

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

FA No. 310 of 2014

**Radhika Singh
-Versus-
Tapas Dutta**

With

FA No. 311 of 2014

**Radhika Singh
-Versus-
D.I. Taxcon Services Private Limited**

For the appellant : Mr. Abhrajit Mitra, Sr. Adv.
Mr. Suddhasatva Banerjee,
Mr. Dipendra Nath Chunder
Mr. Sourojit Dasgupta,
Mr. Dhruv Chaddha

For the respondent
in FA No. 310 of 2014 : Mr. Tapas Dutta (in person)

For the respondent
in FA No. 311 of 2014 : Ms. Ajeya Mitra

Heard on : 02.12.2025

Reserved on : 02.12.2025

Judgment on : 09.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeals arise out of judgments passed in analogous suits, both for eviction of licensee, in respect of different parts of the same premises, at the behest of the plaintiff. Since the facts of both cases are similar, the appeals have been taken up for hearing together and are being disposed of analogously.
2. The geneses of the suits, from which the appeals arise, are two agreements for Leave and Licence, both dated August 18, 2005, entered into between NICCO Corporation Limited, the original owner of the suit premises, and the respective defendants. The terms of the deeds were identical. By the impugned judgments, which are almost exactly identical, the learned Trial Judge dismissed both suits primarily on the ground that since admittedly the respective defendants have never been in exclusive possession and/or control over the demised premises, by conduct, the defendants showed their intention to have surrendered the possession of the premises to the plaintiff-Company and were not further willing to renew the terms of licence. On such premise, the learned Trial Judge construed that the plaintiff-Company had taken over possession of the suit premises and, as such, there was no cause of action for filing the suits and/or to claim damages. Thus, both suits were dismissed *ex parte* against the defendants.
3. At the initial stage, the defendants filed applications under Order VII Rule 11 of the Code of Civil Procedure (CPC) on the ground that the City Civil Court, where the suits were instituted, did not have jurisdiction to hear the suits. As per the defendants, it was the Presidency Small Cause Court at

Calcutta which had jurisdiction to entertain the suits. The said applications under Order VII Rule 11 of the Code being rejected, revisional applications were preferred, which were dismissed for default. Restoration applications were filed which, as per submission of the defendants/respondents, are still pending.

4. However, subsequently, the defendants did not contest the suits, for which those were heard *ex parte* and ultimately dismissed.
5. During pendency of the appeals, the original plaintiff/appellant, namely NICCO Corporation Limited, went into liquidation and one Ms. Radhika Singh purchased both the properties in a liquidation sale. The said Ms. Radhika Singh, having applied under Order XXII Rule 10 of the CPC, was substituted as appellant in both the appeals.
6. Learned senior counsel appearing for the appellant argues that the impugned judgments are bad in law, as the learned Trial Judge proceeded on the premise that there was no cause of action since admittedly the defendants did not have exclusive possession or control of the premises. It is submitted that merely because the defendants/respondents have no exclusive possession or control, it cannot be said that the physical possession of the suit premises was handed over to the plaintiff. Rather, such factors indicate that the defendants were licensees in respect of the premises and, as such, the eviction suits were very much maintainable.
7. It is argued that the learned Trial Judge conclusively determined, while rejecting the applications under Order VII Rule 11 of the Code, that the suit was maintainable before the City Civil Court at Calcutta in view of the bar under Section 19(d) of the Presidency Small Cause Courts Act, precluding

the Small Cause Court at Calcutta from taking up suits for possession of immovable property.

8. Thus, the question of jurisdiction cannot now be reopened, particularly since the same was not raised before the Trial Court at the hearing of the suit after dismissal of the applications for rejection of the plaints.
9. Learned senior counsel next argues that the substituted appellant, being the purchaser of the suit properties in liquidation sale, automatically stepped into the shoes of the original plaintiff. Upon her application under Order XXII Rule 10 having been allowed, the question of her *locus standi* cannot now be reopened.
10. It is further submitted that neither any challenge before a superior forum nor any review application was filed in respect of the order allowing the application under Order XXII Rule 10 and, as such, the said issue is a closed chapter.
11. Learned senior counsel argues that since all the material evidence is before this court, which is the first appellate court, it ought to decide the suits on merits instead of unnecessarily remanding the same to the Trial Court.
12. Submitting on the merits of the case, it is argued by the appellant that Clause 14 of the Original Leave and Licence Agreements, which were for a period of 11 months, categorically spelt out that nothing in the deeds shall be construed to mean that the defendants were tenants under the plaintiff. The same provision was repeated in the two subsequent renewals of the Leave and Licence Agreements on the same terms and conditions, thereby continuing the jural relationship between the parties in the capacity of licensor-licensee.

