



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6717 OF 2009

Harish Kumar Narang

...Petitioner

Versus

Rajni Tahil Bhambhawani

...Respondent

WITH

CIVIL APPLICATION NO.319 OF 2017

IN

WRIT PETITION NO.6717 OF 2009

Rajni Tahil Bhambhawani

...Applicant

IN THE MATTER BETWEEN:

Harish Kumar Narang

...Petitioner

Versus

Rajni Tahil Bhambhawani

...Respondent

Mr. V. Y. Sanglikar, for the Petitioner.

Mr. Ajay Panicker a/w Ms. Priyanka Lanke i/b Ajay Law Associates, for the Respondent in WP/6717/2009 & CA/319/2017.

CORAM: MADHAV J. JAMDAR, J.

DATED: 24 JUNE 2024

JUDGMENT:

1. Heard Mr. Sanglikar, learned Counsel for the Petitioner and Mr. Panicker, learned Counsel for the Respondent.

2. In the present Writ Petition preferred under Article 227 of the Constitution of India, challenge is to the legality and validity of the Order dated 20th August 2008 passed by the Competent Authority (Rent

Act), Konkan Division, Mumbai in Case No.7 of 2007 filed under Section 24 of the *Maharashtra Rent Control Act, 1999* (“Rent Act”) as well as to the Order dated 18th July 2009 passed by Additional Commissioner, Konkan Division, Mumbai in Revision Application No.279 of 2008 preferred under Section 44 of the Rent Act (“impugned Orders”).

3. Before setting out the submissions of both the parties and before considering the challenge to the legality and validity of the impugned Orders, it is necessary to set out certain factual aspects.

(i) Subject matter of the present Writ Petition is Flat No.A-201, Palm Court, Plot No.504, Link Road, Malad (West), Mumbai- 400 064 (“the said flat”). It is an admitted position that the said flat belongs to the Respondent.

(ii) On 29th November 2003, a Leave and License Agreement was executed with respect to the said flat for a period of 11 months from 1st December 2003 to 31st October 2004 for a license fees of Rs.10,000/- per month and a security deposit of Rs.1,00,000/- (“first Leave and License Agreement”).

(iii) On 4th December 2004, another Leave and License Agreement was executed between the Petitioner and the Respondent for a period of 11 months from 1st November 2004 to 30th September 2005 for a license fee of Rs.10,500/- per month and a security deposit of Rs.1,00,000/-

("second Leave and License Agreement"). The second Leave and License Agreement came to an end by efflux of time on 30th September 2005.

(iv) It is an admitted position that although both the Leave and Licence Agreements are in writing, both of them are unregistered Leave and Licence Agreements.

(v) It is the contention of the Respondent that the Petitioner wanted some time to vacate the flat and therefore agreed to pay a sum of Rs.10,500/- per month till 30th September 2006. It is the contention of the Petitioner that in fact the arrangement was that the flat was given on a rental basis and agreements of leave and licence were executed as the Respondent stated that the Respondent does not want to approach Society to seek permission to give the flat on the tenancy basis.

(vi) On 12th February 2007, the Eviction Application No.7 of 2007 was preferred under Section 24 of the Rent Act before the Competent Authority for eviction and also seeking compensation at double the rate of license fees i.e. Rs.21,000/- w.e.f. October 2005.

(vii) On 18th May 2007, the Petitioner filed the Written Statement to the said Eviction Application. In the said Written Statement, the contention raised is to the effect that although the Agreement is of leave and license, the transaction was of tenancy and that Leave and License Agreement is not registered and hence in accordance with Section 55(2) of the Rent Act, the contention of the tenant about the terms and

conditions subject to which a flat have been given to him by the landlord on leave and licence or have been let to him, shall prevail unless proved otherwise. It is contended that as a Leave and Licence Agreement is not registered, the Application is not maintainable. It is also contended that as after expiry by efflux of time of Leave and Licence Agreement on 30th September 2005, the Petitioner is residing in the said flat for about a period of two years, Application filed under Section 24 of the Rent Act on 12th February 2007 without any termination notice, is not maintainable.

(viii) On 11th January 2008, the Respondent filed the Evidence–Affidavit. The Respondent has been cross-examined by the Petitioner on 4th April 2008. Although on 4th April 2008 the Eviction Application was adjourned for further cross-examination, no further cross-examination was conducted and the Respondent’s evidence was closed on 2nd July 2008.

