

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.3767 OF 2025

IN

CIVIL REVISION APPLICATION NO.747 OF 2024

Ram Shankar Sinha

...Petitioner

Versus

Ritesh V. Patel & Anr.

...Respondents

Mr. Alizain Patel, for the Petitioner.

Mr. Nilesh L. Makwana a/w Lajri H. Panchal, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATED: 5th MAY 2025

JUDGMENT:

1. Heard Mr. Patel, learned Counsel appearing for the Petitioner and Mr. Makwana, learned Counsel appearing for the Respondents.

2. By the present Civil Writ Petition filed under Article 227 of the Constitution of India challenge is to the legality and validity of the order dated 14th February 2025 passed by Additional Divisional Commissioner, Konkan Division, Mumbai in Revision Application No.747/2024. By the impugned order of the Additional Divisional Commissioner, order dated 9th August 2024 passed by the Competent Authority, Rent Control Act Court, Konkan Division, Mumbai in Eviction Application No.247 of 2023 is set aside and the said Eviction Application is remanded back to the Competent Authority for trial and directing that order be passed after leading evidence by both the parties.

3. The Competent Authority by order dated 9th August 2024 rejected

Application bearing Exhibit-11 filed in Eviction Application No.247 of 2023 seeking leave to defend filed by the Respondent and also Application bearing Exhibit-12 under Order VII Rule 11 of the *Code of Civil Procedure, 1908* (“**CPC**”) for rejection of the Eviction Application. Consequently the Competent Authority passed eviction order on 9th August 2024.

4. It is the main submission of learned Counsel appearing for the Petitioner that in view of Explanation (b) to Section 24 of the *Maharashtra Rent Control Act, 1999* (“**Maharashtra Rent Act**”) no other evidence which is contrary to the terms and conditions of written leave and license agreement can be led and the said terms are conclusive of the facts stated therein. He relied on a judgment of a learned Single Judge in the case of *Sanath Kumar Sanjib Das v. Fernandes Anthony John & Ors.*¹ and also judgment of a learned Single Judge in the case of *Ramesh Sidde Gawda v. Vivek Deendayal Agarwal*² and therefore submits that the Additional Commissioner Konkan Division, Mumbai has passed the order which is contrary to the settled legal position and therefore the same is required to be quashed and set aside and order passed by the Competent Authority is required to be restored.

5. On the other hand Mr. Makwana, learned Counsel appearing for the Respondents submits that the Respondents are in possession of the

1 2024 SCC OnLine Bom 2135

2 2016 SCC OnLine Bom 6262

premises since 2011. The last leave and license agreement was executed on 16th June 2018 and the same expired by efflux of time on 15th June 2020. He states that the Application is filed on 9th November 2023. He states that after the said period of leave and license agreement comes to an end, the relationship between the Petitioner and the Respondents is no more of licensor and licensees and therefore the Application is not maintainable. He further submits that there is material on record to show that parties negotiated the sale of subject premises and price was also fixed subsequently after the leave and license agreement. He submits that Civil Suit seeking specific performance of said oral agreement is pending. He therefore submitted that no interference in the impugned order is warranted.

6. The issues involved in this Writ Petition are also involved in the decision of this Court in the case of *Alpana Sanjay Kolhatkar & Ors. v. Vijay Kumar Amrut Gone & Ors*³. In said case *inter alia* following points were raised and decided:-

- i. What is the scope of explanation 'b' to Section 24 read with Section 43(4) of the Maharashtra Rent Control Act, 1999?
- ii. Whether the Competent Authority while deciding the Application for leave to defend filed under Section 43(4) of the Maharashtra Rent Control Act, 1999 can decide the same dehors the rigours of explanation 'b' to Section

³ Civil Writ Petition No.11046 of 2019 decided on 7th August 2023.

24 of the Maharashtra Rent Act?

The discussion in said decision of *Alpana Kolhatkar* (supra) is also relevant.

7. Apart from the above points, following point is also required to be decided:-

- iii. Whether in the facts and circumstances of this case it is necessary to grant leave to defend under Section 43(4) of the Maharashtra Rent Control Act, 1999 to the Respondent.

Point No. i :

What is the scope of explanation 'b' to Section 24 read with Section 43(4) of the Maharashtra Rent Control Act, 1999?

8. The relevant provisions of law concerning the scope and ambit of jurisdiction of Competent Authority dealing with cases covered by Section 24 of the Maharashtra Rent Act are as follows:

- (i) Chapter V of the Maharashtra Rent Act sets out special provisions for recovery of possession in certain cases. Section 23 is concerning entitlement to recover possession of premises required for occupation by the members of armed forces of the Union, scientists or their successor-in-interest. Section 24 is concerning the landlord entitled to recover the possession of the premises given on licence on expiry. In this case eviction proceedings are filed under Section 24 of the Maharashtra Rent

Act, which reads as under:-

"24. Landlord entitled to recover possession of premises given on licence on expiry.—(1) Notwithstanding anything contained in this Act, a licensee, in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the competent authority, and the competent authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the competent authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3) The competent authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation.—For the purposes of this section—

(a) the expression "landlord" includes a successor-in-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence; and

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein."

(Emphasis added)

(ii) Chapter VIII of the Maharashtra Rent Act provides for

provisions for summary disposal of certain Applications. Section 39 of the Maharashtra Rent Act provides that provisions of this Chapter to have an overriding effect and the same reads as under:-

“39. The provisions of this Chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force.”

(iii) Section 40 of the Maharashtra Rent Act is regarding appointment of Competent Authority.