- 13.** Furthermore, it is argued that from the Leave and Licence Agreements themselves, it would be evident that the plaintiff retained the right to enter into possession of the premises at any point of time. Hence, the defendants never had exclusive control or possession of the subject premises.
- 14.** It is further contended that the provision in the Agreements to give three months' notice for termination of the contract was applicable to the licensee and not the licensor. Thus, there was no fetter at any point of time on the licensor to terminate the agreements.
- 15.** It is highlighted that the licensees were permitted to install only electricity sub-meters under the licensor, which indicates that exclusive control of the property was never given to the licensees. Also, the water supply, lift facilities and toilet enjoyed by the licensees were kept common, which goes on to show that there was no exclusivity in the enjoyment of the property on the part of the licensees.
- 16.** It is next contended by the appellant that as per Clause 4 of the Original Leave and Licence Agreements, the security deposit of Rs. 42,240/- was refundable interest-free on the expiry of the term of the licenses and on getting back vacant possession of the office-space from the licensee. The licensor/plaintiff, it is submitted, refunded the security deposits upon expiry of the licenses by tendering cheques for the corresponding amounts, which were encashed by the licensees. Thus, it is an admitted position that the licenses have expired.
- 17.** Learned senior counsel further contends that despite the licensees having deposited rent and obtained orders under Sections 27 and 36 of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the 1997")

from the Rent Controller, those did not conclusively determine that the licensees were tenants under the plaintiff.

18. While controverting the reliance placed by the respondents on *Ayan Chatterjee and Ors. v. Future Technology Foundation Inc. And Ors.*, reported at AIR 2005 Cal 295, it is submitted that a challenge was preferred against the said order before the Supreme Court where it was observed by the Hon'ble Supreme Court that the findings recorded in the abovementioned Division Bench judgment of this court, while deciding interlocutory proceedings, were *prima facie* in nature and their effect would remain confined to the disposal of the interlocutory proceedings and would not affect and come in the way of the disposal of the suits on merits in any manner. Thus, the said judgment of the Division Bench of this Court is not binding at all as a precedent.
19. In support of such contention, the judgment of the Hon'ble Supreme Court dated April 18, 2017 passed in the matter is cited.
20. Learned counsel for the respondent in FA No. 311 of 2014 and the respondent, appearing in person with the leave of Court in FA No. 310 of 2014, contend that the order allowing the application of the present appellant under Order XXII Rule 10 of the CPC can be reopened by this Court under Article 215 of the Constitution of India, as a court of records.
21. The respondents cite *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported at AIR 2005 SC 540 in support of such contention. It is further argued that the application under Order XXII Rule 10, having been filed after an inordinate delay, ought to have been dismissed. In support of such proposition, the respondents cite the following judgments:

- (i) (2021) 12 SCC 812 [*Jagadish v. State of Karnataka and Ors.*];
- (ii) (2020) 17 SCC 284 [*Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe*]; and
- (iii) (2018) 1 SCC 271 [*Lynette Fernandes v. Gertie Mathias since Deceased by L.Rs*]

- 22.** The respondents rely on *Ayan Chatterjee (supra)*¹, where the tests for determination of whether the relationship between the parties is that of lessor-lessee or licensor-licensee were laid down by relying on *Associated Hotels of India Limited v. R. N. Kapoor*, reported at (1960) 1 SCR 368.
- 23.** By taking the court through different clauses of the Leave and Licence Agreements, it is submitted that all such tests are satisfied to show that the jural relationship between the parties was that of a lease and not a licence. It is submitted that the clauses of the lease deeds clearly contemplate that those were determinable only at the instance of the licensees. Thus, the plaintiff did not have the right to evict the so-called licensee prior to the expiry of the tenure of the lease period.
- 24.** Moreover, independent sub-meter and exclusive user of the premises was given to the defendants/respondents, which is evident from the agreements themselves. Furthermore, on applications made by the tenants, the Rent Controller passed orders under Sections 27 and 36 of the 1997 Act.
- 25.** The order under Section 27 was challenged before this Court. However, the plaintiff/appellant was granted liberty to move the Land Reforms and Tenancy Tribunal, since the 1997 Act came within the ambit of “specified Acts” under the Land Reforms and Tenancy Tribunals Act, 1997. However,

¹. *Ayan Chatterjee and Ors. v. Future Technology Foundation Inc. And Ors.*, reported at AIR 2005 Cal 295

such leave was not availed of by the plaintiff, thereby permitting the said order to attain finality.

