 was heard by the Civil Judge, Junior Division, and by its order dated 11 April 2022, the Civil Judge, Junior Division rejected the application Ex.5 filed by the petitioner-licensee. In miscellaneous appeal filed against the rejection of Ex.5 before the District Court by the petitioner-licensee, the applicants-licensors gave an

undertaking that since the miscellaneous civil appeal is listed on 14 July 2022, till then the position will not be disturbed. The District Court accepted the undertaking of the applicants-licensors and hence, the application of the original petitioner-licensee was allowed.

3.9 Thereafter, on original petitioner-licensee, preferring application for continuation of the status quo order, the District Court continued the status quo order from 24 June 2022 till 20 November 2022. On 20 November 2022, the miscellaneous civil appeal was dismissed. However, on the application of the petitioner, status quo order was extended.

3.10 The petitioner-licensee, thereafter filed the present civil Writ Petition No. 13693 of 2022. This Court thereafter continued the status-quo granted by the District Court, Satara.

3.11 In the meantime, the respondent nos. 3 and 4-Trust filed an intervention application in the present writ petition on the ground that the respondent nos.3 and 4-Trust were

the owners of the suit premises and on the basis that they had filed Regular Civil Suit No. 308 of 2010 before the Civil Judge, Senior Division, Mahabaleshwar whereby resolution dated 25 August, 2009 passed by the Municipal Council was under challenge.

3.12 The intervention application filed by the respondent nos. 3 and 4-Trust was opposed by the petitioner-licensee by filing reply (Ex.36).

3.13 The respondent nos. 3 and 4-Trust had filed a similar kind of application for intervention in Regular Civil Suit No. 1 of 2022. The said application filed for intervention, in Regular Civil Suit No. 1 of 2022, was allowed.

3.14 The interim application filed by the respondent nos. 3 and 4-Trust in the present writ petition, was allowed by this Court on 11 September, 2023. In the interim application for intervention, the respondent nos. 3 and 4-Trust submitted that the petitioner has been inducted in possession of the suit premises by the applicants-licensors pursuant to the agreement dated 1 February, 2021.

3.15 The respondent nos. 3 and 4 – Trust in the meantime also filed a suit for eviction under Section 16(1)(n) – ground of non user of Maharashtra Rent Control Act, 1999 being R.C.S.No. 69 of 2023 in the Civil Judge, Junior Division, Mahabaleshwar against the petitioner-licensee and applicant-licensors. The applicants herein were not served with a copy of the writ of summons in R.C.S.No. 69 of 2023.

3.16 On 30 October 2023, the present writ petition was listed for hearing before this Court, when the order was passed to accept the undertaking given by the petitioner-licensee to deposit a sum of Rs.23,00,000/- before the Trial Court within eight weeks. Based on the said undertaking, the stay order was continued until 15 January, 2024.

3.17 On 31 January, 2024 on an application made by the applicants-licensors the writ petition was listed for directions on 2 February, 2023. Applicants-licensors issued notices to the petitioner-licensee and the respondent nos. 3 and 4-Trust, that the present writ petition is likely to be on

board on 2 February, 2024.

3.18 The applicants thereafter learnt that on 31 January, 2024 itself, the respondent nos. 3 and 4-Trust, who are the plaintiff's in R.C.S. No. 69 of 2023, filed a pursis to withdraw the eviction suit filed under Rent Act, by virtue of consent terms entered into by the plaintiff Trust with the licensee only. Accordingly, the Civil Judge, Junior Division, Mahabaleshwar passed an order disposing of the said R.C.S.No. 69 of 2023. Immediately, thereafter pursis was filed by licensee to withdraw his suit being RCS No.1/2022 which would tender the present writ petition as infructuous. However, by protective order passed by this Court on 2 February 2024, the licensee Suit – RCS No.1/2022 is not allowed to be withdrawn.

3.19 The present interim application seeks appointment of Court Receiver and to hold licensee guilty of contempt, as possession of the suit premises is handed over to the Trust.

4. Mr.Girish Godbole, learned senior counsel appearing for the applicants/original respondent no.1 and 2, made

his submissions :-

4.1 He submitted that this Court had clearly passed an order of status quo and in violation of the same, the petitioner in breach of the *status quo* order handed over possession of the suit premises to the respondent nos. 3 and 4-Trust, with the sole purpose of defeating the rights of the applicants herein.

4.2 On 1 February, 2024, the Regular Civil Suit No. 1 of 2022, was listed before the Civil Judge, Junior Division, Mahabaleshwar when the advocate appearing for the original petitioner filed an application stating that on 31 January, 2024, the petitioner and the respondent nos. 3 and 4 had entered into the consent terms in Regular Civil Suit No. 69 of 2023. The advocate appearing for the applicants, in the said suit sought time to respond to the application of the withdrawal of the suit.

4.3 The applicants thereafter realized that the respondent nos. 3 and 4 had filed Regular Civil Suit No. 69 of 2023 wherein the applicants were shown as defendant

nos. 2 and 3 and the original petitioner herein who is shown as defendant no.4. Even today, the writ of summons in the said suit is not served upon the applicants.

4.4 Therefore, from the Court, first a status quo order is obtained and during the pendency of the status quo order, the possession of the suit premises was handed over to the respondent nos. 3 and 4 – Trust by obtaining the collusive order in Regular Civil Suit No. 69 of 2023.

4.5 Mr.Godbole submitted that the writ of summons in Regular Civil Suit No. 69 of 2023 was not served on the applicants. The said Regular Civil Suit No. 69 of 2023 was a eviction suit under Rent Act, filed by the trust against the petitioner-licensee and also against the applicant-licensor. The said Regular Civil Suit No. 69 of 2023 was a suit for eviction filed only under section 16(1)(n) – non user of the Maharashtra Rent Act. Mr.Godbole submitted that the possession can't be lost by the tenant by way of filing consent terms.

4.6. Mr.Godbole submitted that after the license period of

the trust was lapsed, pursuant to the resolution of the Municipal Council passed on 25 August, 2009, a lease was created in favour of the applicants and the erstwhile owner.

4.7 Subsequently, the trust challenged the Municipal Council's resolution dated 25 August, 2009 by filing a suit being Regular Civil Suit No. 308 of 2010. In the meanwhile, the Municipal Council passed a resolution no.485, revoking the resolution dated 25 August, 2009.

