

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.763 OF 2024**

WITH

INTERIM APPLICATION NO.15211 OF 2024

WITH

INTERIM APPLICATION NO.10412 OF 2025

Rajkumar Nagappa Houshetti,
Age: 57 years, Occu.: Business,
R/at : Hipparga, Taluka North Solapur,
District Solapur.

.....Appellant/Applicant

Vs.

Ganesh Highways,
Through Vinay Nandkishore Baldava
Age: 39 years, Occu.: Business,
R/at: 54/8, Kundan Bungalow,
Jawahar Mala, Samrat Chowk,
Solapur.

.....Respondent

Mr. Abhay Anturkar, i/b. Mr. Tanaji Mhatugade, for the Appellant/
Applicant.

Mr. Pradeep Salgar with Mr. Vaishnavi A. Shelar, for the Respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : 17th NOVEMBER 2025

JUDGMENT :-

1. The Appellant (original plaintiff) takes exception to Judgment and Decree dated 3rd August 2024 passed by District Judge, Solapur in Regular Civil Appeal No.122 of 2023, thereby upholding Judgment

and Decree dated 27th April 2023 passed by Civil Judge, Senior Division, Solapur in Special Civil Suit No.129 of 2017. (Parties are hereinafter referred to as per their original status in suit).

2. It is contention of Appellant/plaintiff that he is owner of land admeasuring 3000 Sq.Mtrs. out of Gat No.18/1/2/1 situated at Hipparga, District Solapur. He has been appointed as franchise of Essar Oil Limited. He has been given retail outlet for distribution of petrol, diesel and other allied petroleum products. The plaintiff has leased out land to Essar Oil Ltd. for running outlet for the period of thirty years vide registered Lease Agreement dated 24th March 2006. Later on, he entered into an agreement dated 6th March 2015 with defendant and leased petrol outlet to him alongwith premises and equipment installed at the site. According to plaintiff, on 17th May 2016, he received notice from Essar Oil Ltd. regarding sale of petroleum products of Hindustan Petroleum from subject outlet. The defendant was questioned as to breach of terms of agreement. According to plaintiff, since June 2016, defendant has not paid remuneration and closed outlet. The plaintiff requested defendant to start petrol pump, however, defendant failed to take necessary steps.

On 14th May 2016, plaintiff issued notice to defendant demanding possession of subject property. However, defendant falsely replied the notice stating that on 20th May 2016 he has already restored possession of subject property to plaintiff. Defendant appeared in suit, filed written statement with counterclaim for recovery of deposit of Rs.5,00,000/- from Plaintiff.

3. In light of the aforesaid pleadings, trial Court framed issues below Exhibit 12 and after considering evidence dismissed suit, whereas allowed counterclaim of defendant for payment of Rs.5,00,000/- alongwith interest @ 7% p.a. from date of suit till realization thereof to defendant.

4. The aggrieved plaintiff filed appeal before District Judge at Solapur, who concurred with trial Court and dismissed the appeal.

5. Mr. Abhay Anturkar, learned Advocate appearing for Appellant would submit that Courts below failed to interpret agreement dated 6th March 2015 entered between Appellant and Respondent and erroneously observed that it was a 'licence' and not the 'lease'. He would further submit that defendant came with a case that he has

handed over possession or surrendered possession of suit property on 20th May 2016, however, failed to substantiate same by leading evidence to that effect. No oral or documentary evidence is led to that effect. On other hand, plaintiff has recorded oral evidence to suggests that defendant was in actual possession of property, even after date of alleged surrender of possession. Since there is no surrender or delivery of possession of suit property to plaintiff, the plaintiff is entitle for decree of amount towards royalty for running petrol pump from June 2016 till decision of suit.

6. Per contra, Mr. Pradeep Salgar, learned Advocate appearing for Respondent supports impugned Judgment and Decree. He would submit that agreement dated 6th Marcy 2015 itself is sufficient to hold that running business was transferred to defendant alongwith land and equipments subject to payment of royalty. There is nothing to suggest that it was a 'lease' as contended by plaintiff. He would submit that the Courts below have concurrently interpreted stipulations in agreement dated 6th March 2015 and rightly concluded that it was a 'licence' and not the 'lease'. He would submit that possession of property was already surrendered to plaintiff. The defendant has clarified same in his reply to notice issued by plaintiff