(ix) It appears that although adjournment was granted from time to time, the Petitioner remained absent and therefore, on 14th August 2008, the learned Competent Authority passed the following Order:

“Today applicant present with Adv. Respondent and his Advocate absent till 3.35 p.m.. No evidence led by Resp. On last date also Respondent was absent. Hence right of Resp. to lead the evidence stands forfeited.”

(x) Thereafter on 20th August 2008, the Competent Authority allowed

the Application No.7 of 2007 preferred under Section 24 of the Rent Act and directed the Petitioner to vacate and handover peaceful and vacant possession of the said flat and also directed the Petitioner to pay damages at the rate of Rs.21,000/- per month from 1st October 2005 till handing over possession of the said flat.

(xi) The present Petitioner preferred Revision Application No.279 of 2008 before the Additional Commissioner, Konkan Division, Mumbai and the said Revision Application was dismissed by Order dated 18th September 2009.

4. Mr. Sanglikar, learned Counsel for the Petitioner *inter alia* raised following contentions:

(a) He submitted that the impugned Order of the Competent Authority has been passed in total violation of principles of natural justice. To substantiate said contention, he pointed out Paragraph no.3 of the Revision Application preferred before the Additional Commissioner, Konkan Division, Mumbai. He submitted that for valid reasons either the Petitioner or his Advocate was absent for about 4 to 5 days and the Competent Authority had not given an opportunity to the Petitioner to file his Evidence-Affidavit and also without giving the Petitioner an opportunity of hearing, the impugned Order has been passed. He therefore submitted that in the facts and circumstances of this case, the impugned Orders are required to be quashed and set aside

and the matter is required to be remanded back to the learned Competent Authority.

(b) He pointed out Clause No.16 of the Leave and License Agreement (Page No.14) of the Writ Petition and submitted that unless the deposit is refunded, the Petitioner is not under obligation to handover the possession of the said flat.

(c) He submitted that in fact the real transaction is that the said flat is given to the Petitioner on tenancy basis. He submitted that Leave and License Agreement is not registered as required under Section 55(2) of the Rent Act. He submitted that therefore the contentions raised by the Petitioner that the said flat is given on the tenancy basis and the terms of the tenancy has to be given primacy. He submitted that the Competent Authority has not given an opportunity to the Petitioner to place on record the case that the said flat is given on tenancy basis.

(d) He submitted that the jurisdictional fact as required under Section 24 of the Rent Act are not pleaded and proved. He submitted that what is important for the Competent Authority to get jurisdiction under Section 24 of the Rent Act is that it has to be pleaded and proved that the flat is given on leave and license for residence and therefore the impugned Order has been passed by the Competent Authority without jurisdiction. As far as aspect of the jurisdiction of the Tribunal is concerned and absence of jurisdictional fact in the Application preferred

by the Respondent, Mr. Sanglikar has relied on the following decisions:

- (i) *Arun Kumar v. Union of India* ¹;
- (ii) *Rekha Prasmodrao Deshmukh v. Gajanan Maharaj Sansthan, Shegaon* ²;
- (iii) *Sameer s/o Vasantrao Sathawane v. Ramesh s/o Maratrao Raut* ³;
- (iv) *Carona Ltd. v. M/s Parvathy Swaminathan and Sons* ⁴;
- (v) *Sarwan Kumar & Anr. v. Madan Lal Aggarwal* ⁵.

(e) He further pointed out the contention raised in the Application preferred under Section 24 of the said Act on Page No.28 to the effect that on expiry of the second Leave and License Agreement, the Petitioner sought sometime to vacate the flat and agreed to pay rent of Rs.16,000/- per month, which he has paid upto on 30th September 2006. He therefore, submitted that the same is a novation of contract. He relied on the following decisions and contended that the same is not permissible:

- (i) *Arun Kumar v. Union of India (supra)*;
- (ii) *Rajprasanna Kondur v. Arif Taher Khan* ⁶;
- (iii) *Bhuneshwar Prasad & Anr. v. UCO Bank & Ors.* ⁷.