4.8 The trust applied to the Court to add them as party in the suit filed by the licensee being R.C.S.No.1 of 2022. The said application was opposed by the petitioner-licensee. Mr.Godbole submitted that this Court by its order dated 30 October, 2023 had extended the status quo order. However, the Court was not informed of filing of the eviction suit under Rent Act. He submitted that on 15 January, 2024, the writ petition was not listed on board.

4.9 Mr.Godbole submitted that this Court on 12 January, 2024 had issued directions that the matters which are on board and not reached, the earlier stay order will be

continued till the next date automatically and further the matters which are due and are not listed, even in those matters, stay granted earlier would automatically continue. He submitted that hence, there was clearly a breach of the order passed by this Court. He relied upon the judgment of this High Court, in **Govinda Bhagoji Kamable Vs. Sadu Bapu Kamable reported in 2005(1)Mh.LJ651** which clarifies the meaning of ‘stay meantime’

4.10 Mr.Godbole submitted that a pursis was also filed by the petitioner-licensee herein, before the Civil Judge, Junior Division for withdrawal of the suit of injunction. However, due to the protective order passed by this Court, the said suit is not allowed to be withdrawn.

4.11 He submitted that this is a fit case wherein this Court shall appoint a receiver in respect of the suit premises and to take possession of the suit premises and handover the possession back to the applicants-licensors. So also, the contempt notice would have to be issued against the petitioner herein.

4.12 Mr.Godbole referred to the three judgments on the issue that in a eviction suit under the Rent Act, possession can't be handed over pursuant to the consent terms being filed. Since, it is a settled law that in a Rent Act suit, possession can be handed over, only pursuant to the decree of eviction being passed. He referred to following three judgments.

- (a) **Nagindas Ramdas Vs. Dalpatram Ichharam & Ors.**
AIR 1974 SC 471
- (b) **Abedali Khan Vs. Devidas**
2012(1) Mh.L. J. 466
- (c) **Mulji Umershi Vs. Paradisia Builders**
1997(3) Mh. L. J.532

4.13 Mr.Godbole submitted that one person by name Waghmare had been recently to the Hotel Ambassador and the same can be seen from the booking and payment made online and from the photographs which he has tendered across the bar. He submitted that the online booking shows the phone number of the petitioner. He further referred to the affidavit of respondent nos. 3 and 4 dated 24 April 2024. He referred to the paragraph no.5 of the

affidavit which mentions that the petitioner is still in possession and is running a business of Hotel Ambassador. He, therefore, submits that the receiver to be appointed should take possession from the petitioner, or from whosoever is in possession of the suit premises and handover the same back to the applicants.

4.14 Mr.Godbole further submitted that the issue about resolution been passed by the Municipal Council granting lease of the subject premises to his client will be decided in the pending suit of the year 2010. According to Mr.Godbole the said issue is subjudiced before the Court of Civil Judge, Senior Division, Mahabaleshwar.

4.15 Mr.Godbole submitted that this was a clear case of respondent nos. 3 and 4, colliding with the petitioner and without following the due process of law exchanging the possession of the suit premises at the back of his client is a complete fraud played on his client and the Court.

4.16 Mr.Godbole further submitted that this Court has ample powers under its writ jurisdiction of 227 of the Constitution of

India to pass a preventive order as this Court has already done on 2 February, 2024 thereby not allowing the present petitioner to withdraw the suit filed in the Lower Court.

4.17 Mr.Godbole submits that even though the Rent Act suit is filed, the petitioner has went ahead and handed over possession to the respondent nos. 3 and 4. He submitted that if the petitioner was been threatened by the respondent nos. 3 and 4, the petitioner could have approach this Hon'ble Court or the Civil Judge, Senior Division before which there are suits pending and could have informed Court that he is desirous of handing over possession of the suit premises to the right parties of the litigation or could have told the Court that he is desirous to handover the possession of the suit premises to the Court and the Court could pass any further orders as required in law.

4.18 Mr.Godbole further submitted that nobody can dispute the document which was produced on behalf of his client regarding the booking made of Hotel Ambassador and a payment made to the online App and so also the photos shown which shows that one Mr.Waghmare had booked a room on Make my Trip in Hotel Ambassador.

4.19 Mr.Godbole further submitted that hence there is no doubt that Hotel Ambassador is still operational and considering the affidavit filed by the respondent nos. 3 and 4, it is the petitioner who is operating the Hotel Ambassador as of date.

4.20 Mr.Godbole submitted that only on 1 February, 2024 his client became aware of the withdrawal of the Rent Act suit by respondent nos. 3 and 4.

4.21 Mr.Godbole submitted that taking into consideration the merits of the matter, it will be necessary for this Court to appoint a Court Receiver in the form of Court Receiver, High Court, Bombay or else any appropriate person to be appointed as a Receiver or else the Nazir of Mahabaleshwar Senior Division Court be appointed as a Receiver, and the Receiver to take back the possession from the petitioner or else from the respondent nos. 3 and 4 and handover the said possession of the suit premises to his client.

4.22 Mr.Godbole submitted that the judgment of the

Supreme Court in *Noorali Babal Thanawala vs. K. M. H. Shetty reported in (1990) 1 SCC 259*, more particularly paragraph 11 is applicable to the present proceedings.

4.23 Mr.Godbole further submitted that the amount which has been deposited by the petitioner in this Court and/or in the Court of Civil Judge, Senior Division, Mahabaleshwar, should be allowed to be withdrawn by his client as his client is a lessor and the petitioner herein is the lessee who had earlier made payment of the monthly compensation to the petitioner. He submits that no prejudice would be caused to any of the parties if the said amount is withdrawn by the petitioner.

4.24 Mr.Godbole further submitted that the petitioner has committed a clear case of contempt, as the order passed by this Court on 30 October 2023, directed the petitioner to deposit the outstanding amount within a period of eight weeks. He submitted that the petitioner did not comply with the direction given by this Court neither sought extension of time to deposit the amount.

4.25 Mr.Godbole submitted that only after an application for appointment of the Court Receiver was filed by his client, the

balance amount as directed by this Court, an attempt was made to deposit the said amount.

4.26 Mr.Godbole submitted that Mrs.Gonsalves' client did not come before this Court to inform to whom they should handover possession.

