

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1811 OF 2024

Zamir Ali Khan

Aged 35 years, Occ.: Business,
Residing at, Flat No.2002, 20th Floor,
Plot CS IA/1888, 375, Yasmin Tower
Sane Guruji Marg, Jacob Circle,
Byculla, Mumbai – 400 011

... Appellant.

Versus

(1) Mohammed Umar Khan

Aged: Adult, Occ.: Not known,
Mohammed Bhai Mansion, 1st Floor,
Bhaidas Mangal Marg, Kemps Corner,
Mumbai – 400 026

(2) Farhana Umar Khan

Aged: Adult, Occ; Not known
Mohammed Bhai Mansion, 1st Floor,
Bhaidas Mangal Marg, Kemps Corner,
Mumbai – 400 026

(3) Mumtaz Abdul Rahim Sayyad

Aged 60 years, Occ: Not known
Residing at : 22/42/, Zainab Block,
Islampura Street, Opp Moti Cinema,
Girgaon, Mumbai – 400 004.

... Respondents.

AND

FIRST APPEAL NO.1810 OF 2024

Zamir Ali Khan

Aged 35 years, Occ.: Business,
Residing at, Flat No.2002, 20th Floor,

Plot CS IA/1888, 375, Yasmin Tower
Sane Guruji Marg, Jacob Circle,
Byculla, Mumbai – 400 011

... Appellant.

Versus

- (1) Mumtaz Abdul Rahim Sayyad
Aged 60 years, Occ: Not known
Residing at : 22/42/, Zainab Block,
Islampura Street, Opp Moti Cinema,
Girgaon, Mumbai – 400 004.
- (2) Mohammed Umar Khan
Aged: Adult, Occ.: Not known,
Mohammed Bhai Mansion, 1st Floor,
Bhaidas Mangal Marg, Kemps Corner,
Mumbai – 400 026
- (2) Farhana Umar Khan
Aged: Adult, Occ; Not known
Mohammed Bhai Mansion, 1st Floor,
Bhaidas Mangal Marg, Kemps Corner,
Mumbai – 400 026

... Respondents.

*Mr. Kamlesh P. Mali, for the Appellant in both Appeals.
Mr. Rishikesh Soni a/w. Mr.Dinesh Pednekar, C.Keswani and Mr.Mihir
Rathod i/by Economic Laws Practice for Respondents Nos.1 and 2 in
FA/1811/2024 and for Respondent Nos2 and 3 in FA/1810/2024.*

Coram : Sharmila U. Deshmukh, J.
Reserved on : January 09, 2025
Pronounced on : February 25, 2025

JUDGMENT:

1. Both the Appeals challenge the common order passed in
Notice of Motion No.1729 of 2024, Notice of Motion No.1761 of

2024 and Notice of Motion No.3803 of 2024 in S.C. Suit No.4902 of 2024 and order below Exhibit 1 in S.C. Suit No.624 of 2024 by which S.C. Suit No.4902 of 2024 came to be decreed and S.C. Suit No.624 of 2024 was dismissed. Common submissions were advanced and the Appeals are being disposed of by this common judgment.

2. The present Appellant is the Defendant No.2 in S.C.Suit No.4902 of 2024 and Plaintiff in S.C. Suit No.624 of 2024. S.C.Suit No.4902 of 2024 was instituted by the Respondent Nos.1 and 2 *inter alia* for a declaration that the Appellant is a rank trespasser in respect of Flat No.2002, 20th Floor, admeasuring 68.30 sqr.mtrs. in building known as "Yasmin Towers" situated at Sane Guruji Marg, Jacob Circle, Byculla, Mumbai – 400 011 and for direction to vacate and handover the peaceful possession of the suit premises and permanent injunction.

3. S.C.Suit No.624 of 2024 was instituted by the present Appellant seeking permanent injunction restraining the Respondents herein from forcibly dispossessing the Plaintiff from the suit premises without following due process of law.