(iv) Section 41 of the Maharashtra Rent Act is concerning definition of “landlord” for the purpose of Chapter VIII of the same i.e. in the case where summary disposal of certain Applications is contemplated. Said section 41 reads as under:

“S.41. Definition of landlord for the purpose of Chapter VIII

For the purposes of this Chapter, landlord means a landlord who is,—

(a) a person who has created a service tenancy in respect of his premises or a part thereof in favour of his employee under section 22;

(b) a member of the armed forces of the Union or a scientist or a Government servant or a successor-in-interest, referred to in section 23; or

(c) a person who has given premises on licence for residence or a successor-in-interest referred to in section 24.”

(Emphasis added)

(v) Section 42 of the Maharashtra Rent Act is concerning

special provisions for making Application to competent authority by landlord to evict the tenant or licensee and the same reads as under:-

“42. Special provisions for making application to Competent Authority by landlord to evict tenant or licensee-

*Notwithstanding anything contained in this Act or any other Law for the time being in force or any contract to the contrary or any judgement or decree or order of any court, but **subject to the provisions of section 22 or 23 or 24, as the case may be, a landlord may submit an application to the Competent Authority, signed and verified in a manner provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908, as if it were a plaint, to the Competent Authority having jurisdiction in the area in which the premises are situated, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be.**”*

(Emphasis added)

(vi) Section 43 of the Maharashtra Rent Act prescribes special procedure for disposal of Applications filed by the landlord under the said Chapter VIII of the same. Section 43 reads as under :-

“43. Special procedure for disposal of applications-

*(1) Every application by a landlord under this Chapter for the recovery of possession shall be accompanied by such fees as may be prescribed. **The Competent Authority shall deal with the application in accordance with the procedure laid down in this section.***

(2) The Competent Authority shall issue summons

in relation to every application referred to in sub-section (2) in the form specified in Schedule III.

(3) (a) The Competent Authority shall, in addition to, and simultaneously with, the issue of summons for service on the tenant or licensee, as the case may be, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or the licensee or agent empowered by such tenant or licensee to accept the service at the place where the tenant or licensee or such agent actually and voluntarily resides or carries on business or personally works for gain.

(b) When an acknowledgement purporting to be signed by the tenant or licensee or their agent is received by the Competent Authority or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or licensee or their agent had refused to take delivery of the registered article, the Competent Authority may proceed to hear and decide the application as if there has been a valid service of summons.

*(4) (a) **The tenant or licensee** on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) **shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be***

admitted by the tenant or the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The Competent Authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in section 22 or 23 or 24. Special provision for making application to Competent Authority by landlord to evict tenant or licensee. Special procedure for disposal of applications.

(c) Where leave is granted to the tenant or licensee to contest the application the Competent Authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application.

(5) The Competent Authority shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.”

(Emphasis added)

(vii) Section 44 of the Maharashtra Rent Act provides that order of Competent Authority be non-appealable and provides revision to the Additional Commissioner. Said Section 44 reads as under:-

“44. Order of Competent Authority to be non-appealable and revision by State Government-

(1) No appeal shall lie against an order for the recovery of possession of any premises made by the Competent Authority in accordance with the procedure specified in section 43.

(2) The State Government or such officer, not below the rank of an Additional Commissioner of a Revenue Division, as the State Government may, by general or special order, authorise in this behalf, may, at any time suo motu or on the application of any person aggrieved, for the purposes of satisfying itself that an order made in any case by the Competent Authority under section 43 is according to law, call for the record of that case and pass such order in respect thereto as it or he thinks fit :

Provided that, no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter :

Provided further that, no powers of revision at the instance of person aggrieved shall be exercised, unless an application is presented within ninety days of the date of the order sought to be revised.”

(Emphasis added)

(viii) Section 47 of the Maharashtra Rent Act gives exclusive jurisdiction to the Competent Authority. Said Section 47 reads as under :-

“47. Bar of jurisdiction -

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Competent Authority or the State Government or an officer authorised by it is empowered by or under this Act, to decide, and no

injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power so conferred on the Competent Authority or the State Government or such officer.”

(Emphasis added)

(ix) Section 49 of the Maharashtra Rent Act provides that Competent Authority appointed under said Chapter VIII to be deemed to be public servant. Section 50 of the Maharashtra Rent Act provides that all proceedings before the Competent Authority be judicial proceedings. Section 51 of the Maharashtra Rent Act provides that however, the Competent Authority shall be deemed to be civil court for the purposes of Section 345 and 346 of the *Code of Criminal Procedure, 1973*. Section 52 of the Maharashtra Rent Act provides that no suit, proceeding or other legal proceedings shall lie against the Competent Authority in respect of anything done in good faith or intended to be done under the said Act.

(x) Section 55 of the Maharashtra Rent Act is also relevant as *inter alia*, it provides that any Agreement for Leave and Licence after commencement of the Maharashtra Rent Act, shall be in writing and shall be registered under the *Registration Act, 1908*. It further provides that the responsibility of getting such an Agreement registered shall be with the landlord and in the absence of the written registered Agreement, the contention of

the tenant about the terms and conditions subject to which a premises has been given to him by the landlord on Leave and Licence or have been let to him, shall prevail, unless proved otherwise. Section 55 reads as under :-

55. Tenancy agreement to be compulsorily registered -

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908.

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions, subject to which a premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.

(3) Any landlord who contravenes the provisions of this section shall, on conviction, be punished with imprisonment which may extend to three months or with fine not exceeding rupees five thousand or with both."

(Emphasis added)

9. In several decisions of this Court, the scheme under Section 13A(2) of the *Bombay Rents, Hotels and Lodging House Rates Control Act, 1947* ("**Bombay Rent Act**") which is similar to Section 24 read with Chapter VIII of the Maharashtra Rent Act is considered.