4.27 Mr.Godbole submitted that it is necessary for this Court to pass an order of 'status quo ante'.

5. Mr.Mutahhar Khan, learned counsel appeared for the original Petitioner/Licensee, and made his submissions :-

5(i) He submitted that the petitioner-licensee was of a *bona fide* belief that the status quo order passed by this Court, had ended on 15 January 2024. Therefore, since there was a lot of pressure on the petitioner from the respondent nos. 3 and 4 - trust, the petitioner had no option but to handover possession of the suit premises to the respondent nos. 3 and -trust.

5(ii) Mr.Khan submitted that the petitioner had already complied with the relief as sought in prayer clause (b) of the interim application of payment of outstanding license

fees. Mr.Khan further submitted that the prayer clause (a) of the interim application can be granted. As regards prayer clause (c), Mr.Khan submitted that even prayer clause (c) can be granted, except deletion of the word 'petitioner' from the said prayer clause. Mr.Khan submitted that even the prayer clause (f) can be granted and there is nothing to prosecute.

5(iii) Mr.Khan submitted that prayer clauses (d) and (e), he is opposing the same since there is no willful non-compliance on the part of the petitioner.

5(iv) Mr. khan relied upon the following judgments to buttress his submissions:

- a) **State of Bihar Vs. Rani Sonabati Kumari reported in AIR 1961 SC 221.**
- b) **Sitaram Vs. Ganesh Das reported in AIR 1973 All 449**
- c) **Jagdishbhai M Patel Vs. Saraswatiben reported in 2019 SCC Online Guj 6989**
- d) **Ram kishan Vs. Tarun Bajaj reported in (2014) 16 SCC 204**

5(v) He submitted that his client was actually ill- advised

and hence his client though had taken possession of the suit property from the applicants/licensors, in an *Leave and License Agreement*, he handed over possession to the petitioner-trust. However, his client can't now bring back the possession. As on 31 January, 2024, the possession of the suit property has been handed over to the respondent nos. 3 and 4 (trust).

5(vi) He submitted that as per the directions of the Court, his client has complied with the same as regards the amounts are concerned.

5(vii) He further submitted that since the passing of the order passed by this Court, even though pursis is filed to withdraw Regular Civil Suit No. 1 of 2022, the suit is still not withdrawn.

6. Mr.Dinyar D. Madon, learned senior counsel appeared for the respondent nos.3 and 4-trust, and made his submissions :-

6.1 He submitted that when the order was passed on application Ex.5 and in appeal before the District Court

and orders were passed before this Court, of “the parties to maintain status quo”, the respondent nos.3 and 4 (trust) was not a party to the proceedings. Mr.Madon submitted that the respondent nos. 3 and 4(trust) was joined as a party to the proceedings much later i.e. in the suit on 30 January 2023 and in the writ petition on 11 September 2023. Therefore, there was no status quo orders passed against the respondent nos. 3 and 4-trust.

6.2 He submitted that the applicants herein have no right whatsoever with respect of the suit premises. He submitted that the applicants have illegally entered into a *Leave and License Agreement* as licensor, with the petitioner as licensee.

6.3 He further submitted that the applicants are claiming their rights through one Mr.Umbreliwalla and no document is produced on record to show that Mr.Umbreliwalla had given any kind of his right to the applicants.

6.4 He submitted that the suit property which is a part of the larger piece of land belongs to the Municipal Council,

Panchgani.

6.5 He submitted that the resolution dated 25 August, 2009 passed by the Municipal Council is under challenge by way of Regular Civil Suit No. 308 of 2010 before the Civil Judge, Senior Division, Satara.

6.6 He further submitted that the person referred as Motiwala (as the applicant no.2) appears to be different from one Mr.Motiwala whose name appears to be in the resolution dated 25 August, 2009.

6.7 He further referred to the Municipal Council's resolution dated 12 October, 2010 whereby the earlier resolution of the Municipal Council is revoked. He submitted that the resolution dated 12 October, 2010 was not challenged by the present applicants.

6.8 He referred to the judgments of the Supreme Court in case of **Cotton Corporation of India Ltd. Vs. United Industrial Bank Ltd. reported in (1983) 4 SCC 625.**

6.9 He further submitted that if the present petitioner wants to withdraw the suit filed by him before the CJ JR.

Div being Regular Civil Suit No. 1 of 2022, the Court can't object to the same.

6.10 He further submitted that whether the defendant can seek appointment of the Court Receiver in plaintiff's suit ? He referred to the judgment of **Anil Kumar Singh Vs. Vijay Pal Singh & Ors. Reported in (2018) 12 SCC 584.**

6.11 He further submits that since no courts can object to the request made by the plaintiff for withdrawal of his suit and if the suits are withdrawn, all interim orders passed in the said suit also are gone. He referred to the judgment of of Supreme Court in case of **K. Sivaramaiah Vs. Rukmani Ammal reported in (2004) 1 SCC 471.**

6.12 He submits that his client is in possession of the suit premises from 31 January, 2024. He submitted that however, the Hotel Ambassador is not in operation.

6.13 He submitted that a false affidavit dated 16 April, 2024 has been filed by the applicants herein.

6.14 He submitted that the photographs and the documents tendered by the applicants are all forged.

Mr.Madon also strongly objected to the payment receipts which has been shown of Make My Trip by the applicants.

6.15 He submitted that the applicants though were aware of the proceedings, however they acted only when the consent terms were being filed before the Trial Court.

6.16 He submitted that the applicants have not convinced this Court as to why a receiver should be appointed by this Court.

6.17 He also referred to the provisions of section 83 of the Waqf Act.

6.18 He submitted that the Waqf Board was established in Maharashtra in the year 2000 and the Tribunal was established in the year 2001. He submitted that section 85 bars the jurisdiction of the Civil Court to entertain any proceedings pertaining to Waqf property and under section 86, a receiver can be appointed. Mr.Madon submitted that his client the Waqf was registered in the year 2018. He submitted that the Interim Application therefore requires to be dismissed.

7. Mr. Godbole, in rejoinder submitted as under:-

7(i) He submitted that the respondent nos.3 and 4 though were initially not aware about status-quo granted by the appellate court and subsequently by this Court, as soon as they were joined in the suit and in this writ petition, they became aware about the status quo order. Hence, according to him, the respondent nos. 3 and 4 now can't take the defence that the status quo to be maintained by parties, will not apply to them.

7(ii) Mr.Godbole submits that the argument about his client been a trespasser, will have no merits as the status of his clients will be decided in the Rent Act suit which is filed under section 16 (1) (n) of the Maharashtra Rent Control Act.