4. For the sake of convenience, the parties are referred to by their status in S.C. Suit No.4902 of 2024.

PLEADINGS:

S.C.SUIT NO.4902 OF 2024:

5. The Plaint pleads that the Plaintiffs are co-owners of the suit

premises. Defendant No.1 is former licensee of Plaintiffs who was permitted use of the suit premises under a unregistered Leave and License Agreement dated 10th May, 2023 which expired on 9th April, 2024. Defendant No.1 was initially regular in making payment of monthly compensation, however, from October, 2023, she requested the monthly compensation to be adjusted against the security deposit. As the security deposit got exhausted, on 6th February, 2024, the Plaintiffs called upon Defendant No.1 to vacate the suit premises by 10th February, 2024. On 8th February, 2024, the Plaintiffs were served with copy of suit filed by the Defendant No.2 seeking injunctive reliefs against the Plaintiffs. Upon enquiries, the Plaintiffs became aware that Defendant No.2 was residing in the suit premises instead of Defendant No.1. The Defendant No.2 has entered into registered Leave and License agreement in respect of Defendant No.1's flat being Flat No.22/42, Zenab Building, which is different from suit premises and sought eviction of Defendant No.2 being rank trespasser.

S.C. SUIT NO.624 OF 2024:

6. The plaint pleads that Plaintiff is residing in the suit premises since 30th May, 2023 and is in possession of registered leave and license agreement and electricity bill to show possession. The Defendant No.1 agreed to give her residential flat i.e. Flat No.22/42, Zenab Block on leave and license basis to Defendant

No.2 who paid Rs 18,25,000/- to Defendant No.1. Defendant No.1 asked Defendant No.2 to be witness to the leave and license agreement in respect of the suit premises, which he agreed. The Defendant No.1 instead of shifting Defendant No.2 to Flat No.22/42, Zenab Block informed him that he can buy the suit premises rented by her and security deposit will be adjusted against the sale consideration. Recently, the Plaintiffs who are owners of the suit premises threatened to evict the Defendant No.2 and hence suit for injunction was filed against dispossession without following due process of law.

NOTICE OF MOTION NO.1761 OF 2024:

7. In S.C. Suit No.4902 of 2024, an Application was filed by the Plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 (for short, "CPC") seeking decree on admission. It was pleaded that in paragraph 9, 11 and 12 of the plaint in Suit No.624 of 2024 there is a clear, categoric and unequivocal admission on oath acknowledging the Plaintiffs as the owners of the suit premises. Likewise in police complaint given by Defendant No. 2 it is admitted that the Plaintiffs are owners of the suit premises.

8. The application came to be resisted by the Defendant No.2 contending that the suit is not maintainable as the Plaintiffs are claiming recovery of possession from the Defendants as gratuitous licensee and the City Civil Court has no jurisdiction to try the suit in

view of Section 41 of the Presidency Small Cause Courts Act, 1882 (for short, "PSCC Act"). The Plaintiff in connivance with Defendant No.1 has taken Rs.18,50,000/- from Defendant No.2. It was contended that the Defendant No.2 was residing in the suit premises with due permission of the Plaintiffs and after payment of Rs.18,50,000/- to Defendant No.1.

NOTICE OF MOTION No.3803 OF 2024:

9. Notice of Motion No.3803 of 2024 was filed by Defendant No.2 seeking rejection of plaint under Order VII Rule 11 of CPC on the ground that the suit is liable to be rejected as the same does not disclose any cause of action and that vague reliefs are sought by the Plaintiffs. It was pleaded that the Plaintiffs have not prayed for cancellation of the registered Lease-Deed and the suit has been filed in collusion with the Defendant No.1.

NOTICE OF MOTION NO.1729 OF 2024:

10. Notice of Motion No.1729 of 2024 was taken out by the Plaintiff seeking relief of temporary injunction restraining the Defendants from creating third party rights. The defence of Defendant No.2 is more or less similar in all the interim applications.