before institution of suit. Both Courts have concurrently held that subject property was restored in plaintiff's possession on 20th May 2016 and rightly dismissed suit and decreed counterclaim.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that plaintiff instituted Special Civil Suit No129 of 2017 with specific pleading that suit property consist of a petrol outlet of Essar Oil Ltd. The plaintiff was running business of petrol pump under licence of Oil Company and as per agreement dated 6th March 2015 same has been transferred to defendant against fixed remuneration of Rs.85,000/- per month to be paid to Plaintiff. It was specifically agreed that defendant should continue to run petrol pump of Essar Oil Ltd. and shall not deal with business of any other Oil Company. It is further contention of plaintiff that defendant flouted condition and started dealing with sale of petroleum products of Hindustan Petroleum. Eventually, Essar Oil Ltd. issued show cause notice for cancellation of dealership. The aforesaid averments in plaint depicts that business of petroleum pump was transferred to defendant and not leased premises for his use.

8. The stipulations in agreement dated 6th March 2015 also depicts that plaintiff had already leased land to Essar Oil Ltd. for running outlet for a period of 30 years under registered lease agreement dated 24th March 2006, thereafter equipments were installed at site for running petrol pump to be used for sale and exclusive storage of company's products. The aforesaid averments in agreement clearly demonstrate that land in question was already leased to Essar Oil Ltd. by plaintiff and he was licensed for running outlet of said company. It is evident that what was remained with plaintiff was business of petrol pump and same has been latter on entrusted by him to defendant alongwith fixtures, machinery and equipments.

9. Clause 6 of the agreement speaks about remuneration of Rs.85,000/- per month towards business of petrol pump, premises, fixtures, outlet, machinery, etc. with condition that defendant shall exclusively use premises for running petrol pump/retail outlet of Essar oil only. Clause 9 stipulates that defendant shall pay all expenses and charges of electricity and water consumed in the said premises. Clause 11 further stipulates that parties hereto agree that

this agreement of conducting business is granted to defendant on personal basis and he shall not be entitled to transfer,, assign, sub-let or grant any licence in respect of or part with possession of licensed premises or any part thereof. The harmonious reading of aforesaid agreement leaves no doubt that it was an agreement of licence to run the business and not the lease of premises within the meaning of Section 105 of Transfer of Property Act, 1882.

10. The learned Advocate appearing for Appellant endeavours to impress upon this Court that all ingredients of Sections 105 and 106 can be found in terms of agreement. However, this submission cannot countenanced for simple reason that Appellant had already entered into agreement of lease of premises in favour of Essar Oil Ltd. The validity of said lease was for 30 years from 24th March 2006. Eventually, lease hold rights and possession of land continues with Essar Oil Ltd. The Appellant had no authority to transfer premises alone by creating lease in favour of defendant.

11. Apparently, plaintiff was running business of petrol pump under licence of Essar Oil Ltd. after lease of land to said company. He continued to run business of company outlet under their licence.

It is, therefore, clear that Appellant/plaintiff had entered in license agreement of business of petrol pump with defendant on fixed remuneration of Rs.85,000/- per month.

12. So far as handing over of possession of defendant to plaintiff is concerned, the defendant has specifically pleaded that on 20th May 2016, he has handed over physical possession of subject property to plaintiff. Admittedly, there is no documentary evidence regarding actual handing over of possession. However, both fact finding Courts, on appreciation of pleadings and evidence concurrently held that possession of subject property was handed over to plaintiff. In absence of modalities prescribed under agreement regarding handing over of possession, contents of reply notice Exhibit 28 dated 17th May 2017 are relevant. The defendant has specifically contended that he had surrendered possession of petrol pump to plaintiff on 20th May 2016. Thereafter, plaintiff had issued notice asking defendant to continue the business of petrol pump, but does not say anything about surrender or non-surrender of possession of property by defendant. The trial Court in paragraph No.33 of Judgment elaborately dealt with aforesaid aspects and concluded that

possession has been transferred to plaintiff. The Appellate Court concurred with aforesaid findings. plaintiff could not show from reliable material that after 10th May 2016 defendant had retained possession, hence finding recovered by Courts cannot be faulted.

13. In that view of the matter, no perversity can be found in concurrent Judgments and Decrees passed by Courts below. No substantial questions of law arises for consideration in this Appeal. In result, Second Appeal stands dismissed. In view of dismissal of Second Appeal, nothing survives for further consideration in Interim Applications and the same shall also stand disposed of.

(S. G. CHAPALGAONKAR, J.)

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RAJU
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