7(iii) Mr.Godbole submitted that the judgment of ***Cotton Corporation*** (supra), is the correct position in law. However, he submitted that in the present proceeding, there was an order of status quo passed by this Court. He further submitted that the order dated 15 January 2024 is

not a conditional order. He submitted that this Court in the judgment of ***Govinda Kamable*** (supra) has clearly interpreted the meaning of the interim orders being continued by interpreting the meaning of the word 'meanwhile'.

7(iv) Mr.Godbole further submitted that the Municipal Council is the owner of the land on which Hotel Ambassador situated. It is the Municipal Council who had earlier leased out the land to the Trust (which has now been registered in the year 2018 as a Waqf). As the said lease had lapsed, the Municipal Council by a notification had granted lease to his client. Hence, there is no question of a Waqf Act coming into picture and more particularly section 85 of the Waqf Act the suit being barred by law.

7(v) Mr.Godbole submitted that hence, he is trying to make a prayer for restoration of possession. Mr.Godbole submitted that the judgment passed by Justice Lodha is squarely applicable to the present proceedings.

7(vi) Mr.Godbole further submitted that the issue raised of

two different persons being name Motiwala, he submits that the same are the father and the son. He submitted that Mr.Yusuf is the father. Therefore, according to him, there is no perversity in the same.

8. Mr.Khan appearing for the petitioner in rejoinder submitted that pursuant to the order passed by this Court of deposit of Rs.23,00,000/-, as of today the entire amount has been deposited. He submitted that though there was a delay in depositing the amount, his client without prejudice to the right and contention has deposited the outstanding amount.

8(i) Mr.Khan submitted that as far as possession is concerned, admittedly it was handed over by his client to the respondent nos. 3 and 4, therefore, if this Court pass any order against the respondent nos. 3 and 4 to handover possession back to the petitioner, his client would have no objection to the same.

8(ii) Mr.Khan submitted that a sympathy view should be taken as far as his client is concerned, because this Court

had not considered the evidence before it in the right prospective.

Analysis and conclusion

9. I have heard counsels of all the sides, and through their assistance I have gone through the documents on record.

10. The Interim Application filed by the licensor of suit premises, is seeking two major reliefs : (i) Appointment of Court Receiver in respect of suit premises and handing over possession back to applicant; (ii) to hold petitioner-licensee guilty of civil contempt under the provisions of order 39, Rule 2(A) of Code of Civil Procedure.

Appointment of Court Receiver

11. The suit premises is a part of a larger property, the owner of the same is Municipal Council, Mahabaleshwar. Earlier the Municipal Council had created a lease of the suit premises in favour of respondent nos. 3 and 4 – Trust. After the lease period had lapsed, the Municipal Council on

25 August 2009, by a resolution passed granted lease of the suit premises to the applicants herein.

12. In the meanwhile, the Municipal Council issued a fresh resolution thereby cancelling the earlier resolution. The grant of lease in favour of the applicants is being challenged by the respondent nos.3 and 4 – Trust by way of suit being RCS No. 308 of 2010. The said suit is pending for hearing and final disposal before the Civil Judge, Senior Division, Satara.

13. The applicants-licensors executed a registered leave and license agreement dated 1 February 2021 pertaining to the suit premises in favour of the petitioner herein. The said leave and license was for a period of 36 months for the period from 1 February 2021 to 31 January 2024. During the pendency of the said leave and license agreement, the petitioner herein (licensee) stopped paying the license fee to the applicants (licensor). Hence, the licensor issued a notice dated 1 September 2021 to licensee. The licensee thereafter paid the outstanding

amounts in intervals. No payments were received by the applicants-licensors after November 2021. However, in January 2022, the licensee filed the suit against the licensor)who are the applicants in the present interim application). The said suit was for seeking an injunction against the licensor, for disturbing the possession of the licensee without following due process of law.

14. In the said suit filed by the present petitioner (licensee) the interim application for status-quo was rejected by the trial Court and the Appellate Court. The present writ petition has been filed by the licensee, challenging both the orders of rejection. However, the status-quo order which was granted by the District Court pending the appeal, was continued by this Court and an order of status-quo to the parties was granted by this Court.

15. The Trust filed an eviction suit being RCS No.69/2023 under the Maharashtra Rent Control Act on the grounds of non-user- Section 16(1)(n), for eviction

against the applicants, and the petitioner. In the said eviction suit, summons was not served on the present applicants, and consent terms were entered into between the respondent nos.3 and 4 – Trust (plaintiff in the eviction suit under the rent Act), and the petitioner herein (licensee). Pursuant to the said consent terms, the licensee handed over possession of the suit premises to the respondent nos.3 and 4- Trust, without informing the applicants-licensors, who had given him the possession of suit premises, which fact is admitted in the present writ petition.

16. The applicants were granted lease by the owners of the larger property i.e. the Municipal Council, pursuant to a resolution passed on 25 August 2009. The said resolution though has been challenged by the respondent nos.3 and 4 – Trust by way of RCS No.308 of 2010, the said suit is still pending for hearing and final disposal. Admittedly, there was a leave and license agreement, pursuant to which the applicants herein had given possession of the suit premises

to the petitioner herein (licensee). The respondent nos.3 and 4 – Trust, has filed an eviction suit under the Maharashtra Rent Act against the applicants and the petitioner, and the said suit sought possession of the suit premises. Though, the applicants herein (licensor) were party to the said suit, no summons were served on the applicants herein, and by way of purported consent terms the possession of the suit premises was handed over to the respondent nos.3 and 4 – Trust by the petitioner herein (licensee). Once it is admitted by the petitioner herein (licensee), that they had taken the possession of the suit premises from the applicants herein (licensors), pursuant to a leave and license agreement, in my opinion, during the subsistency of the said leave and license agreement or even otherwise the petitioner herein (licensee) could not have handed over possession of the suit premises, to the respondent nos.3 and 4 – Trust.

17. The respondent nos.3 and 4 – Trust, had earlier an interest in the suit property pursuant to a lease being

created in their favour according to them by the Municipal Council. The said lease period was lapsed and thereafter, the Municipal Council by way of resolution dated 25 August 2009 created a lease in favour of the applicants herein.