(i) In case of *Jasmeet Hoon v. Rita Johar* ⁴ the said special procedure for eviction of Licencee before the Competent Authority prescribing a special rule of evidence is discussed in paragraph No.11. The paragraph No.11 reads as follows :-

“11. In several Judgments of this Court, it has been held that section 13-A(2) lays down a special procedure for eviction of licensees before the Competent Authority which is a special forum constituted under Part IIA of the Act. Explanation (b) to section 13-A(2) prescribes a special rule of evidence. It provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. In view of this special rule of evidence, this Court has held that it is not permissible for the Court to go behind the document to find out the real intention of the parties or to arrive at a conclusion that the document is of a lease and not of leave and licence. The licensee cannot lead evidence to establish that the real transaction was of tenancy or is not what it professes to be. The agreement is conclusive evidence that the transaction is of leave and licence. In other words, it has been held that the words in explanation (b) to section 13-A(2) have the effect of shutting out any other evidence on the subject which might be adduced before the Court. This view was taken by a learned Single Judge of this Court (A.P. Shah, J.) in Swami Attah v. Mrs. Thrity Poonawalla reported in 1996 (1) Mh. L.J. 603. In paras 4 and 5 the learned Judge held as follows:—

“4. ... The explanation (b) to section 13(A2) prescribes a special rule of evidence, which provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. In view of the special rule of evidence, it is not permissible for the court to go beyond the document to find out the intention of the parties

4 2000 SCC Online Bom 524

and to arrive at a conclusion that the document is of lease and not of leave and licence....”.

5.But where a document or evidence is made conclusive it creates a presumption juris et de jure in favour of the truth and legality of the matter stated and no evidence can be adduced to contradict it. Conclusive evidence means an absolute evidence of a fact for all purposes for which it is so made evidence R. v. Levi, (1865) 34 L.J.M.C. 174. Therefore, the words appearing in explanation (b) “an agreement of licence in writing shall be conclusive evidence of the fact stated therein” must in the ordinary and grammatical meaning, have the effect of shutting out any other evidence on the subject which might be adduced before the Court.”

The same view has been reiterated in the earlier Judgment of another learned Single Judge Mr. Justice R.G. Vaidyanatha in Amarjit Singh v. R.N. Gupta reported in 1995 (4) BCR 538. In para 4 of his Judgment, the learned Judge held thus:

“4. It is true as observed by the Supreme Court in Associated Hotels of India's case, AIR 1959 SC 1262 that the question whether in a particular case the transaction is one of a lease or licence is a question of fact to be decided on the peculiar facts and circumstances of the case, the contents of the document, the intention of the parties etc. But in my view, in the present case, we are guided by a special legislation viz. the Bombay Rent Act which contains provisions for leave and licence in addition to tenancies. A special forum is created for eviction of licensees who are continuing in the premises after the expiry of the licence period.

Section 13-A-2(1) of the Bombay Rent Act provides a procedure for eviction of a licensee before a competent authority. Then a special rule of evidence is prescribed in section 13-A-2(3)(b) which provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein.

In view of this special rule of evidence prescribed under the Act we cannot go beyond the document to find out the intention of the parties, the circumstances of the case, the nature of possession etc. as pointed out by the Supreme Court in the Associated Hotels of India's case, that rule may be applicable to leases under the general law. But we are concerned with the leave and licence under a particular statute which prohibits taking of extraneous factors other than the contents of the document to find out the nature of the transaction.”

Apart from these Judgments, two other learned Single Judges Mr. Justice P.S. Patankar and Mr. Justice R.M. Lodha have interpreted the provisions of section 13-A(2) in Automatic Electric Ltd. v. Sharadchandra Vinayak Tipnis reported in 1996 (1) Mh. L.J. 619, Sails India v. Rita M. Rupani reported in 1997 (2) Mh. L.J. 269 and Ramesh Ramrao Hate v. Parvez B. Bhesania reported in 1997 (1) Mh. L.J. 295. Mr. Justice Patankar, referred in para 11 of his judgment in 1996 (1) Mh. L.J. 619 to the Statement of Objects and Reasons underlying section 13-A(2) which is as follows:

“There are many a landlord who prefer to keep their premises vacant instead of letting them or

giving them on licence fee for fear of not getting the premises back when they want the same for their own use as it requires several years to get possession of such premises through the Court of law. It is therefore proposed to encourage the system of giving premises by landlords on licence basis and, on the failure of the licensee to deliver possession of the licensed premises to the landlord on expiry of the period of licence, to enable the landlord to get the possession of the premises from licensee as speedily as possible. For that purpose it is proposed to amend section 6 suitably, and to insert new section 13-A(2). This special machinery for this purpose is proposed to be created by clause 19.”

The learned Judge then holds as follows:—

“The objects and reasons make it clear that many landlords do not let out the premises or on licence fee in view of the difficulty in getting back the premises under the provisions of the Act, whenever they want the same for their own use. It clearly condemns about the long delays-caused in prosecuting the litigation in Courts of law regarding getting the possession of the premises. It was necessary to change this scenario and to encourage landlords to give the premises on licence basis and to provide the machinery to enable the landlords to get back the premises immediately after the expiry of the period of licence. It was necessary to introduce some speedy remedy. This was done by section 13-A(2) and special machinery was provided. It was thought by the legislature to induce the landlords to give the premises on licence basis.”