IMPUGNED JUDGMENT:

11. By the impugned order dated 20th September, 2024, the Trial Court decreed S.C. Suit No.4902 of 2024 under Order XII Rule 6 of

CPC directing the Defendants to vacate the suit premises within two months and directed an inquiry into *mesne profits*. Notice of Motion No.3803 of 2024 praying for rejection of the plaint came to be dismissed. Notice of Motion No.1729 of 2024 seeking relief of injunction came to be disposed of. As consequence of the S.C. Suit No.4902 of 2024 being decreed, S.C. Suit No.624 of 2024 stood dismissed.

12. On the objection to jurisdiction, the Trial Court considered the pleadings in S.C. Suit No.624 of 2004 and held that it is not pleaded that Defendant No.2 is in possession of suit flat with consent of Plaintiffs or that Plaintiffs agreed to sell the suit flat to Defendant No.2. It held that Defendant No.2 is in possession of suit flat without knowledge or consent of Plaintiffs and the possession is in violation of leave and license agreement executed by the Plaintiffs with Defendant No.1. Consequently, Defendant No.2 is not gratuitous licensee and the Civil Court has jurisdiction.

13. On the aspect of decree on admission, the Trial Court considered the admissions of Defendant No.2 in S.C. Suit No.624 of 2024 admitting the ownership of Plaintiffs, the execution of leave and license between Defendant Nos.1 and 2 in respect of Flat No.22/42, Zenab Block and the payment of Rs.18,25,000/- to the Defendant No.1 and not to the Plaintiffs and based on admissions decreed S.C. Suit No.4902 of 2024.

14. On the reliefs sought in S.C. Suit No.624 of 2024, the Trial Court held that there is no cause of action for the Defendant No.2 to claim injunction in respect of suit flat as ownership is admitted and the execution of leave and license agreement is in respect of Flat No.22/42 and it cannot be said that Defendant No.2 has entered into leave and license agreement with Defendant No.1 under the impression that he is going to purchase the suit flat. It held that there is no need to conduct further inquiry and trial of the Plaintiffs suit and Defendant No. 2 is bound to vacate the suit flat.

SUBMISSIONS:

15. Mr. Mali, learned counsel appearing the Appellants-Original Defendant No. 2 would submit that the Plaintiffs had specifically pleaded in S.C. Suit No.4902 of 2024 that the Defendant No.1 was a licensee of the Plaintiff and the Defendant No.2 has been wrongfully and illegally inducted by Defendant No.1 without any authority and that the Defendant No.1 is earning illegal benefits by illegally and wrongfully inducting the Defendant No.2 in the suit premises. He submits that in view of the pleadings, the Civil Court will not have the jurisdiction to adjudicate. He draws support from the decisions of the Apex Court in the cases of ***(i) Nagin Mansukhlal Dogli vs. Haribhai Manibhai Patel [1979 SCC OnLine Bom 29]***, ***(ii) Mahadev P. Kambekar vs. Shree Krishna Woolen Mills Private Limited [(2020) 14 SCC 505]***, ***(iii) Prabhudas Damodhar***

Kotecha and Ors. vs. Manhabala Jeram Damodar and Anr. [(2013) 15 SCC 358] and (iv) ***Vaijayanti Amar Vazalwar vs. Chandrakant Odhavji Thakkar [2007 (Supp.) Bom.C.R.679]*** to contend that being a gratuitous licensee under Section 41 of the PSCC Act, the suit is maintainable only before the Small Causes Court.

16. He would further submit that the suit could not have been decreed under Order XII Rule 6 of CPC by the Trial Court as there is no unequivocal admission which is *sine qua non* for granting decree on admission. He would submit that although the ownership is not disputed, the right to remain in possession has been pleaded by reason of the agreement between the parties that the Plaintiffs are willing to sell the said house and the deposit of Rs.18,25,000/- given to the Defendant No.1 will be deducted from purchase consideration. He submits that therefore it cannot be said that there is an unequivocal and clear admission entitling the Plaintiffs to a decree on admission.