18. As the respondent nos.3 and 4 – Trust, was still of the opinion that they had interest in the suit premises, they had filed an eviction suit under the Maharashtra Rent Act against the applicants herein and the petitioner also. In my opinion, possession of a premises under the Rent Act can be handed over back to the plaintiff/landlord only by way of an eviction decree.

19. This is a settled law, and the judgment referred by Mr. Godbole squarely applies to the present proceedings.

19.1 In the judgment of ***Dalpathram*** (supra), paragraphs no.14, 15, 19, 20, 21 and 22 read as under:-

“14. Section 28 of the Bombay Rent Act which begins with a non obstante clause, specifies Courts which shall have exclusive jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant inter alia

relating to (a) recovery of rent of any premises: (b) recovery of possession of any premises to which the provisions of Part II apply. The words "to which the provisions of Part II apply" are significant. They indicate that the exclusive jurisdiction for recovery of possession is to be exercised when the provisions of Part II, which include Sections 12 and 13, apply.

15. All these three Acts lay down specific grounds more or less similar, on which a decree or order of eviction can be passed by the Rent Court or the Tribunal exercising exclusive jurisdiction. In the Delhi Rent Act, such grounds are specified in a consolidated form under Section 13, while the same thing has been split up into two and provided in two sections (12 and 13) in the Bombay Rent Act which represent the negative and positive parts of the same pattern. Taken together, they are exhaustive of the grounds on which the Rent Court is competent to pass a decree of possession. Similarly, in the Madras Rent Act, the grounds on which a tenant can be evicted, are given in Sections 10, 14 to 16.

19. Construing the provisions of Sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for Possession either in invitum or with the consent of the parties on a ground which is de hors the

Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in Sections 12 and 13 is a sine qua nan to the exercise of jurisdiction by the Rent Court under these provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the legislative mandate, it could not do.

20. In the view we take, we are fortified by the ratio of the decision in Barton v. Fincham [1921] 2 K.B. 291. Therein the Court of Appeal was considering the scheme of the Rent Restrictions Act, 1920, the language of Section 5 of which was similar to Section 13 of the Delhi Rent Act. In that context, Atkin L. J. stated the law on the point thus :

"The section appears to me to limit definitely the jurisdiction of the Courts in making ejectment orders in the case of premises to which the Act applies. Parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted they are not to have.

If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the bona fides of the admission, the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to- an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act."

21. It is true that in Barton's case just as in Seshadri's case (supra), the statute under consideration expressly

prohibited the Court from passing a decree on a ground which was not covered by the statute but the principle is equally applicable to cases under statutes which place such a letter on the jurisdiction of the Court, by necessary implication.

22. The mere fact that Order 23, Rule 3, of the CPC is applicable to the proceedings in a suit under the Bombay Rent Act, does not remove that fetter on the Rent Court or empower it to make a decree for eviction de hors the statute. Even under that provision of the Code, the Court, before ordering that the compromise be recorded, is required to satisfy itself about the lawfulness of the agreement. Such lawfulness or otherwise of the agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act.”

19.2 Judgment of Bombay High Court in ***Abedali Khan***

(supra), paragraphs No.8, 9, 12, 14, 15, 16, 19, 20, 21 and

22 reads as under:-

“8. In the present matter, suit is filed by the petitioner though for injunction simplicitor, all the averments are based on landlord-tenant relationship. Though this relationship is denied by the Respondent in the written statement and contentions of trespass are raised; the pleadings in the plaint are to be considered to decide the jurisdiction and scope of the suit.

9. Compromise has taken place immediately after written statement was filed and before framing of the issues. Thus, neither petitioner nor the Respondent had an opportunity to prove their respective cases. On this background, the contents in the compromise purshis are

to be read. The terms of the compromise are written in Marathi, so it was understood by both the parties. Petitioner's stand that he is tenant and respondent is landlord is accepted. It was mentioned that there was No. dispute between the parties about arrears. Both the parties wanted to keep their relation cordial and friendly. Therefore, they agreed to enter into compromise. It was further agreed that petitioner while occupying the suit premises upto 28.12.2010 was allowed to occupy the premises for a period of three months and thereafter he would vacate the premises; failing which the Respondent has every right to evict the Petitioner out of the house. Nothing is stated about payment of the rent for a period of future three months. So, it appears that future three months rent free stay in the suit premises was a consideration for vacating the premises. On the same day, the trial Court recorded the compromise in presence of parties and advocates. The contents of the compromise were affirmed by both the parties and then he passed the order.

12. Order 23, Rule 3 enables parties to compromise the suit and empowers the Court to record and accept it. By way of an amendment, the following portion is substituted by the Code of Civil Procedure (Amendment Act, 1976):

" So far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as a subject-matter of the suit."

This amendment has widened the scope of the compromise between the parties. So, the parties may arrive at an agreement or compromise in respect of the subject-matter, which may not be the same as the subject-matter of the suit. It is permissible for the

parties to travel beyond from the subject matter and cover the disputed issues between them and bring under the compromise.

14. Section 15 and 16 of Maharashtra Rent Control Act protect the tenant and give grounds for the eviction of the tenant. Section 15 and 16 though are covered under two different chapters, yet they form one scheme of the Act. This being a beneficial legislation, these sections protect the interest of the tenant. Section 15 alone forms chapter III which is about the relief against forfeiture. Then, Section 16 is covered under separate Chapter No. IV about recovery of possession. The section states that the landlord shall be entitled to recover the possession of any premises, if the Court is satisfied under the circumstances, which are enumerated in Section 16. Thus, the grounds available to recover the possession are specifically mentioned in Section 16. Section 15 is a non obstante and puts bar on the landlord to evict tenant if tenant pays or willing to pay standard rent and permitted increases. This section is similar to Section 12 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. It provides the relief against eviction to the tenant and it restricts unfettered right of landlord to recover possession of the premises from the tenant.

15. Whether Section 16 prohibits any compromise between the landlord and tenant in respect of handing over of the possession and further execution of decree of eviction of the tenant based on such compromise ? By way of compromise Petitioner-tenant was willing and agree to hand over the possession of the vacant premises to the Respondent but thereafter he withdrew his consent and so, the landlord wants to evict the tenant for withdrawal of his consent to the agreement,

which was recorded before the Court. Undoubtedly, the sanctity of the compromise, which is recorded by the Court is to be honoured by the parties.