In 1997 (1) Mh. L.J. 295 Mr. Justice R.M. Lodha has held in para 9 of his Judgment as under:—

*“9. Once the legislature by explanation (b) of section 13-A(2) has provided that a written agreement of licence shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13-A(2) of the Bombay Rent Act. The intention of the legislature was to give finality to the existence of a fact occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusiveness of that evidence. The object of expression ‘conclusive evidence of fact stated therein’ is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence agreement from the proof of another. The argument of learned counsel for the petitioner that explanation (b) only makes the written agreement of licence conclusive evidence as regards the licensor and not against the licensee is very difficult to be appreciated. Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence. The law laid down by the Apex Court in **Smt. Somawanti case (supra)** is clear answer to the contention of the learned counsel for the petitioner wherein the Apex Court has held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the*

Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13-A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist. Same position holds good also in a case where the execution of written agreement of leave and licence is denied and the Competent Authority after recording evidence reaches the conclusion that execution of such agreement for leave and licence has been proved by the licensor.”

In the present case, the law as laid down in these Judgments is squarely attracted.”

(Emphasis added)

(ii) In the case of ***Rajendra B. Nair v. Suresh D. Dnyamothe***⁵ this Court discussed special scheme under old section 13A(2) and the said special rule of evidence. The relevant discussion is given in paragraphs 8 to 11 which read as under:-

*“8. On the other hand, on behalf of the respondent reliance was sought to be placed on clauses 2 and 12 of the agreement which respectively refer to the payment of monthly rent and to the bar of subletting. It was next submitted that **the documents in support of the plea that there was an oral agreement to sell were placed before the Competent Authority and the authority was consequently justified in forming the view that it ought not to allow the application for***

5 2002 SCC OnLine Bom 244

eviction. Finally, it was urged that the finding which was recorded by the Competent Authority should not be interfered with in revisional proceedings.

9. Section 13-A2 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 has been introduced by amendment in order to provide a speedy remedy for the purpose of the recovery of possession of premises given on licence, on the expiry of the licence. Prior to the enactment of section 13-A2, a great deal of legal ingenuity would be devoted to determining whether a Leave and Licence agreement was in fact an agreement of licence or of tenancy. A significant body of law had developed on the subject. Section 13-A2 now provides that notwithstanding anything contained in the Rent Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence. On the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee by making an application to the competent authority. The competent authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of the licensee. Sub-section (2) of section 13-A2 then provides that any licensee who does not deliver possession of the premises on the expiry of the period of licence and continues to be in possession until he is dispossessed by the competent authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence. Under sub-section (3), the competent authority is directed not to entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence. Explanation (b) to the section provides that for the purposes of the section an agreement of

licence in writing shall be conclusive evidence of the fact stated therein. In other words, the mandate of Explanation (b) is that once there is a written agreement, it shall be conclusive evidence of the facts which are contained therein. Consequently, it would not be open to the parties to lead evidence to establish that what was in fact, stated to be an agreement of licence in writing, was not an agreement of licence but of tenancy. The legislative mandate of making the written agreement conclusive evidence of the facts stated therein has to be given full force and effect. These provisions have been interpreted in several judgments of the learned Single Judges of this Court and it would be convenient to make reference to those judgments.

10. The line of precedent in this area is clear and consistent. In Amarjit Singh v. R.N. Gupta, 1995 (4) Bom.C.R. 538. Mr. Justice R.G. Vaidyanatha speaking for this Court held that section 13-A2 provides a special rule of evidence. The Court consequently cannot go beyond the document to find out the intention of the parties, the circumstances of the case, the nature of possession etc. ... (This) particular statute prohibits taking of extraneous factors other than the contents of the document to find out the nature of the transaction. In Swami Attah v. Mrs. Thrity Poonawalla, 1996 (1) Mh.L.J. 603 Mr. Justice A.P. Shah held, after referring to the judgment of the Supreme Court in Smt. Somawanti v. The State of Punjab, AIR 1963 SC 151 that “where a document or evidence is made conclusive it creates a presumption juris et de jure in favour of the truth and legality of the matter stated and no evidence can be adduced to contradict it.” Mr. Justice P.S. Patankar in Automatic Electric Ltd. v. Sharadchandra Vinayak Tipnis, 1996 (1) Mh.L.J. 619 referred to statement of objects and reasons underlying the introduction of section 13-A2 by Maharashtra Act 18 of 1987 and took due notice of

the fact that the legislature had acknowledged that many landlords do not let out premises or grant a licence in view of the difficulty in getting back the premises under the provisions of the Act. In view of the long delays involved in prosecuting litigation before Courts of law while getting back possession of the premises, the legislature had introduced a speedy remedy in section 13-A2 and created a special machinery so as to encourage landlords to give premises out on a licence with an assurance that they will get back the premises immediately after the expiry of the period of licence. In Ramesh Ramrao Hate v. Parvez B. Bhesania, 1997 (1) Mh.L.J. 295 : 1997 (1) ALL MR 39, Mr. Justice R.M. Lodha held that “the intention of the legislature was to give finality to the existence of the facts occurring in the written agreement of leave and licence.” The learned Judge held that once the execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13-A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein.”

11. The agreement is one by which a licence pure and simple was created in favour of the respondent. Explanation (b) to section 13-A2 must be given effect and its consequence is that the parties are shut out from leading evidence for the purpose of demonstrating that the agreement was not a leave and licence agreement. The provisions of the agreement which have been adverted to above clearly establish that the agreement was in fact and in law what it purported to be namely, an agreement by which a licence to occupy the premises was given to the respondent for a temporary period of three months. This needs emphasis, because quite apart

from the provisions of Explanation (b) which would have the effect of shutting out oral evidence to the contrary, the plain terms of the agreement show that it was one of leave and licence.”