- 26.** The order under Section 36 of the 1997 Act was set aside in review, against which the Tribunal was moved, which challenge was ultimately dismissed for default.
- 27.** It is argued that since rent control deposits were made by the defendants/respondents with the Controller in respect of the suit premises and such orders were passed by the Controller, the defendants/respondents were conclusively accepted as tenants of the premises.
- 28.** The respondents next contend that the order under Order XXII Rule 10 of the CPC is open to challenge. The said application was made by the substituted appellant long after three years from purchase of the property by the substituted appellant in liquidation sale. It is argued that the rigours of Article 137 of the Constitution of India are applicable, for which several judgments are cited, as discussed above.
- 29.** The respondents rely on *Mansukhlal Dhanraj Jain and others v. Eknath Vithal Ogale*, reported at AIR 1995 SC 1102 and *Ranjit Kumar Bose and another v. Anannya Chowdhury and another*, reported at AIR 2014 SC 1534 in support of the proposition that the Presidency Small Cause Court at Calcutta, and not the City Civil Court, had the jurisdiction to take up the eviction suits against licensees/tenants. It is further submitted that the pecuniary jurisdiction of the Small Cause Court was increased under Schedule IV of the governing statute with effect from July 9, 2009, that is, on the date of institution of the suits before the City Civil Court. Hence, as

on that date, the Presidency Small Cause Court had pecuniary jurisdiction as well.

30. By citing *Chandra Bai (Dead) through Legal Representatives v. Khandalwal Vipra Vidyalaya Samiti and another*, reported at (2016) 12 SCC 534, the respondents argue that the validity of the assignment or demise of a property is not finally decided at the order XXII Rule 10 stage but is open to be argued at the final hearing of a suit/appeal. Thus, despite the order substituting the present appellant, the said question is required to be decided finally by this Court at the final hearing of the appeal.
31. The respondents further cite *Vinay Eknath Lad v. Chiu Mao Chen*, reported at (2019) 20 SCC 182, in support of the argument that the tenant/licensee can challenge the derivative title of landlord/licensor. Since the acquisition of title by the present substituted appellant had itself been challenged before the appropriate forum in connection with the liquidation proceedings, during subsistence of the challenge, the appellant has not acquired any right to proceed with the appeals.
32. Lastly, it is contended that the contention of the appellant that security deposit has been returned to the defendants/respondents is untrue. Although communication was made to the respondents regarding tendering a cheque of the amount of security deposit, only the said covering letter was received by the respondents and not any cheque accompanying the same. It is submitted that the appellant itself encashed the cheque. Rather, the respondents have offered the amount of security deposit to the appellant.

33. Thus, it is argued that the appeals ought to be dismissed, since the learned Trial Judge was justified in coming to the conclusion that there was no cause of action for the suits.

34. Upon hearing learned counsel for the parties, the following issues fall for consideration in the present appeal:

- (i) Whether the impugned judgments are valid in the eye of law;**
- (ii) Whether the matters should be remanded to the Trial Court for re-adjudication on merits;**
- (iii) Whether the substituted appellant has the *locus standi* to prosecute the appeals;**
- (iv) Whether the City Civil Court had the jurisdiction to decide the suits;**
- (v) Whether the jural relationship between the parties is that of a lease or licence;**
- (vi) Whether the adjudications by the Rent Controller are conclusive.**

35. The above issues are answered as follows:

(i) Whether the impugned judgments are valid in the eye of law

36. The Trial Court proceeded on the premise that since the plaintiff has averred that the defendants have no exclusive possession or control of the suit property, it was admitted that the plaintiff was in possession and, as such, the suit was not maintainable.