16. Thus, there is No. bar on parties contracting out compromise under Order 23 Rule 3 of the Code of Procedure, even for vacating the rental premises and consequential eviction on failure to vacate the same. Thus, Order 23, Rule 3 is applicable to the eviction suits governed under special statute like Maharashtra Rent Control Act and not violative to the statute. In the compromise, landlord and tenant one of the party or parties mutually agree to give away their rights and accept certain terms.

19. I place reliance on Roshan Lal and another Vs. Madan Lal and others, reported in MANU/SC/0513/1975 : AIR 1975 SC 2130, where it was held that Order XXIII Rule 3 of the Code of Civil Procedure is applicable to eviction suits governed by the special statutes. In that matter landlord has filed a suit for eviction against the Defendant-tenant. The parties entered into compromise and trial Court passed a decree for eviction against the tenant, which was objected by Defendants-tenant on the ground that compromise decree was void and not executable as it is against the provisions of the Act. This objection was accepted and execution was dismissed. Miscellaneous Appeal was dismissed, which was filed before the District Judge. Second Miscellaneous Appeal, which was filed before the Madhya Pradesh High Court was allowed and it was held that the decree was not nullity and was executable. So, tenant, the original Defendants, who were the judgment debtors filed appeal in the Supreme Court. The Apex Court while deciding the said issue has referred a landmark case of

K.K.Chari Vs. R.M.Seshadri (supra), in which Apex Court has come across the similar issue. The Apex Court, on the basis of judgment in *K.K.Chari Vs. R.M.Seshadri* (supra) further elaborated the reasoning on this issue and though at the time of deciding this matter, there was no amendment of 1976 widening the scope of the compromise, yet it was held that such decree was executable. The said view was taken by the Apex Court in the year 1975 when this amendment was absent. Bar of restricting the compromise only to the subject-matter of the suit is expressly lifted by this amendment. However, it is not to be construed that the provision is unrestricted. Widening the scope does not mean it is unlimited.

20. Order 23 Rule 3 of the Code of Civil Procedure is a procedural law, enabling the compromise beyond the subject matter of the suit. However, the Maharashtra Rent Control Act is a special statute wherein Section 16 deals with the grounds of eviction and entitlement of the possession under specific grounds. Undoubtedly, the substantive Act will have priority over the procedural law. Therefore, by harmonious interpretation a balance between the procedural law and statutory provisions under the Maharashtra Rent Control Act can be achieved.

21. Unless one of the grounds available under Section 16 is taken up, pleaded or shown to the Court at the time of compromise and unless it is mentioned in the compromise, the decree based on such compromise will not be executable. Landlord and tenant may enter into compromise, where tenant is ready to vacate the premises. Court is satisfied about it as the parties before the Court mutually agree, though any ground for eviction or vacating the rented premises, which is

available under Section 16 of the Maharashtra Rent Control Act is not mentioned in the compromise, the compromise can be materialised if the tenant vacates the premises voluntarily. However, the obstacle in the execution will arise if premises is not vacated.

22. Thus, while submitting the terms of the compromise, it is mandatory that at least one of the grounds for eviction which is available under Section 16 of the Maharashtra Rent Control Act ought to have been mentioned in the compromise purshis or there should be a clear indication of such ground which might have been pleaded either in the plaint by landlord or in the written statement if the landlord is a Defendant. Thereafter, it is the duty of the Court while recording the compromise, to satisfy itself that any ground under Section 16 ought to have been mentioned in the compromise and then accept it. In case of [Roshan Lal](#) (supra), the Apex Court has enlightened us on this issue and has held :

" If, however, parties choose to enter into a compromise due to any reason such as to avoid the risk of protracted litigating expenses, it is open to them to do so. The Court can pass a decree on the basis of the compromise. In such a situation the only thing to be seen is whether the compromise is in violation of the requirement of the law. In other words, parties cannot be permitted to have a tenant's eviction merely by agreement without anything more. The compromise must indicate either on its face or in the background of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord, in the circumstances, is entitled to have such a decree under the law."

Passing a decree for eviction on adjudication of the requisite facts or on their admission in a compromise either expressed or implied is not different.

Thus, in the terms of compromise why landlord wants premises and the ground, which is available under Section 16 should reflect in the compromise, then only that compromise becomes executable.

On this background, the present compromise is to be looked into. In the compromise purshis, the status of the parties as landlord and tenant is accepted. No ground which is available under Section 16 of the Maharashtra Rent Control Act is mentioned, indicated or reflected. Therefore, the decree based upon the terms of the compromise being contrary to Section 16 of the Maharashtra Rent Control Act, becomes unexecutable.

Going back to the definition of Decree Holder, though the Defendant-landlord is having a decree/order in his favour, the same is not executable, as in the compromise no ground available under Section 16 of the Maharashtra Rent Control Act is mentioned or clearly indicated. So, eviction of the tenant contrary to Section 16 of the Maharashtra Rent Control Act is violative to the said special statute.

The order passed by learned 5th Civil Judge, Senior Division, Hingoli is set aside. Writ Petition is allowed.

Rule made absolute accordingly.”

20. In affidavit dated 26 February 2024 of petitioner-licensee, paragraph no.8, reads as under :-

“8. The filing of Consent Terms in RCS No.69 of 2023 was only avoid any coercive action against myself on the

basis of the complaint preferred by Respondent Nos.3 and 4. I acted on the basis of advice believing the same to be correct. I am now advised that my actions including the filing of Consent Terms without bringing the same to the notice of this Hon'ble Court was ill-advised. However, my actions were never intended to overreach any orders passed by this Hon'ble Court or interfere with the administration of justice.”

(Emphasis supplied)

21. Mr.Khan has submitted that the prayer clause (a) of the interim application can be granted. Prayer (a) reads as under:-

“Pending the hearing and final disposal of the present writ petition no.13693 of 2022, this hon'ble Court be pleased to pass an order appointing a court receiver or such other officer with all powers under Order XL of the code of civil procedure, 1908, to take possession of the said premises being all that piece and parcel of land bearing CTS NO.172 in final plot no.169 in T.P. Scheme no.3 at Panchgani , taluka Mahabaleshwar, District Satara, admeasuring 3969 sq. mtrs. Along with structures standing thereon known as Hotel Ambassador and hand over possession herein;”

21.1 As regards prayer clause (c), Mr.Khan submitted that even prayer clause (c) can be granted, except deletion of

the word 'petitioner' from the said prayer clause. Prayer (c) reads as under:-

“Pending the hearing and final disposal of the present writ petition no.13693 of 2022, this hon'ble Court be pleased to direct the Petitioner and Respondent nos.3 and 4 to handover possession of the said premises to these Applicants.”