(Emphasis added)

(iii) In *Mukesh Dharsibhai Thakkar v. Rajnikant Ramanlal Gunderia*⁶ the learned Single Judge has discussed the scheme of proceedings under Section 24 of the Maharashtra Rent Act in paragraphs 5 to 8. The said paragraphs 5 to 8 read as under :-

“5. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that respondent No. 1 executed leave and licence agreement in favour of the petitioners on 28/10/2006 for a period of 12 months commencing from 01/11/2006 to 31/10/2007. Thus, entry of the petitioner in the premises in question is as a ‘licensee’. Section 52 of the Indian Easements Act, 1882 defines the expression ‘license’ and read thus:

52. “License” defined.-Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

6. Though period of 12 months expired on 31/10/2007 that does not mean that status of the petitioner is changed from licensee to either a tenant or as a trespasser as the respondent permitted him to occupy the suit premises. In fact, in view of the Section

⁶ 2016 SCC OnLine Bom 731

52 of the said Act, he continuous to be the licensee in the premises in question.

7. Ms. Baxi relied upon Section 55 of the Act to contend that the leave and licence agreement is compulsorily required to be in writing and is also required to be registered under the Registration Act, 1908. The responsibility of getting such an agreement registered is on the licensor and in absence of the written registered agreement, the contention of the licensee about the terms and conditions subject to which a premises have been given to him by the landlord on leave and licence or have been let out to him shall prevail, unless proved otherwise. She submitted that as the leave and licence agreement is not registered, the contention of the licensee/tenant prevails, unless proved otherwise by the licensor/landlord. She, therefore, submitted that the matter may be remanded to the competent authority so as to offer an opportunity to contest the application filed by the first respondent.

8. This issue is no longer res integra. In the case of Amit B. Dalal (supra), the learned Single Judge of this Court has considered Sections 24 and 25 of the Act as also decision of this Court in the case of (1) Ramesh Ramrao Hate v. Parvez Bhesania, ((1997) 1 Mah LJ 295, and (2) Raj Prasanna Kondur (supra). The relevant discussion is in paragraphs-19 to 20, which reads thus:

“19. Thus in both the petitions, the execution of leave and licence agreements is not disputed by the Petitioner. The common issue which arises in both the petitions is regarding the effect of non-registration of the agreement of leave and licence on the clause (b) of explanation to section 24. The other common issue is as regards interpretation of sub section 2 of section

55 of the said Act of 1999. Section 24 of the said Act reads thus:

It is not in dispute that under the said Act of 1947, section 13A(2) contained a similar provision. Clause (b) of the explanation to said section 13A(2) and clause (b) of explanation to section 24 of the said Act are identical. The said clause (b) of explanation to section 13A(2) of the said Act of 1947 has been given consistent interpretation by this Court. In the case of Ramesh Ramrao Hate v. Parvez Bhesania ((1997) 1 Mah LJ 295), this Court interpreted the said clause. In paragraph 8 and 9, this Court observed thus:

*“8. The controversy centres round the explanation (b) which makes a provision that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. **Though the expression used in explanation is “conclusive evidence” it cannot be differentiated with the expression “conclusive proof.”***

“9. Once the legislature by explanation (b) or Section 13A(2) has provided that a written agreement of licence shall be conclusive evidence of the facts stated therein, it provided a special rule of evidence for the purpose of proceedings under section 13A(2) of the Bombay Rent Act. The intention of the legislature was to give finality to the existence of a fact occurring in the written agreement of leave and licence. In other words legislature intended to shut out any other evidence which would detract from the conclusive of that evidence. The object of expression ‘conclusive

evidence of fact stated therein' is aimed to give finality to the establishment of the existence of the fact or facts stated in the written leave and licence agreement from the proof of another. The argument of learned counsel for the Petitioner that explanation (b) only makes the written agreement of licence conclusive as regards the licensor and not against the licence is very difficult to be appreciated. Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence. The law laid down by the Apex Court in Smt. Somawanti' case (supra) is clear answer to the contention of the learned counsel for the Petitioner wherein the Apex Court has held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact otherwise when such evidence is made conclusive. Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13A(2) based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist."

(emphasis added)

In the subsequent decisions, this Court has

consistently adopted the said interpretation of clause (b). There is no reason why the ratio of the said decision should not govern the clause (b) of section 24 of the said Act. Thus, in both the cases it will not be open for the Petitioner to lead any evidence to show that the transaction was not of leave and licence but was of tenancy inasmuch as the facts stated in the leave and licence agreement establish that the Petitioner was inducted as a licensee in the suit premises.

19A. Now the question which remains to be decided in both the petitions is of interpretation of sub-section 2 of section 55 and the effect of the said provision on the said clause (b). Section 55 reads thus:

In the case of Raj Prasanna (supra), while dealing with sub-section 2 of section 55 of the said Act of 1999, in paragraphs 14 and 15 of the judgment, this Court held thus:

“14. The said Clause (b) in the Explanation to section 24 may, at first glance, appears to be contrary to the provisions under section 55 of the said Act, since sub-section (1) of section 55 requires an agreement to be in writing, besides its registration being mandatory, and sub-section (2) thereof provides that in the absence of written registered agreement, the contention of the licensee regarding terms and conditions of the agreement would prevail, unless proved otherwise. It is to be noted that the presumptive value attached to the contention of the licensee in relation to the terms and conditions of the license is for the eventuality of “absence of written registered agreement”, whereas, the

conclusive evidence spoken of under Clause (b) in the Explanation to section 24 relates to “facts” stated in the written agreement. Harmonious reading of section 55(1) and (2) along with the said Clause (b) in the Explanation to section 24 of the said Act would reveal that though it is mandatory for the landlord to get the agreement of leave and license recorded in writing and registered under the Registration Act, 1908, failure in that regard would warrant consequences as stipulated under section 55 of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. On the other hand, the provisions of section 55(2) and 55(3) of the said Act relate to the consequences of failure on the part of the landlord to comply with the requirement of registration of the agreement. In other words, though, in terms of subsection (2) of section 55 of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.