- 37.** However, such conclusion is absurd, to say the least. It is well-known that one of the essential ingredients of a licence is that the licensee does not have any exclusivity of possession or control over the suit premises and such control is retained by the licensor. Hence, such pleading is a necessary part of the averments in the plaint in any suit for eviction of licensee. Rather, if such ingredients are not proved, the court cannot come to a finding as to licence.
- 38.** Mere absence of exclusive possession or control does not automatically lead to the conclusion that the defendants do not have any physical possession of the property. The primary ingredient in a licence is that the licensee is in physical possession of the property for the purpose of user of the same, without having any exclusivity in such possession or total control of the premises. Such averment cannot, thus, lead to the extreme conclusion that the plaintiff is in possession of the property and there is no cause of action for the suit. If it were to be so, there would be no necessity for the plaintiff to take the trouble of filing the suit but the plaintiff could just walk into the suit premises without taking the trouble of embroiling itself in litigation.
- 39.** The learned Trial Judge also came to the secondary conclusion, by default, that the plaintiff-Company has taken over possession by putting lock and key, which is not borne out by the pleadings or evidence at all. The pleadings in the plaints in both the suits as well as evidence led by the plaintiff merely show that the plaintiff has deployed security guards who have control over the entry and exit to the premises, thus indicating that the control of the premises vests with the plaintiff. Such evidence does not necessarily mean that the defendants have no possession whatsoever but

only hits at the exclusivity of the possession and/or control of the defendants in respect of the suit premises.

- 40.** Hence, the impugned judgments are not only cryptic but perverse, the learned Trial Judge having taken a view contrary to that of a reasonably prudent person on the facts of the case. Hence, the impugned judgments are not valid in the eye of law.

(ii) Whether the matters should be remanded to the Trial Court for re-adjudication on merits

- 41.** The obvious question which then arises is whether, in view of the learned Trial Judge having not adverted to the merits of the case and/or the governing law at all, the matter should be remanded as a whole to the Trial Court. Rules 23 and 23-A of Order XLI of the CPC contemplate open remand, either where a suit has been disposed of on a preliminary point or otherwise. On the other hand, Rule 25 of Order XLI speaks about limited remand, if necessary upon reframing of issues, directing the Trial Court to return findings and evidence on certain issues, upon which the matter is returned to the Appellate Court.
- 42.** However, all the above Rules are governed by the umbrella provision of Order XLI Rule 24, CPC, which provides that where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court, if necessary after re-settling the issues, may finally determine the suit, notwithstanding that the judgment of the Trial Court has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

- 43.** In the present case, the suits proceeded *ex parte* upon the defendants having not appeared at subsequent stages of the same. Thus, remanding the matter to be re-adjudicated would open up the opportunity to the defendants to file their defences, which right was lost by them in the first place.
- 44.** More importantly, the relevant evidence, being the deeds-in-question as well as the oral evidence of the plaintiff's witness, are already on record, sufficient to adjudicate the matter without an unnecessary remand.
- 45.** Furthermore, the suits were instituted on June 9, 2009, that, is 16 years back. A remand at this stage would unnecessarily prolong the agony of the parties.
- 46.** Rule 24 of Order XLI is to be read in conjunction with Rule 33 of the said Order, which grants powers to the Appellate Court to pass any decree and make any order which ought to have been passed and to pass or make such further or other decree or order as the case may require, notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties. Thus, the powers of the Appellate Court are wide enough to advert to all facets of the disputes without an unnecessary remand.
- 47.** Hence, we choose to adjudicate the appeals ourselves on merits, since the evidence on record, in our opinion, is sufficient in the facts of the cases and the first appellate court is the last court of facts.

(iii) Whether the substituted appellant has the locus standi to prosecute the appeals

- 48.** As per *Chandra Bai (Dead) through Legal Representatives (supra)*², the validity of an assignment or demise in favour of a proposed substituted appellant may not be conclusively decided at the time of adjudication of an application under Order XXII Rule 10 of the CPC but has to be finally decided at the hearing of the appeal.
- 49.** Going by such proposition, we now take up the said issue for final adjudication irrespective of the substitution of the appellant at the interlocutory stage. In such view of the matter, the question of power of correcting its own records by a Constitutional Court, as conferred under Article 215 of the Constitution of India and/or in terms of *Dattaraj Nathuji Thaware (supra)*³, is rendered unnecessary.
- 50.** At the outset, we find that *Jagadish (supra)*⁴ pertains to an application being filed three years after the cause of action arises. However, in view of the appeal being a continuous process and there being previous challenges to the acquisition of title by the substituted appellant before different forums, the bar under Article 137 of the Limitation Act, is not applicable, more so, since the right to continue with the appeal by the owner of a property against a licensee is a continuous right and arises *de die in diem*.
- 51.** Moreover, the rigours of Order XXII Rule 9 of the CPC are not applicable in respect of Order XXII Rule 10. As such, the concept of abatement does not