22. The judgment of Bombay High Court of ***Mulji Umershi*** (supra) is squarely applicable to the present proceeding. Paragraph No.19 of the said judgment reads as under:-

19. In my view, in suitable cases, the Court is not powerless to pass appropriate order for appointment of receiver without any application by any of the parties while rejecting the application for temporary injunction. Such power of course has to be exercised sparingly and in exceptional cases where dismissal of an application for grant of temporary injunction may lead the parties to take law in their own hands and use their own devices either for protection of unlawful possession of recent origin or for gaining possession or such like circumstances. There is no impediment put by the Code of Civil Procedure in passing such order to prevent the ends of justice being defeated. Such order may be imminently required to be passed also so that possession may be made over to that party who is prima facie entitled to possession but is deprived by unlawful conduct or illegal act of the

other party. An appointment of receiver can be made on the application of either parties to the litigation as well as suo motu and therefore, absence of application shall not preclude the Court from passing such order if it is just and convenient. The cases may be varied and many. A party may not have any right to the property and still comes in possession of the property unlawfully and illegally which may be of recent origin and on that basis may seek to protect his possession by filing suit for injunction and by making an application for temporary injunction. The Court may find that such person has no title, right or interest in the property and is not in lawful possession and, therefore, is not entitled to grant of any temporary injunction. To avoid grave situation where the parties may take law in their own hands even while temporary injunction has been refused, in the absence of any application, the Court may make an order of appointment of receiver. Such exceptional order is permissible under law to prevent larger mischief if it is just and convenient in the facts and circumstances of the case. There is nothing wrong if by taking such recourse the plaintiff who has unlawfully come in possession recently is dispossessed during pendency of suit. In suitable and appropriate case, if the trial Court appoints the receiver while rejecting the application for temporary injunction, it cannot be said that such power is without jurisdiction. I find myself in respectful disagreement with the abstract proposition of Madras High Court in Sri Narayan Dossu Varu (supra) that in a suit for injunction it is not open to the Court to appoint a receiver. The view of Allahabad, Travancore, Cochin and Andhra Pradesh High Courts in the cases referred hereinabove appear to be more sound and to which I fully agree.”

23. So also, this Court had passed an order of status-quo. The parties to the writ petition are bound by the status-quo order passed by this Court. Hence, the petitioner herein (licensee) could not have handed over possession of the suit premises to the respondent nos.3 and 4 -Trust. In my view, therefore, a case is made out by the applicants herein (licensor) of appointing a Court Receiver in the present proceedings pertaining to the suit premises and the Court Receiver should take over the possession of the suit premises from the respondent nos.3 and 4 -Trust and hand it over, back to the applicants herein (licensors).

23.1 The petitioner has admitted that he made a *bonafide* mistake that there being no stay granted by this Court has handed over the possession of the suit premises to the respondent nos.3 and 4 – Trust. The petitioner has agreed that a receiver can be appointed in the present proceedings. The petitioner has also admitted that the license fees deposited by him in this Court can be handed over to the applicants herein. Therefore, according to me,

it is in the interest of justice that the Receiver of the suit premises be appointed.

23.2 Therefore, from the Court, first status quo order is obtained and during the pendency of the status quo order, the possession of the suit premises was handed over to the respondent nos. 3 and 4 by obtaining the collusive order in Regular Civil Suit No. 69 of 2023.

23.3 Bombay High Court in the judgment of ***Govinda Kamable*** (supra) has interpreted the meaning of “stay meantime”, means stay upto disposal of Appeal. Paragraph No.12 of the judgment reads as under:-

“12. In view of this controversy, the question is whether the possession should be restored to the Appellants. Before I consider this question, it is necessary to consider the main controversy whether the stay granted by this Court was operative only till the returnable date i.e. 9th December 2002, or it was to continue till disposal of the Civil Application or till further orders. The first part of the order records that the notice is issued to the Respondents and 9th December 2002 is fixed as the returnable date of the notice. From the plain reading of the order, it is very clear that the order of ad-interim stay

was not limited to any particular date. The first part of the order directs issuance of the notice to Respondents and it is ordered to be made returnable on a particular date. It is further stated that in the meanwhile ad-interim exparte relief is granted. It is crystal clear from the order that the intention of this Court was to issue notice and to grant stay in the meanwhile. The phrase "in the meanwhile" is used in the order granting stay. The dictionary meaning of the word meanwhile is "till happening of a particular even" or "until something expected happens". When the stay was to be operative in the meanwhile, it was to operate upto happening of a particular event. The said event was hearing of the application after service of notice to the Respondents. Whenever this Court intends to grant ad-interim relief limited to a particular date, it is always mentioned in the order very specifically that the ad-interim relief will be operative till a particular date. When this Court issued notice and granted ad-interim relief in the meanwhile, it was obviously intended that the ad-interim relief will operate till the application was heard by this Court after service of notice. When this Court makes notice returnable on a particular date, it cannot be argued that the date mentioned in the notice is the date on which the application will be positively heard. The returnable date mentioned in the order is the returnable date fixed for the notice. It is a date fixed for appearance of the parties.

It is not necessary that on the returnable date fixed by this Court, the case appears on the Board. When this Court issued notice to the Respondents and granted ad-interim relief "in the meanwhile", is obvious that the ad-interim relief was to operate till the Court heard the parties on the basis of the notice issued or till order of stay was specifically vacated by this Court. Whenever, the Court intends that the ad-interim relief will operate till the returnable date, it is specifically mentioned in the order that ad-interim relief will operate upto a specific date or till the returnable date of notice. When ad-interim relief is granted "in the meanwhile" after issuance of notice to the Contesting Party the said relief continues to operate until the event of hearing of the Application. The order cannot be read to mean that the interim relief is operative only till the returnable date of the notice.