17. Drawing support from the decision of the Division Bench of this Court in the case of ***Shantez & Anr. vs. Applause Bhansali Films & Ors. [2009 9 Bom.C.R. 799]*** and ***Rajesh Mitra alias Rajesh Kumar Mitra and Anr. vs. Karnani Properties Ltd. [2024 SCC OnLine SC 2607]***, he submits that the nature of admission is not conclusive to decree the suit under Order XII Rule 6 of CPC. He

submits that there is no illegality in his possession as it is the specific case of the Plaintiffs that the Defendant No.1 had inducted him as a licensee. He submits that the Trial Court has not come to any finding that the suit is required to be decreed based on the admission about ownership. He submits that the maintainability of the suit itself is in question as the reliefs are sought not only against the Defendant No.2 but also against the Defendant No.1 who is admittedly a licensee and although possession is sought to be recovered from Defendant No.1, injunction is sought against both the parties as well as *mesne profits* are sought.

18. *Per contra*, Mr.Soni, learned counsel appearing for the Respondent Nos.1 and 2 would submit that the City Civil Court will have the jurisdiction as the relief is sought against the Defendant No.2 and there is no relationship of Licensor and licensee with the Defendant No.2. He draws support from the decision of the Apex Court in the case of ***Abdulla Bin Ali and ors. vs. Galappa and Ors.*** ***[(1985) 2 SCC 54]*** to contend that the jurisdiction depends on the plaint and not the written statement and the suit not having been filed on the landlord and tenant relationship, the Small Causes Court will not have the jurisdiction. He would further submit that the plaint will have to be read as a whole in order to determine whether the Civil Court will have the jurisdiction and has taken this Court in detail through the averments made in the plaint. He

submits that the plaint does not admit of any licensor and licensee relationship between the Plaintiffs and the Defendant No.2, therefore, the Civil Court will have jurisdiction.

19. He submits that in S.C. Suit No.624 of 2024 filed by the Defendant No.2 seeking injunction, there is no relief for specific performance sought. He submits that leave and license agreement which is referred to in the plaint is in respect of a leave and license agreement of a different flat and not the suit premises. He would submit that considering the admitted pleading of ownership and the absence of any pleading to justify the possession of the Defendants, the suit has been rightly decreed on admission. He submits that the only relief which is sought by the Defendant No.2 is of injunction and he does not claim any title or relief of specific performance. In support, he relied upon the following decisions:

- (i) *Abdulla Bin Ali and ors. vs. Galappa and Ors. [(1985) 2 SCC 54];***
- (ii) *Kusumkant T. Nagda vs. Mariam Bi wd/o Ebrahim [2004 SCC OnLine Bom 882];***
- (iii) *Uttam Singh Duggal & Co.Ltd. vs. United Bank of India and Ors. [(2000) 7 SCC 120];***
- (iv) *Karam Kapahi and Ors. vs. Lal Chand Public Charitable Trust and Anr. [(2010) 4 SCC 753];***

POINTS FOR DETERMINATION:

20. The following points arise for determination:

- (i) Whether the Civil Court will have the jurisdiction to entertain the suit ?

(ii) Whether the Plaintiffs are entitled to a decree on admission under Order XII Rule 6 of the Code of Civil Procedure 1908 ?

AS TO POINT NO.(i):

21. The objection to the Civil Court's jurisdiction is based on the pleadings in S.C. Suit No. 4902 of 2024 about the execution of leave and license agreement between the Plaintiffs and the Defendant No.1 and the induction of the Defendant No.2 by the Defendant No.1 in the suit flat. In the context of jurisdiction, it would be apposite to refer to the provisions of PSCC Act which was enacted to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay. The Small Causes Court has been constituted under the PSCC Act and is deemed to be a Court subject to the superintendence of High Court. Chapter IV of the PSCC Act deals with the jurisdiction in respect of suits and Chapter VII governs the suit relating to recovery of possession of certain immovable property and certain license fees and rent. Section 19 which founds place in Chapter IV of PSCC Act exempts certain class of suits from the jurisdiction of the Small Causes Court. Relevant for our purpose are Clause (d) of Section 19 of the PSCC Act, which reads thus :

*"19. The Small Causes Court shall have no jurisdiction in-
.....
(d) suits for the recovery of immovable property;
...."*

22. Section 41 contained in Chapter VII of PSCC Act provides as under :

“41.(1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therefor, irrespective of the value of the subject matter of such suits or proceedings.