2. *Chandra Bai (Dead) through Legal Representatives v. Khandalwal Vipra Vidyalaya Samiti and another*, reported at (2016) 12 SCC 534

3. *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported at AIR 2005 SC 540

4. *Jagadish v. State of Karnataka and Ors.*, reported at (2021) 12 SCC 812

apply in a case of devolution of interest under Order XXII Rule 10 of the Code during pendency of the appeals.

52. *Ramesh Nivrutti Bhagwat (supra)*⁵ and *Lynette Fernandes (supra)*⁶ pertain respectively to applicability of Article 137 of the Limitation Act to proceedings for grant of probate and revocation of probate, which are not applicable in the present case.
53. Hence, the respondents' argument that the application for substitution under Order XXII Rule 10 was barred under Article 137 of the Constitution is not tenable in the eye of law.
54. Insofar as the acquisition of title of the substituted appellant is concerned, the said appellant purchased the suit property in liquidation sale which has not been set aside by any competent court or forum at all. Thus, the substituted appellant has acquired the right to prosecute the appeals by stepping into the shoes of the original plaintiff/appellant. Hence, we come to the conclusion that the substituted appellant has the *locus standi* to prosecute the appeals.

(iv) Whether the City Civil Court had the jurisdiction to decide the suits

55. While deciding this issue, we have to keep in mind that applications under Order VII Rule 11 of the CPC were rejected by the Trial Court on the self-same ground, thus, conclusively deciding the issue. The revisional applications preferred against the same were dismissed for default. We are

5. (2020) 17 SCC 284 [*Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe*]

6. (2018) 1 SCC 271 [*Lynette Fernandes v. Gertie Mathias since Deceased by L.Rs*]

apprised that the restoration applications in that regard are still pending. Thus, as on date, the orders rejecting the applications under Order VII Rule 11 of the Code subsist. Hence, the principle of *res judicata* operates and the issue cannot be reopened at a subsequent stage of the proceeding.

- 56.** However, even granting the benefit of Section 105(1) of the CPC to the respondents, permitting them to challenge perceived errors and irregularities in the orders dismissing the applications for rejection of plaint (since the revisional applications against such orders were dismissed for default and not on merits) and taking up the issue for adjudication, we are unable to convince ourselves that the City Civil Court did not have jurisdiction to entertain and decide the suits.
- 57.** A composite reading of the provisions of the Presidency Small Cause Courts Act, 1882 (for short, “the 1882 Act”), as amended till date, prompts us to so observe.
- 58.** Section 19(d) of the said Act categorically debars the Small Cause Court from entertaining suits for recovery of immovable property, without any qualification.
- 59.** Rule 18(2), as amended in West Bengal, provides that notwithstanding anything contained in Section 19 or sub-section (1) of Section 18, the Small Cause Court shall have jurisdiction to try all suits and proceeding for eviction of a tenant under Chapter III of the West Bengal Premises Tenancy Act, 1956 (in brief, “the 1956 Act”) as a civil court of ordinary original jurisdiction. Even extending such provision to the 1997 Act, which is the successor statute of the 1956 Act, the present suits were for eviction of

licensees, and not tenants under the 1997 or the 1956 Act. Hence, the exceptions carved out in Section 18(2) are not applicable.

- 60.** Heavy reliance has been placed by the respondents on Section 41 of the 1882 Act to argue that suits for eviction of tenants and licensees can be filed in the Small Cause Court.
- 61.** To adjudicate upon such issue, the provisions of Chapter VII of the 1882 Act are to be looked into. The caption of the said Chapter is “Recovery of Possession of Immovable Property”. A conjoint reading of Sections 41 to 49, which come within the ambit of Chapter VII, unambiguously shows that the said provisions are a complete code in themselves and are in the nature of summary proceedings. A proceeding for eviction as contemplated under Sections 41 to 43 of the 1882 Act is independent and separate remedies than a regular civil suit for eviction, operating on a parallel footing with regular eviction suits.
- 62.** The summary proceeding contemplated therein cannot be equated with a regular suit for eviction/for possession of immovable property, which the Small Cause Court is barred from taking up under Section 19(d).
- 63.** Section 41 provides for issuance of summons against persons occupying property without leave. Section 43 categorically provides that only if the occupant *does not appear at the time appointed and show cause to the contrary*, the applicant shall, *if the Small Cause Court is satisfied that he is entitled to apply under Section 41*, be entitled to an order addressed to a bailiff of the court directing him to give possession of the property to the applicant.