1 Civil Appeal No.3270 of 2023
2 2015 SCC OnLine Bom 6829
3 Writ Petition No.6073 of 2015 (Nagpur)
4 AIR 2008 SC 187
5 AIR 2003 SC 1475
6 2005 (4) BOM CR 383
7 AIR 2000 SC 2796

(f) He submitted that the Petitioner has preferred an Application under Order IX Rule 13 of the *Code of Civil Procedure, 1908* (“CPC”) before the Competent Authority, however, the said Application has been kept in the record and no Order has been passed. Insofar as parameters to be followed by the Court while considering the Application under Order IX Rule 13 of the CPC, he relied on the following decisions:

- (i) *Tea Auction Ltd. v. Grace Hill Tea Industry*⁸;
- (ii) *State of W. B. v. The Administrator Howrah*⁹;
- (iii) *Prakash Chander Manchanda v. Smt. Janki Manchanda*¹⁰;
- (iv) *Grindlays Bank Ltd. v. CGI Tribunal*¹¹;
- (v) *Savithri Amma Seethamma v. Aratha Karthy*¹²;
- (vi) *Kalpna v. Gorakhnath Govinda Dhone*¹³.

5. On the other hand, Mr. Panicker, learned Counsel for the Respondent raised the following contentions:

(a) Eviction proceedings based on unregistered Leave and License Agreement is maintainable. He relied on following two decisions to substantiate said contention:

- (i) *Mukesh Dharsibhai Thakkar v. Rajnikant Ramanlal*

8 (2006) 12 SCC 104

9 AIR 1972 SC 749; (1972) 1 SCC 366

10 AIR 1987 SC 42

11 AIR 1981 SC 606

12 AIR 1983 SC 318

13 2015 SCC OnLine Bom 4709

*Gunderia*¹⁴;

(ii) *Hongkong and Shanghai Banking Corporation Ltd. v. Diamant Borat India Private Ltd.*¹⁵.

(b) As far as the contention that the Competent Authority has no jurisdiction to deal with the Application filed under Section 24 of the Rent Act, Mr. Panicker, learned Counsel pointed out Clause No.1 and recitals 1 and 2 of the Leave and License Agreement and contended that the same has been given only for residential use. He submitted that the flat in question is on the 2nd floor in a co-operative housing society. He pointed out a list of furniture and fixtures. He pointed out certain contentions raised in the Written Statement and submitted that even it is the case of the Petitioner that the said flat has been given on leave and license basis only for residence. He therefore submitted that the Competent Authority has jurisdiction under Section 24 of the Rent Act to decide the Application.

(c) As far as the contention that no opportunity has been granted by the Competent Authority to lead evidence to the Petitioner, Mr. Panicker submitted that on 4th April 2008, the Petitioner's Advocate cross-examined the Respondent and thereafter on 2nd July 2008, the evidence of the Respondent was closed and the matter was adjourned for evidence of the Petitioner. He submitted that on or about 4 or 5 dates,

14 2016 SCC OnLine Bom 731
15 (1998) 2 Mah LJ 35

the Petitioner and his Advocate continuously remained absent and therefore on 14th August 2008, the Competent Authority passed an Order to the effect that the right of the Respondent to lead evidence stands forfeited. He submitted that thereafter on 20th August 2008, the Competent Authority passed the eviction Order. He submitted that no sufficient cause has been given for absence for 4 to 5 dates and no medical certificate is produced.

(d) He submitted that there is no document on record to show that any Application for setting aside the Order passed by the Competent Authority under Order IX Rule 13 of the CPC is actually preferred before the Competent Authority.

(e) He submitted that notice of termination is not at all required before filing the proceedings under Section 24 of the Rent Act.

(f) He submitted that there is no novation of contract and the amount mentioned as Rs.16,000/- in the Application filed under Section 24 of the Rent Act is a typographical error/drafting mistake. He submitted that Rs.16,000/- were never paid and what is paid up to November 2006 even as per the case of the Petitioner is only Rs.10,500/-. To substantiate said contention, he pointed out paragraphs on Page No.2 of the Eviction Application (Page No.28) and Paragraph No.17 of the Written Statement (Page No.40). He relied on the decision of the Supreme Court in *Sarup Singh Gupta v. S. Jagdish Singh &*

*Others*¹⁶ and contended that the acceptance of rent does not amount to waiver of notice to quit unless there be any other evidence to prove that the landlord so intended.