15. The contention of the learned Advocate for the Petitioner that the absence of registered written agreement would render of license to be invalid and therefore, it would result in the absence of jurisdictional fact to enable the Competent Authority to entertain the application under section 24 of the said Act, cannot be accepted. The jurisdictional fact which is required for the Competent Authority to entertain the application for

eviction under section 24 of the said Act is the expiry of license for residence in favour of the person occupying the premises and moment the same is disclosed based on whatever material placed before the Competent Authority, it will empower the Competent Authority to take cognizance of such application and to proceed to deal with the matter. Absence of registration or even the agreement being not in writing, that would not render the license to be invalid.....”

*19B. The contention of the learned counsel appearing for the Petitioner is that if an agreement of leave and licence is not registered, in view of sub-section 2 of section 55 of the said Act, if the a licensee while opposing an application under section 24 contends that in fact what was created was a tenancy and not a licence, the said contention will prevail unless it is proved otherwise by the applicant- licensee. However, sub-section 2 cannot be read in isolation and it will have to be read with sub-section 1. The sub-section 1 makes registration of an agreement of tenancy as well as an agreement of leave and licence compulsory. That is how in sub-section 2 there is a reference to premises being given on leave and licence or the premises being let out to the tenant. **Sub-section 2 cannot be so interpreted that it will nullify clause (b) of explanation to section 24. Both the provisions will have to be harmoniously construed. It must noted here that a special remedy for eviction of licensees under section 24 of the said Act is available only to premises given on licence for residential use. Section 55 is applicable not only to licence which is covered by section 24 but also to the licence granted in respect of premises for a use other than residential. The effect of sub-section 2 of section 55 is that in case of licence granted for non-residential use, if the agreement is not registered, it will be open for the opponent licensee to contend that the terms and conditions of the licence agreed between the parties were different from***

the terms and conditions incorporated under the agreement of leave and licence. When an application for eviction of a licensee in respect of license granted for residential use is made under section 24 of the said Act, to the leave and licence agreement subject matter of such application, explanation (b) will apply and the agreement will to be treated as conclusive evidence of the facts stated therein.

20. There is one more important aspect of the matter. An agreement of leave and licence does not require registration under the Registration Act, 1908 (hereinafter referred to as the said Act of 1908). Section 49 of the said Act of 1908 provides that no document which requires registration either under section 17 or under the Transfer of Property Act, 1882 can be received as evidence of any transaction affecting such property unless it has been registered. Thus section 49 of the said Act is applicable only to the documents which require registration either under section 17 of the said Act of 1908 or under the Transfer of Property Act, 1882. Under the said Act, while providing for consequences of non-registration, the legislature has not chosen to provide for drastic consequences as provided under section 49 of the said Act of 1908. Therefore, non-registration of a document required to be registered under section 55 of the said Act attracts limited consequences provided under sub-section 2 thereof apart from prosecution under sub-section 3. An unregistered document which requires registration under section 55 of the said Act can be read in evidence provided the same is proved and the same is otherwise admissible in evidence. Section 49 of the said Act of 1908 will not be applicable to such document which is required to be registered under section 55 of the said Act. Therefore, a document which requires registration under section 55 of the said Act does not become an invalid document. The presumption under clause (b) of explanation to section 24 of the said

Act is applicable only when an application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an agreement in writing of leave and licence in respect of the premises given for residential use, when an application under section 24 is made, the clause (b) will apply to such agreement and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said agreement.”

(Emphasis added)

10. Thus, the Scheme of Maharashtra Rent Act regarding Special provisions for recovery of possession in case of landlord entitled to recover possession of premises given on leave and licence for residence on expiry of the period of licence as provided under Section 24 of the Maharashtra Rent Act read with provisions of Chapter VIII concerning summary disposal of certain Applications is as follows:-

(i) Explanation (b) to section 13-A(2) of the Bombay Rent Act i.e. Explanation (b) to Section 24 of the Maharashtra Rent Act prescribes a special rule of evidence. It provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein. In view of this special rule of evidence, this Court has held that it is not permissible for the Court to go behind the document to find out the real intention of the parties. The agreement is conclusive evidence that the transaction is of leave and licence. In other words, it has been held that the words "conclusive evidence" of the facts stated in the Leave and Licence Agreement have the effect of shutting out any other evidence on the subject which might be adduced before the Court. No evidence can be adduced to contradict it. Conclusive evidence means an absolute evidence of a fact for all purposes for which it is so made evidence. In

view of this special rule of evidence prescribed under the Act Court cannot go beyond the document to find out the intention of the parties, the circumstances of the case, the nature of possession etc.

(ii) Once it is provided by the legislature that an agreement of licence in writing shall be conclusive evidence of the facts stated therein, it prohibits from leading any other evidence which may affect the conclusiveness of that evidence. Supreme Court in Smt. Somawanti case (supra) held that once the law says that certain evidence is conclusive it shuts out any other evidence which would detract from the conclusiveness of that evidence. Not only that when a certain evidence is made conclusive evidence, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence, but also the Court has no option to hold the existence of the fact, when such evidence is made conclusive.