(2) Nothing contained in sub-section (1) shall apply to suits or proceedings for the recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act, the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force apply.”

23. Conjoint reading of the above provisions especially the *non obstante* clause in Section 41 of PSCC Act indicates that the jurisdiction of Small Causes Court to entertain suit for recovery of immovable property in view of Section 19(d) of the PSCC Act is ousted, however, where the subject matter of the suit relates to the recovery of immovable property, license fees or rent between landlord and tenant or licensor and licensee, it is only the Small Causes Court which would have jurisdiction irrespective of valuation. Thus the legislature has created a specialised forum for adjudication of specified class of suits between specified class of persons.

24. The Small Causes Court would thus be held to have jurisdiction if the suit is one between licensor and licensee for recovery of immovable property. In ***ING Vysya Bank Ltd. v. Modern India Ltd. [2008(2) MhLJ 653]*** learned Single Judge of this Court while considering the bar of jurisdiction of arbitral tribunal to entertain claim for specific performance of renewal clause in agreement of license in the context of Section 41 of PSCC Act held that the primary determination which the Court must make in every such case is whether the suit in substance and in essence is a suit relating to recovery of possession or the recovery of license fee, rent or other charges between landlord and tenant or a licensor and licensee which is required to be decided by looking at the kernel and disregarding the chaff.

25. In ***Raizada Topandas v. Gorakhram Gokalchand [(1964) 3 SCR 214]***, the Apex Court was considering the issue of jurisdiction of City Civil Court to entertain the suit seeking declaration of possession and injunction on the basis of an agreement dated 23rd June, 1955 appointing the Plaintiffs therein as commission agent. The defence raised was of sub-letting and the existence of landlord-tenant relationship. The preliminary issue of jurisdiction was decided against the Defendant by the High Court. The Apex Court noted the decision of Allahabad High Court in ***Ananti v.***

Channu [(1929) ILR 52 Allahabad 501] on the issue of jurisdiction at the inception of suit which had held as under:

"The plaintiff chooses his forum and files his suit. If he establishes the correctness of his facts he will get his relief from the forum chosen. If ... he frames his suit in a manner not warranted by the facts, and goes for his relief to a court which cannot grant him relief on the true facts, he will have his suit dismissed. Then there will be no question of returning the plaint for presentation to the proper court, for the plaint, as framed, would not justify the other kind of court to grant him the relief..... ... If it is found, on a trial on the merits so far as this issue of jurisdiction goes, that the facts alleged by the plaintiff are not true and the facts alleged by the defendants are true, and that the case is not cognizable by the court, there will be two kinds of orders to be passed. If the jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper court. If, on the other hand, it is found that, having regard to the *nature* of the suit, it not cognizable by the class of court to which the court belongs, the plaintiff's suit will have to be dismissed in its entirety."

26. The Apex Court held in paragraph 6 and 8 as under:

"6.We do not think that the section says or intends to say that the plea of the defendant will determine or change forum.....If, therefore, the plaintiff in his plaint does not admit a relation which would attract any of the provisions of the Act on which the exclusive jurisdiction given under Section 28 depends, we do not think that the defendant by his plea can force the plaintiff to go to a forum where on his averments he cannot go....."

"8. The High Court has rightly said:

"A suit which is essentially one between the landlord and tenant does not cease to be such a suit merely because the defendant denies the claim of the plaintiff..."

27. In a Full Bench decision of this Court in ***Dattraya Krishna Jangam (supra)***, the Full Bench considered the question whether the jurisdiction of Special Court depends on the Plaintiff's case as

made out in the plaint or whether the contentions raised by the Defendant are also to be taken into consideration. The Full Bench followed the decision in ***Raizada Topandas*** (supra) that the jurisdiction of the Court should ordinarily be determined at the time of institution of suit when the plaint is filed, that the plea of defendant will not determine or change the forum. The Full Bench held in paragraph 5 as under :

"The position, therefore, is that in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Whatever may be the form of relief claimed, if on a fair reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claimed in substance relates to recovery of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone that will have jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of the suit in the Special court will depend on the decision of the Court on that issue. Similarly if the plaint does not allege the relationship of landlord and tenant and no claim or question arises out of the Act or any of its provisions, then it will be the ordinary civil Court and not the special Court that will have jurisdiction to entertain the suit."

