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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 508 OF 2016**

Prakash Jivandas Asar ... Appellant

Vs.

Sangli Krishi Utpan Bajar ... Respondents

Samiti (through its Secretary
Maruti Bhaurao Patil) and Others

Mr. S. K. Halwasia a/w. Mr. Keshav Thakur for the Appellant.

Mr. Umesh Mankapure a/w. Ms. Stefy Dias for Respondent No.1.

Mr. Chirag Sonecha for Respondent Nos. 2, 3 and 4 (through VC).

CORAM : GAURI GODSE, J.

DATE : 13th JANUARY 2025

ORDER :

1. Heard learned counsel for the parties. This second appeal is preferred by defendant no. 4 to challenge the concurrent judgments and decrees holding the plaintiff entitled to recover the dues from defendant nos. 1 to 4. The suit was filed for possession and recovery of the suit flat from defendant nos. 1 to 4. Defendant no. 1 is a partnership firm in whose favour the lease was granted by the plaintiff. Defendant nos. 2 to 4 were joined as partners of defendant no.1.

2. Learned counsel for the appellant (defendant no.4) submits that the plaintiff had accepted rent from defendant no. 4 and renewed the licence; however, subsequently the plaintiff refused to renew the licence in the name of defendant no. 4 by unilaterally deciding that the licence fees has to be paid by all the defendants. He submits that defendant no. 2 had filed a suit against the plaintiff and defendant no. 4 for declaration and injunction. However, the said suit was dismissed on merits. He submits that the original partnership was formed by the defendant no. 4's grandfather and subsequently defendant no. 4 continued as sole proprietor as the other partners had expired. He thus submits that when the licence was renewed by the plaintiff in the name of defendant no. 4 in his independent capacity the plaintiff was not entitled to seek recovery of the licence fees from all the defendants. He therefore submits that defendant no. 4's counter claim was erroneously dismissed. He submits that defendant no. 4 alone is entitled to pay the licence fees and continue with the licence. Learned counsel for the appellant therefore submits that the second appeal would raise substantial questions of law on incorrect appreciation of the evidence on record which indicates defendant no. 4's independent right to continue as proprietor of defendant no. 1.

3. Learned counsel for the plaintiff supports the impugned

decree. He submits that defendant no. 4 admitted that there was no document to show dissolution of the partnership. He submits that admittedly the original licence is in the name of defendant no. 1 – firm. He submits that in between though the licence was renewed in the name of defendant no. 4, the same could not be renewed further as there was objection on behalf of the partners. He thus submits that when the original licence is in the name of defendant no. 1- firm, the same cannot be renewed in any individual name in the absence of any document of dissolution of the partnership firm.

4. Learned counsel for the plaintiff further submits that the first appeal was filed by defendant no. 4 claiming to be proprietor of defendant no. 1 and not in his individual capacity. He submits that defendant no. 1 therefore would not be entitled to seek any relief by claiming that defendant no. 1 was a proprietary concern of defendant no. 4. He thus submits that the second appeal does not raise any substantial question of law.

5. To consider the rival submissions made by the parties, I have perused both the judgments. The suit is filed on the ground that defendant no. 1 is the licensee. Defendant no. 4 has contested the suit in his individual capacity by claiming that he is proprietor of defendant no.1. A perusal of the reasons recorded by the trial court

indicates that defendant no.4 admitted that there was no dissolution of the partnership firm. There is no dispute that the original licence is in the name of defendant no. 1- firm.

6. The first appeal is preferred in the name of defendant no. 1 firm stating it to be a proprietary concern represented through defendant no. 4. Defendant no. 4 was added as a partner of defendant no. 1, however defendant no. 1 who claims to be having independent rights on the ground that defendant no. 1 is now converted into proprietary concern has not filed the first appeal in his individual capacity, but has filed the first appeal as well as second appeal by claiming to be proprietor of defendant no. 1.

7. Since there is no dispute that the original licence was in the name of defendant no. 1-firm, the grounds raised on behalf of the defendant no. 4 to claim independent rights cannot be accepted without any supporting evidence that defendant no.1 partnership firm was dissolved. Therefore, the ground raised on behalf of defendant no. 4 that he has independent rights on the ground that defendant no. 1 is now converted as proprietary concern cannot be examined in absence of any document in the name of the proprietary concern, or independently in the name of defendant no. 4.

8. Both courts have accepted the original document in the name of defendant no.1. There is no dispute that defendant no. 1 firm is not yet dissolved. Reasons recorded by both the courts in holding plaintiff entitled to recover the dues from defendant nos. 1 to 4 and dismissing the counter claim would not require any consideration by this court.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]