(iii) Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under section 13-A(2) of the Bombay Rent Act/ Section 24 of the Maharashtra Rent Act based on such leave and licence agreement, it is conclusive evidence of the facts stated therein and no other evidence can be led inconsistent with the said facts by either of the parties and is conclusive between the parties of the facts stated therein. The Competent Authority has no option but to hold that the facts stated therein do exist.

(iv) Harmonious reading of section 55(1) and (2) along with the said Clause (b) in the Explanation to section 24 of the said Act would reveal that though it is mandatory for the landlord to get the agreement of leave and license recorded in writing and registered under the

Registration Act, 1908, failure in that regard would warrant consequences as stipulated under section 55 of the said Act, however, once the matter reaches the stage of evidence, and if there is an agreement in writing, though not registered, even then the facts stated in such agreement could be deemed to be conclusively established on the basis of such written agreement itself and there would be no other evidence admissible in that regard. In other words, though, in terms of subsection (2) of section 55 of the said Act, there will be presumptive value to the contentions of the licensee in respect of the terms and conditions of the agreement is in writing and even though it is not registered, the same, as regards the facts stated therein would be deemed to have been proved conclusively on production of the agreement itself, and in which case, any presumption arising in relation to the terms and conditions of the license contrary to the facts stated in such agreement would stand rebutted.

11. Thus, it is clear that as per the settled legal position, the intention of the legislature was to give finality to the existence of the facts occurring in the written Agreement of leave and licence. The legislature intended to shut out any other evidence which will detract from the conclusive evidence of that case. The object of expression “conclusive evidence of facts stated therein” is aimed to give finality to the establishment of the existence of the fact or facts stated in the Leave and Licence Agreement. It is settled legal position that once it is provided by the legislature that an Agreement of Licence in writing shall be conclusive evidence of the facts stated therein, it prohibits any other evidence, which may affect the conclusiveness of the evidence. It is a

settled legal position that when certain evidence is conclusive, it prohibits any other evidence to be led which may detract from the conclusiveness of that evidence. It is a settled legal position that non-registration of a document required to be registered under Section 55 of the Maharashtra Rent Act attracts limited consequences provided under Sub Section 2 thereof apart from prosecution under Sub Section 3. An unregistered document which requires registration under Section 55 of the Maharashtra Rent Act can be read in evidence provided the same is proved and the same is otherwise admissible in evidence. Section 49 of the *Registration Act, 1908* will not be applicable to such document which is required to be registered under Section 55 of the Maharashtra Rent Act. Therefore, a document which requires registration under Section 55 of the Maharashtra Rent Act does not become an invalid document. The presumption under clause (b) of explanation to Section 24 of the Maharashtra Rent Act is applicable only when an Application for eviction is filed relating to the premises given on licence for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an Agreement in writing of leave and licence in respect of the premises given for residential use, when an Application under Section 24 of the Maharashtra Rent Act is made, the said clause (b) will apply to such an Agreement and it will not be open for the licensee to lead any evidence

contrary to the terms and conditions provided in the said Agreement.

Point No. ii :

Whether the Competent Authority while deciding the Application for leave to defend filed under Section 43(4) of the Maharashtra Rent Control Act, 1999 can decide the same de hors the rigours of explanation 'b' to Section 24 of the Maharashtra Rent Control Act, 1999?

12. In view of the above settled legal position, it is to be considered whether the Competent Authority, while deciding the Application for leave to defend can decide the same completely ignoring the requirement of explanation (b) to Section 24 of the Maharashtra Rent Act. Explanation (b) to Section 24 of the Maharashtra Rent Act clearly provides that an Agreement of Licence in writing shall be conclusive evidence of the facts stated therein. As held by this Court in *Mukesh Dharsibhai Thakkar* (supra) in respect of the premises given for residential use, when an Application under Section 24 is made, said clause (b) will apply to such a case and it will not be open for the licensee to lead any evidence contrary to the terms and conditions provided in the said Agreement.

13. Section 43 of the Maharashtra Rent Act prescribes special procedure for disposal of Applications filed by the landlord under Chapter VIII of the Maharashtra Rent Act. Under Chapter VIII Section 41 defines “landlord”. Three categories of landlords are contemplated under said Section 41 viz:-

- (i) A person who has created a service tenancy;
- (ii) A member of the armed forces of the Union or a scientist or a Government servant or a successor-in-interest;
- (iii) A person who has given the premises on licence for residence or successor-in-interest defined in Section 22;

Thus, it is clear that the provision that Agreement of Licence in writing shall be conclusive evidence of the facts stated therein will only apply to the landlord who has filed proceeding under Chapter VIII for recovery of premises given on leave and licence and the same will not apply to the other categories of landlords. Section 43(4)(b) of the Maharashtra Rent Act contemplates that the Competent Authority shall give to the tenant or licensee, leave to contest the Application if the affidavit filed by the tenant or licensee discloses such facts, as it would dis-entitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Section 22 or Section 23 or Section 24 of the Maharashtra Rent Act. As set out herein above, Section 22 is regarding recovery of possession in case of tenancy created during service period. Section 23 is when members of armed forces of the Union, scientists or their successor-in-interest entitled to recover possession of premises required for their occupation and Section 24 is regarding landlord entitled to recover possession of any premises given on licence on expiry. Thus, the “landlord” contemplated under Section 41 of Chapter VIII are three different and