- 64.** Hence, by initiating a summons proceeding under the said provisions, the plaintiff only gets an order of possession if the occupant does not appear and show cause to the contrary. As opposed thereto, in a regular suit, the plaintiff would have the liberty to have a full-fledged trial on evidence and get a decree upon satisfying the court on the necessary ingredients of the suit.
- 65.** Importantly, under Section 45 of the 1882 Act, any person aggrieved by an application under Section 41 may bring a suit against the applicant for the recovery of compensation for any damage which he has sustained by reason of error, defect or irregularity in such mode of proceeding.
- 66.** Section 46 further provides that *nothing in the said provisions shall be deemed to protect any applicant* under Section 41, obtaining possession of any property under the said Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order entitled to the possession in such property. Furthermore, when the applicant was not, at the time of making such application, entitled to the possession of such property, the application under Section 41, though no possession is taken thereunder, shall itself be *deemed to be an act of trespass committed by the applicant against the occupant*.
- 67.** Thus, although the initiation of a summary proceeding under Section 41 might give expeditious relief to the applicant, such expediency comes at a heavy risk, which is not only restricted to the failure of the application upon the occupant showing some cause but the applicant running the risk of

being sued for compensation and himself being declared to be a trespasser in respect of the property if the proceeding fails.

- 68.** Hence, the trappings of a summary proceeding have serious consequences, which a person seeking eviction of his licensee may not be prepared to choose.
- 69.** Moreover, throughout Chapter VII, the initiator of the proceedings is defined as an “applicant” and the proceeding as an “application”, instead of “plaintiff” and “suit” respectively, thus clearly indicating that such a proceeding is not a regular suit instituted by a plaintiff but an alternative summary proceeding available to a landlord/licensor parallel to a regular suit for eviction.
- 70.** Hence, on a conjoint reading of all the relevant provisions of the 1882 Act to decipher its scheme, it is palpably clear that whereas Sections 41 to 43 of the 1882 Act provides for a summary summons action for eviction, Section 19(d) of the said Act clearly debars a regular suit for possession of immovable property being instituted in the Presidency Small Cause Court at Calcutta.
- 71.** Thus, it is clear that the remedies of a regular suit and the summary procedure under the 1882 Act are parallel proceedings, providing an option for the licensor to elect between the two remedies. Whereas, in case of a summary remedy being elected, a summons action can be initiated under Section 41 of the 1882 Act, if the licensor chooses to go for a regular suit for eviction, which has completely different and wider trappings than such summary summons action, the regular suit is taken outside the ambit of the 1882 Act and goes within the domain of a regular civil suit, maintainable

before the City Civil Court at Calcutta, which otherwise has jurisdiction as a civil court to take up such suits.

- 72.** The argument of the respondents that, simultaneously with the initiation of the suit, the 1997 Act was amended to bring the pecuniary jurisdiction within the purview of the Small Cause Court, is not attracted at all, since the same operates in respect of suits for eviction of tenant instituted under the 1997 Act, whereas the present suits are for eviction of licensees (as opposed to tenants) simplicitor, within the blanket powers under Section 9 of the CPC.
- 73.** Section 9 is clear to the effect that the Civil Court has jurisdiction in civil suits by default, unless expressly or impliedly barred by a statute.
- 74.** Seen from such perspective as well, the present suits were very much maintainable before the City Civil Court and not before the Presidency Small Cause Court, particularly since there is no bar in Chapter VII or anywhere else in the 1882 Act to the institution of a regular eviction suit in respect of a licensee before the regular civil court, that is, the City Civil Court at Calcutta.
- 75.** Thus, this issue is decided in favour of the plaintiff/appellant, holding that the City Civil Court had jurisdiction to decide the present suits.

(v) Whether the jural relationship between the parties is that of a lease or licence

- 76.** The core issue is now taken up for hearing. The defendants/respondents rely on certain key provisions of the agreements for leave and licence to

argue that those are in substance tenancy agreements, although styled as agreements for 'leave and licence'.