28. The position of law which emerges from the ratio of the above decisions is that the pleadings in the plaint have to be read to ascertain whether the suit is in essence and substance and suit between the licensor and licensee for recovery of possession. If the answer is in the affirmative, then it will be the Small Causes Court

which will have jurisdiction to adjudicate the dispute.

29. The Plaintiffs have come with a case that they are owners of the suit premises, in respect of which a leave and license agreement was executed with Defendant No.1 for period of 11 months. It is averred that when the Defendant No.1 was called upon to vacate the suit premises, the Plaintiffs were served with the injunction suit filed by the Defendant No.2 and thereupon became aware of the Defendant No.2 residing in the suit premises. It is pleaded that the Defendant No.2 is in illegal possession of the suit premises without any authority or consent of the Plaintiffs. The substantive relief is claimed for declaration of Defendant No.2 as rank trespasser and for evicting him from the suit premises. The incidental injunctive relief against creating third party rights are claimed against Defendant Nos.1 and 2.

30. The reading of the plaint as a whole will make it evident that the Plaintiffs do not plead any licensor licensee relationship between the Plaintiffs and the Defendant No.2. The recovery of possession is sought against the Defendant No.2 as rank trespasser as he is in actual possession of the suit premises. The frame of the suit essentially is that though the Defendant No.1 was granted license to occupy the suit premises, the Defendant No. 2 has been inducted without consent or authority of the Plaintiffs. For the Small Causes Court to exercise jurisdiction, the pleadings must

make out a case of the suit being between licensor-licensee for recovery of possession of immovable property from the licensee.

31. With this frame of the suit, it is only the Civil Court which will have the jurisdiction to entertain the suit. The stray pleading that the Defendant No. 1 has inducted Defendant No.2 in the suit premises for illegal benefits will not convert the suit against a trespasser into a suit between licensor-licensee. The plaint has to be read as a whole to determine the essence and substance of the suit. When so read, it is clear that the suit is one for eviction of Defendant No.2, who is alleged to be a trespasser having no right to remain in the suit premises. The incidental injunctive relief against the Defendant No.1 will not oust the jurisdiction of the Civil Court. The finding of the Civil Court that the possession of Defendant No. 2 during subsistence of leave and license agreement dated 10th May, 2023 is in violation of terms of agreement is in the context of appreciating the jurisdictional facts to determine whether the Civil Court will have jurisdiction to entertain the dispute and does not amount to usurping jurisdiction of Small Causes Court.

32. The decisions in the cases of ***Nagin Mansukhlal Dogli*** (*supra*), ***Mahadev P. Kambekar*** (*supra*), ***Prabhudas Damodhar Kotecha*** (*supra*) and ***(iv) Vijayanti Amar Vazalwar*** (*supra*), on which the reliance has been placed would not assist the case of the

Defendant No.2 in the facts of the present case.

33. The suit being in substance a suit for eviction of trespasser, the City Civil Court will have the jurisdiction to entertain and try the dispute. Point No.(i) is accordingly answered in favour of the Plaintiffs.

AS TO POINT NO.(ii):

34. Coming now to the pivotal issue as to whether the suit is liable to be decreed under Order XII Rule 6 of CPC, the said provisions reads as under:

“6. Judgment on admissions.—(1) Where admissions of fact have been made either in the pleading or otherwise; whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question-between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

35. The Plaintiff's application seeks decree on admissions made in S.C. Suit No.624 of 2024 filed by the Defendant No.2. Looking at the averments in S.C. Suit No. 624 of 2024, the Defendant No.2 has pleaded that registered leave and license agreement has been executed between the Defendant No.1 and 2 in respect of flat No.22/42 of a building known as “Zenab Block”, which is the residential flat owned by Defendant No.1 and security deposit of