24. Mr.Khan submitted that even the prayer clause (f) can be granted and there is nothing to prosecute. Prayer (f) reads as under:-

“this hon’ble Court be pleased to stay the further proceedings in Regular Civil Suit No.1 of 2022 filed by Petitioner in the court of Ld. C.J.J.D. Mahableshwar till the disposal of the present application. “

25. Mr.Khan submitted that the petitioner had already complied with the relief as sought in prayer clause (b) of

the interim application. Prayer (b) reads as under:-

“Pending the hearing and final disposal of the present writ petition no.13693 of 2022, this hon’ble Court be pleased to direct petitioners to pay to the Applicants a sum of Rs.23,00,000/- being outstanding fees under the Leave and Licensee agreement dated 5th March 2021, failing which the petitioners may be directed to be detained in civil prison.”

26. The petitioner has deposited a sum of Rs.25,70,000/- in Court towards license fees, the said amount being license fees as per leave and license agreement. I am of the view that the said amount deposited, be permitted to be withdrawn by the applicants-licensors herein.

27. The judgments referred on behalf of the respondent nos.3 and 4 – Trust are not applicable to the present proceedings as I have narrated above the facts in the present proceedings are quite different.

27.1. In ***Cotton Corporation*** (supra), the Bank had filed suit against Cotton Corporation as defendant No.1, and Bank’s Branch Manager, as defendant no.2, praying for a declaration that the acceptance of the Bill of Exchange by

defendant no.2/Manager on behalf of Bank was null and void. In this suit Bank preferred Interim Application, against Cotton Corporation from enforcing any claim whatever in any form or from relying on or giving effect to the Bill of Exchange involved in the dispute for the purpose of any suit or other proceedings against the Bank. Supreme Court upheld the findings of Single Judge of High Court, declined to grant any temporary injunction.

27.2 Though law as enumerated in *Anil Kumar* (supra) and *K. Sivaramaiah* (supra) is a settled law, however the same is not applicable to the present proceedings, as in the present proceeding, there was an order of status-quo to be maintained by parties, so also the possession was handed over in Rent Act eviction suit.

Contempt Proceedings

28. There was status-quo order granted by this Court. The writ petition was scheduled to come up before this Court on 15 January 2024. I had issued an office circular on 12 January 2024 which stated that matters in which a

status-quo order is granted by this Court and which are on board and do not reach, and those matters in which status-quo order is granted by this Court and for some reasons the matters are not on board, the status-quo/stay order granted earlier will continue. In my view, the status-quo order subsisted in the present proceedings on the day the petitioner (licensee) by way of consent terms handed over the possession of the suit premises to respondent nos.3 and 4 – Trust. I have already held that by way of consent terms under a Rent Act eviction suit possession of suit premises can't be handed over to landlord. Hence, according to me, a case is made out of initiating contempt proceedings against the original petitioner (licensee).

28.1 The judgment referred by Mr. Khan, are on the issue of contempt. In the present proceedings in view of the facts as discussed above I am of the view that the petitioner has willfully disobeyed the direction of this Court.

29. In the present proceedings it is so called Waqf/Trust who has filed one suit challenging the Notification issued

by the Municipal Council and another suit filed by Waqf for eviction under the Maharashtra Rent Act and the third suit filed by petitioner-licensee herein for injunction, therefore there is no question of bar of suit under the Waqf Act.

30. Hence, Interim Application is disposed of with following directions.

31. Interim application is partly allowed with following directions :-

(a) Pending the hearing and final disposal of this writ petition, the Nazar of Civil & Criminal Court, Mahabaleshwar, is appointed as a Receiver of the suit premises being all that piece and parcel of the land bearing CTS No. 172 in Final Plot No. 169 in TP Scheme No. 3 at Panchgani Taluka Mahabaleshwar, District Satara admeasuring 3969 square meters along with structures standing thereon known as 'Hotel Ambassador' and to take possession of suit premises and thereafter handover possession to

the applicants herein (Mr.Eliyas @ Samir Ahmed Hingora and Mr.Motiwala Tanvir Mohammad),as agent of the Receiver.

(b) As the possession of suit premises is being taken over by the Receiver and is being handed over to the applicants herein (Mr.Eliyas @ Samir Ahmed Hingora and Mr.Motiwala Tanvir Mohammad), the withdrawal of R.C.S. No.69 of 2023 (Eviction Suit under Rent Act) stands quashed and set aside and RCS No.69 of 2023 stands revived and is taken back to the file and the same to be decided on its own merits after hearing all the parties. The hearing of R.C.S. No.69 of 2023 (Eviction Suit under Rent Act) is hereby expedited and to be decided by the Civil Judge (Junior Division), Mahabaleshwar within a period of one year from today. Parties will co-operate in the hearing of the suit and will not

seek unnecessary adjournments.

(c) The hearing of the Regular Civil Suit No. 1 of 2022 filed by the petitioner before the Civil Judge (Junior Division), Mahabaleshwar is expedited and the same to be decided within a period of one year from today and the same to be decided on its own merits after hearing all the parties. The pursis filed by petitioner for withdrawal of RCS No.1 of 2022 stands disposed of.

(d) The applicants herein (Mr.Eliyas @ Samir Ahmed Hingora and Mr.Motiwalla Tanvir Mohammad), to maintain accounts of the business conducted of “Hotel Ambassador” and preserve the books of account till further directions of this Court.

(e) The amount of Rs.25,70,000/- deposited by the petitioner (Mr.Shakir Abdul Latif Pipi) is allowed to be withdrawn by the applicants herein (Mr.Eliyas @ Samir Ahmed Hingora and Mr.Motiwala Tanvir Mohammad) being the licence fee.

(f) Since the petitioner (Mr.Shakir Abdul Latif Pipi) has willfully and intentionally disobeyed the directions of this Court by handing over possession of suit premises to the respondent nos.3 and 4-Trust, has thereby committed civil contempt of *status-quo* order. **ISSUE** contempt notice to the petitioner (Mr.Shakir Abdul Latif Pipi) having his address at Flat No. 3A, 3rd Floor, A1 Madina Building, Jacob Circle, Agripada, Mumbai – 400 011 under Rule 9 (1) Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960, returnable on

18 June, 2024. The petitioner (Mr. Shakir Abdul Latif Pipi) will remain present in this Court on 18 June, 2024, during the hearing and on each date of hearing till the proceedings are finally disposed of by order of this Court.

32. At this stage, Ms. Gonsalves appearing for the Respondent no.3, 4 and Mr. Khan appearing for the Original Petitioner seek s`tay to the execution of this Order. Ms. Kothari for t he Applicant has opposed the request made by them. Request made by Ms. Gonsalves and Mr. Khan is hereby rejected.

[RAJESH S. PATIL, J.]