- 77.** The inclusion of the successors and legal representatives of the parties in the description of parties in the agreements is relied on by the defendants/respondents, apart from the right of the licensees to install sub-meter. The respondents also argue that the right of terminating the licence is vested only on the licensee upon a prior notice of three months. The respondents contend that the said features of the agreements lend them the character of tenancy agreements.
- 78.** However, none of the above ingredients *ipso facto* alter the character of a Leave and Licence Agreement into that of a Tenancy Agreement.
- 79.** Although, by default, a licence does not subsist after the demise of the licensor or the licensee, such jural relationship being temporary in nature, there is nothing in law to absolutely prevent the parties from choosing to include the heirs within the expression of licensor and licensee.
- 80.** Importantly, there are sufficient indicators otherwise in the agreements themselves to show that the jural relationship between the parties was that of a licence.
- 81.** For example, in Clause 3(c) of the agreements, the licensees are permitted to install *sub-meter*, as opposed to an independent electric meter, in their own names, thereby signifying that even the user of a basic amenity like electricity has to be under the aegis of the licensor.
- 82.** In the very second Clause in the agreements after the description of the parties, it is clearly mentioned that the licensor desires to grant licence in respect of its surplus space *for utilising the office space* as described therein.

The purpose of grant of licence has been specifically reiterated twice in the agreements to be “*for utilising for office space*”. Evidently, such language unerringly indicates that the licences were given for the specific purpose for user as office space and did not confer any right, title or interest on the licensees in respect of the immovable properties as such.

- 83.** The mere provision that the licensee would be permitted to terminate the licence with three months’ prior notice does not *ipso facto* exclude the right of the licensor to evict the licensee at will. In fact, the entire tenor of the agreements shows that the relationship contemplated therein was that of a license between the parties. Apart from the amenities and the toilet being common, the basic nature and structure of the building was not permissible to be altered by the licensees without the prior permission of the licensor as per the terms and conditions of the agreement.
- 84.** The licensees, as per Clause 9 of the original agreements, were to permit the licensor or its duly authorised representative to enter upon the demised premises for inspecting the state and condition of the same *at all reasonable times during the period of the Leave and Licence Agreement*. The prior notice for doing so was merely a gesture of civility and did not curtail or take away the blanket right of the licensor to enter into the premises at will at any point of time. Such right of entry of the licensor, conferred by the agreements, operates as anathema to the concept of exclusive possession and control of the licensees.
- 85.** However, all the above arguments are rendered rather academic in nature in view of Clause 14 of the original license agreements, the contents of which

have been repeated in the subsequent two renewals thereof, although under different clause numbers. The said Clause is quoted hereinbelow:

“14. NOTWITHSTANDING ANYTHING CONTAINED HEREINBEFORE nothing in this agreement shall be construed to confer tenancy rights in favour of the Licensee. Parties to this agreement agree that there is no intention to create any tenancy or permanent licence in respect of the said office space. The Licensee has further given an undertaking/assurance that he/she will not claim a tenancy in respect of the said office space at any time and he/she shall vacate and hand over the office space when the licence agreement expires.”

- 86.** It is well-settled that when the language of an agreement is unambiguous and does not leave scope for interpretation, the Literal Rule of Construction has to be followed and neither internal nor external aids of interpretation are required to be deployed. Clause 14 is the umbrella clause and a culmination of all the terms and conditions of the licence agreements and in unambiguous terms clarifies that nothing in the other clauses of the agreements shall be construed to confer tenancy rights in favour of the licensees. It is reiterated therein that the parties agreed that there was no intention to create any tenancy or permanent licence and the licensees gave undertaking as per the said clause that they would not claim tenancy and would vacate and hand over the office space when the agreements expired.
- 87.** In view of the said clause, there cannot be any scope of further doubt that the agreements created licences, and not tenancies.