Rs.18,25,000/- was paid by the Defendant No.2 to the Defendant No.1 in respect of the license granted by Defendant No.1 in respect of her residential flat. The Defendant No.2 has pleaded that when the Defendant No.2 called upon Defendant No.1 to permit him to reside in licensed flat, the Defendant No.1 informed him that he can buy the suit flat which she has rented as the Plaintiffs are willing to sell the suit flat and that Defendant No.2 started residing in the suit flat. In paragraph 9 and 12 of the plaint, the Defendant No.2 has admitted that the Plaintiffs are owners of the suit flat.

36. The Defendant No.2 by pleading on oath has unequivocally admitted the fact that (a) The Plaintiffs are owners of the suit flat, (b) The registered leave and license agreement was executed between the Defendant Nos.1 and 2 in respect of Flat No.22/42, Zenab Block, which is not the suit flat and security deposit of Rs.18,50,000/- was paid by Defendant No.2 to Defendant No.1 in respect of Flat No.22/42, (c) Defendant No.1 had entered into leave and license agreement with the Plaintiffs in respect of suit flat, and (d) It is the Defendant No.1 who made the offer to sell the suit flat and not the Plaintiffs.

37. In the case of ***Karam Kapahi*** (*supra*), the Supreme Court has observed that the principles behind Order XII Rule 6 of CPC are to give the Plaintiff of right to speedy judgment and either party could on the admission of the other party press for the judgment

and may get rid of so much rival claims about which there is no controversy.

38. The admitted position is that the Plaintiffs are the owners of the suit premises and the Defendant No.2 cannot dispute the crucial fact that he has not claimed title to the suit premises and there is no relief of specific performance of agreement sought in the suit and only relief that is sought is of a permanent injunction. It is thus clear that there is no title dispute between the parties and the claim of the Defendant No.2 is that of being put in possession by the Defendant No.1 and not by the Plaintiffs. There is no agreement to sell, oral or otherwise pleaded between the Plaintiffs and the Defendant No.2. The agreement, if any, is between the Defendant Nos.1 and 2. On the Defendant No.2's own admission, Defendant No.2 has no semblance of right to remain in possession of the suit premises.

39. Though it is sought to be contended that the admissions are not unequivocal, the pleadings clearly admit of the fact of ownership of Plaintiffs, no right of Defendant No.2 to remain in the suit premises and the agreement, if any, only with the Defendant No.1. These admissions are clear, specific and unambiguous. For the Plaintiffs to succeed in S.C. Suit No.4902 of 2024, all that is required is to proved is the factum of ownership and absence of any right in the Defendant No.2 to remain in the suit premises. These facts

stand proved by the pleadings in S.C. Suit No.694 of 2024 constituting admissions which establishes the case of the Plaintiffs and entitles it to decree on admission. In ***Uttam Singh Duggal & Co Ltd vs United Bank of India and Others*** (supra), the Apex Court has held that where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is clear admission of fact in the face of which it is impossible for the party making such admission to succeed.

40. The issue is whether in the face of the admitted ownership of the Plaintiffs and absence of any agreement between the Plaintiffs and the Defendant No.2 as regards the sale of suit flat or grant of license in favour of Defendant No.2 to occupy the suit premises, the suit requires framing of an issue and leading of evidence to grant relief claimed in S.C.Suit No.4902 of 2024. In my view, the answer is only in the negative. The admitted facts establishes that the status of the Defendant No.2 is of a rank trespasser and the Plaintiffs ownership not being in dispute, the Plaintiffs are entitled to recover possession from the Defendant No.2. The admissions do not admit of any right of the Defendant No.2 to remain in possession as there is no agreement pleaded between the Plaintiffs and the Defendant No.2. This is a fit case where the Plaintiffs are entitled to speedy determination of their suit by granting decree on admission.