distinct types of landlords. Said rule of evidence as contained in explanation (b) to Sub Section 3 of Section 24 of the Maharashtra Rent Act will only apply when the residential premises are given on leave and licence basis to the licensee. Thus, it is clear that the criterias which are applicable while considering leave application filed by the tenants who were covered by Sections 22 and 23 is totally different than the Application filed under Section 24 where the special rule of evidence is specified. Sub-Section 4(a) of Section 43 of the Maharashtra Rent Act *inter alia* provides that *licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in sub-section (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the Competent Authority. Sub-Section 4(b) of Section provides that the Competent Authority shall give to the tenant or licensee, leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises, on the ground specified in section 22 or 23 or 24.* Thus, it is clear that while considering leave Application in the proceeding filed by the licensor against the licensee as contemplated under Section 24, special rule of

evidence as contemplated under explanation (b) to Sub Section 3 of Section 24 of the Maharashtra Rent Act is required to be considered and will apply. The licensor can only raise the contentions, even for obtaining leave, which are permitted by said special rule of evidence i.e. explanation (b) to Sub Section 3 of Section 24 of the Maharashtra Rent Act which provides that an Agreement of Licence in writing shall be conclusive evidence of the fact stated therein. However, it is clarified that the same will not apply to the case where it is the claim of the licensee that the Agreement in question has been brought into existence as a fraud. In that case, however, it is required to be *prima facie*, decided by the Competent Authority that the said defence is not moonshine defence.

Point No. iii :

Whether in the facts and circumstances of this case it is necessary to grant leave to defend under Section 43(4) of the Maharashtra Rent Control Act, 1999 to the Respondent?

14. In the light of above legal position it is necessary to see various clauses of the leave and license agreement dated 16th June 2018 (Page Nos.57 to 62). The clause Nos.1, 2, 3 and 6 are very relevant and the same reads as under :-

“1. The LICENSOR agrees to grants the LICENSEE and the LICENSEE agreed to take under leave and license the premise for residential purpose for a period of 24 month with effect from 16th Jun 2018 to 15th Jun 2020.

2. *The **LICENSEE** shall can use the said flat for only residential purpose.*
3. *This Agreement comes into Force from **16th day of Jun 2018 to 15th Jun 2020.***
6. *The **LICENSEE** shall handover the vacant possession to the **LICENSOR** after completion of **24** months.”*

Thus, it is clear that the period of leave and license agreement is from 16th June 2018 to 15th June 2020. It is further agreed between the parties that licensee shall hand over possession to the licensor after completion of 24 months i.e. 15th June 2020. As per Explanation (b) to Section 24 of the MRC Act, terms and conditions in the written leave and license agreement are conclusive of the facts stated therein. Thus, the Competent Authority cannot take into consideration the evidence which is contrary to the written terms of the leave and license agreement.

15. It is also required to be noted that the present Respondent has filed Special Civil Suit No.31 of 2024 seeking specific performance of the oral agreement. The Application bearing Exhibit-5 filed in said Suit has been rejected by the learned Civil Judge, Senior Division, Belapur by order dated 4th November 2024 passed below Exhibit-5 in Special Civil Suit No.31 of 2024. In view of the said suit pending in the Civil Court the following observations in ***Sanath Kumar Sanjib Das*** (supra) are very relevant and squarely applicable to the present case.

“11. However, while conducting limited enquiry under the MRC Act it is neither for the Competent Authority nor for this Court to interpret the terms and conditions of the MoU or to consider conduct of any party qua those terms and conditions. This has to be left to the jurisdiction of the competent Civil Court. If Plaintiff/Petitioner wants Respondent Nos.1 and 2 to specifically perform the Mou, he can file suit seeking specific performance thereof. Mere reference to the license agreement in the MoU would not clothe the Competent Authority with jurisdiction to deal with terms and conditions of the MoU. The license granted in favour of the Petitioner stands on a different footing than the agreement for purchase of licensed premises. The remedies exercisable in respect of two independent rights are also altogether distinct. I am therefore of the view that parties can agitate their grievances in respect of the alleged non-fulfillment of obligations under MoU before appropriate civil court.”

(Emphasis added)

16. Thus, the alleged claim of the oral agreement can not be looked into by the Competent Authority. Thus, the order passed by the Additional Divisional Commissioner remanding back the Eviction Application to the Competent Authority for trial and directing that order be passed after leading evidence by both the parties, consequently granting leave to defend is not proper and legal.

17. One of the point raised by the Respondent before the Competent Authority and Additional Commissioner is that the Eviction Application filed is barred by limitation. It is the contention of learned Counsel appearing for the Petitioner that law of limitation is not applicable to the Application for eviction filed before the Competent Authority under

Section 42 of the Maharashtra Rent Act. To support the said contention learned Counsel for the Petitioner has relied on the decision of this Court in the case of *Sudha Rajendra Mahajan v. Vikas Narayan Patil*⁷. However, the said point is not raised by the learned Counsel appearing for the Respondents in this Writ Petition. In any case, it is required to be noted that the last leave and license agreement was executed on 16th June 2018, same expired by efflux of time on 15th June 2020 and the Eviction Application is filed on 9th November 2023. The Supreme Court due to Covid pandemic has suspended the limitation period from 15th March 2020 to 28th February 2022. Thus, even if it is assumed that the Limitation Act, 1963 applies to the said proceedings then also there is no substance in the said contention.

18. Accordingly, the Writ Petition is allowed by passing following orders:-

ORDER

(i) Order dated 14th February 2025 passed by the Additional Divisional Commissioner, Konkan Division, Mumbai in Revision Application No.747 of 2024 is quashed and set aside and said Revision Application is dismissed.

(ii) Consequently order dated 9th August 2024 of Competent Authority, Rent Control Act Court, Konkan Division in Eviction Application No.247 of 2024 stands

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restored.

19. Accordingly, the Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]