- 88.** The reliance of the respondents on *Ayan Chatterjee (supra)*⁷ is, as such, rather academic in the context. In the said judgment, *Associated Hotels (supra)*⁸ was reiterated. It was held *inter alia* that the substance of the document must be preferred to the form and the real test is the intention of the parties. Both the said tests enure in favour of the plaintiff/appellant in the present case. Moreover, the documents in the present case do not create any interest in the property and as such are not lease agreements but only permit user of the property for office space. Hence, the legal possession and control remained vested in the owner at all points of time. As evident from the different clauses of the agreements as discussed above, the licensor had the liberty to enter into the premises for inspection at any point of time merely upon a notice. Also, it is the plaintiff case, as established by uncontroverted evidence, that the security of the premises has all along been with the licensor, who has been deploying guards for such purpose, having the key to the premises. Thus, the licensees never had exclusive control or possession in respect of the subject premises.
- 89.** In view of the above considerations, it is clear as daylight that the jural relationship between the parties was that of licensor-licensee and not landlord-tenant.
- 90.** However, the argument of the appellant that the observation of the Supreme Court in *Ayan Chatterjee (supra)*⁷ denudes the Division Bench judgment of this court of value as a precedent cannot be accepted, since the Supreme

7. *Ayan Chatterjee and Ors. v. Future Technology Foundation Inc. And Ors.*, reported at AIR 2005 Cal 295

8. *Associated Hotels of India Limited v. R. N. Kapoor*, reported at (1960) 1 SCR 368

Court merely observed that in the said suit itself, the findings would not be considered to be conclusive.

91. However, merely due to such observation that the findings at the interlocutory stage would not be factually conclusive at the final hearing of the suit, the value of the judgment as a precedent cannot be taken away for the legal propositions and ratio laid down therein.
92. Under Article 215 of the Constitution of India, the records of a court of records, including its judgments, have binding value as precedents and operate as authorities. Thus, the binding value as a precedent of the Division Bench judgment in *Ayan Chatterjee (supra)*⁹ cannot be denied. However, as per our above discussion, even if the tests laid down in the said report are applied, the parties to the instant *lis* are found to be licensor-licensees, not landlord-tenants, inter se; thus, the said citation rather supports the case of the plaintiff/appellant.
93. We also need to go into the veracity of the allegation of the plaintiff/appellant that the security deposit was refunded to the defendants, since the same is a disputed question of fact and has not been convincingly proved before this Court by evidence and, in any event, would be superfluous in view of the conclusions arrived at above.
94. Hence, this issue is decided in favour of the appellant, as we arrive at the finding that the jural relationship between the parties is that of licence.

9. *Ayan Chatterjee and Ors. v. Future Technology Foundation Inc. And Ors.*, reported at AIR 2005 Cal 295

(vi) Whether the adjudications by the Rent Controller are conclusive

- 95.** It is well-settled that the Rent Controller under the 1997 Act is not a civil court and, as such, the decision of the Rent Controller regarding acceptance of rent or granting reliefs under the said Act to a person is not a conclusive determination of the status of the applicants before the Rent Controller as tenants. The exclusive domain of such declaration belongs to the civil court. Hence, since we have adjudicated the respective defendants/respondents in both the appeals to be licensees, the tentative findings of the Rent Controller in that regard are overridden by the conclusions of this Court, which is a civil court of competent jurisdiction, albeit sitting in first appeal. Hence, this issue is also held in favour of the appellant and against the respondents.

C O N C L U S I O N

- 96.** In view of the above discussions, there cannot be any manner of doubt that the learned Trial Judge acted in a perverse manner in dismissing the suits on frivolous grounds. Since this court, sitting in first appeal and being the last court of facts, has come to the conclusion that the jural relationship between the parties is that of licensor and licensees, the plaintiff/appellant is entitled to decrees of eviction of the defendants in both the suits as licensees.
- 97.** Hence, FA No. 310 of 2014 is allowed on contest, thereby setting aside the impugned judgment and decree dated July 15, 2014 passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit No. 2871 of

2009 and granting a decree of eviction in favour of the plaintiff/appellant against the defendant/respondent in respect of the suit premises.

98. Similarly, FA No. 311 of 2014 is allowed on contest, thereby setting aside the impugned judgment and decree dated July 15, 2014 passed by the learned Judge, Seventh Bench, City Civil Court at Calcutta in Title Suit No. 2870 of 2009 and granting a decree of eviction in favour of the plaintiff/appellant against the defendant/respondent in respect of the suit premises.

99. The defendants/respondents in both the appeals are granted 90 (ninety) days' time from this day to deliver up vacant and peaceful possession of the respective suit premises in favour of the plaintiff/appellant in both the suits. In default, the plaintiff/appellant will be at liberty to have the decrees executed in due process of law.

100. There will be no order as to costs.

101. Formal decrees be drawn up separately in both the appeals.

102. Interim orders, if any, stand vacated.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)