41. S.C. Suit No.624 of 2024 had been filed only for injunction without claiming any relief of specific performance and is meant only to delay the handing over the possession to the rightful owners i.e. the Plaintiffs, who have already filed a suit seeking recovery of possession. S.C. Suit No.624 of 2024 merely seeks an order of injunction restraining the Plaintiffs from dispossessing the Plaintiffs without following due process of law, which the Plaintiffs have duly followed in the present case.

42. The Trial Court has noted the pleadings in S.C. Suit No.624 of 2024 that the Defendant No.2 does not challenge the Plaintiff's ownership and that it is not case of Defendant No.2 that Plaintiffs have admitted or agreed to sell the suit flat to Defendant No.2. The Trial Court has held that the ownership is not denied and the leave and license agreement executed between Defendant Nos.1 and 2 is in respect of Flat No.22/42 and in the backdrop of these admissions have held that the Defendant No.2's possession illegal and there is no need to conduct further enquiry and trial of the Plaintiff's suit and Defendant No.2 is bound to vacate the flat. The Trial Court has thus considered the admissions of the Defendant No.2 to come to a finding that based on the admissions, the suit can be decreed and there is no cause of action to grant injunction to Defendant No.2.

43. In the case of ***Ashoka Estate (P) Ltd. v. Dewan Chand Builders (P) Ltd., [2009 SCC OnLine Del 894]***, the Court held in paragraph 26 as under:

“26. The plaintiffs if otherwise found entitled to a decree on admissions, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon. This court is to read the pleadings of the parties meaningfully. Issues are to be framed on material and not all propositions of law and fact. A plea, which on the face of it is found by the court to be untenable, does not require the framing of any issue. The pleas of the defendants in the present case are found by me to be such, without calling for any trial whatsoever. If the said pleas of the defendants on the basis whereof the admitted liability of the defendants is sought to be defeated, are found to be untenable, naturally the impediment to the passing off a decree on the basis of admissions disappear. The apex court in T. Arvindam v. T.V. Satyapal, AIR 1977 SC 2421 has held that if on a meaningful-not formal-reading, claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial court should ensure that bogus litigation is shot down at the earliest stage. Again, in Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512 it was held that when no cause of action is disclosed, the courts will not unnecessarily protract the hearing of suit; the court should interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the courts resources being used up in cases which will serve no useful purpose. It was further held that a litigation which in the opinion of the court is doomed to fail should not further be allowed to be used as a device to harass. The said propositions equally apply to written statements/ defence to the claim also.”

44. In the case of **Lakshmikant Shreekant (HUF) through its Karta, L.K. Jhunjhunwala vs. M.N. Dastur & Company Pvt. Ltd. [(1998) 44 DRJ 502]**, the Delhi High Court has held that the Court is required to frame issue of fact or law that necessarily and properly arises for determination. If the plea is malafide or preposterous, or vexatious and can be disposed of without going into facts, the Court will not be justified in adopting hands off approach and

allowing the game of the Defendant to have its sway. I respectfully agree with the observations of the Delhi High Court.

45. It is settled that the Court is not powerless to bring frivolous litigation to an end and Order XII Rule 6 of the CPC gives a wide discretion to the Court where on basis of admissions, the suit can be decreed. This is a fit case where the suit is entitled to be decreed as the entire pleadings in S.C. Suit No.624 of 2024 constitute an admission by the Defendant No.2 about the ownership rights of the Plaintiffs and the absence of any legal right to remain in possession of the suit premises. Point No.(ii) is accordingly answered in favour of the Plaintiffs.

46. The decisions cited by Mr.Mail of ***Shantez and anr vs Applause Bhansali Films and Rajesh Mitra vs Karnani Properties*** (supra), do not assist the case of the Defendant No.2 for the reason that while deciding the entitlement for a decree on admission, the admissions given in facts of that case have to be considered. There is no quarrel with the proposition of law laid down in the said decisions but each case will have to be determined in its own facts.

47. As a result of the above discussion, the First Appeal fails and stands dismissed.

48. In view of dismissal of the Appeal, Civil/Interim Applications, if any, do not survive for consideration and stands dismissed.

[Sharmila U. Deshmukh, J.]