(g) As far as contention that the Petitioner is a tenant and actual intention was to create tenancy, he pointed out various terms and conditions of Leave and License Agreement. He relied on Section 24 of the Rent Act and more particularly on Explanation (b) thereto. He submitted that no declaratory suit has been filed by the Petitioner in the Small Causes Court seeking declaration of tenancy. He therefore submitted that the factual position on record does not show that the actual intention was to create tenancy. In any case, he submitted that no such evidence can be led in view of written Leave and License Agreement and Explanation (b) to Section 24 of the Rent Act.

(h) Insofar as the contention that the leave and license is an unregistered document, he submitted that the execution of Leave and License Agreement is not disputed. He relied on Explanation (b) to Section 24 of the Rent Act and submitted that the agreement of license shall be conclusive evidence of the facts stated. He relied on the decision in *Mukesh Thakkar* (supra) and *Hongkong* (supra) and submitted that in case Leave and License Agreement is a written Agreement, then it is not relevant even, if the Leave and License Agreement is an unregistered Agreement. He submitted that as far as

¹⁶ 2006 4 SCC 205

both Leave and License Agreements, full stamp duty has been paid on both Agreements and submitted that the fact that the Leave and License Agreements are unregistered documents has no relevance in the proceedings under Section 24 of the Rent Act.

6. Thus, on the basis of the submissions of both parties, following issues are required to be decided:

(i) What is the effect of an unregistered Leave and License Agreement and whether the proceedings under Section 24 of the Rent Act filed on the basis of unregistered Leave and License Agreement are maintainable?

(ii) Whether the jurisdictional fact as required under Section 24 of the Rent Act are pleaded and proved and whether the Competent Authority has got jurisdiction to decide the eviction proceedings?

(iii) What is the effect of not refunding the deposit amount and whether eviction Order cannot be passed as the Respondent has not refunded the deposit amount?

(iv) Whether there is a novation of contract and what is the effect of the same on the eviction proceedings filed under Section 24 of the Rent Act?

(v) Whether there is a violation of principles of natural justice and therefore any prejudice has been caused to the

Petitioner and whether impugned Orders are liable to be quashed and set aside on that aspect?

(vi) Whether the Petitioner is entitled for remand of the case in view of Order IX Rule 13 of the CPC?

(vii) Whether both impugned Orders are liable to be quashed and set aside and matter is to be remanded back to the Competent Authority?

7. FIRST POINT:

What is the effect of an unregistered Leave and License Agreement and whether the proceedings under Section 24 of the Rent Act filed on the basis of unregistered Leave and License Agreement are maintainable?

(i) In this case, eviction proceedings are filed under Section 24 of the 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) Section 55 of the Rent Act is also relevant as it *inter alia*, provides that any Agreement for Leave and License after commencement of the 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 License 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)

(iii) In *Amarjit Singh v. R.N. Gupta*¹⁷, this Court was considering the scheme of Section 13-A-2(1) of the *Bombay Rents, Hotel and Lodging House Rates Control Act, 1947* ("Bombay Rent Act") which is concerning procedure for eviction of licensee and Section 13-A-2(3)(b) of the Bombay Rent Act which provides that an agreement of license in writing shall be conclusive evidence of the facts stated therein. The said provision is identical to the Explanation (b) to Section 24 of the Rent Act. In Paragraph No.4 of *Amarjit Singh* (supra) it has been held as under:

"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

¹⁷ 1995 (4) BCR 538

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.”

(iv) In *Swami Attah v. Thrity Poonawalla* ¹⁸ in Paragraph Nos.4 and 5, it has been 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 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

¹⁸ 1996 (1) Mh. L.J. 603

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.”

(v) In *Ramesh Ramrao Hate v. Parvez B. Bhesania* ¹⁹ a learned Single Judge in Paragraph No. 9 held 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*

¹⁹ 1997 (1) Mah LJ 295

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. ”

(Emphasis added)

(vi) In case of *Jasmeet Hoon v. Rita Johar* ²⁰, the said special procedure for eviction of Licensee before the Competent Authority prescribing a special rule of evidence is discussed in Paragraph No.11 which 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

20 2000 SCC OnLine Bom 524; 2001(1) Mh.L.J. 659

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.

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.”

(vii) In *Rajendra B. Nair v. Suresh D. Dyanmothe* ²¹, this Court discussed special scheme under old Section 13A(2) and the said special rule of evidence. The relevant discussion is

21 2002 SCC OnLine Bom 244 : 2002 (4) Mah LJ 93

given in Paragraph Nos.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 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)

(viii) In *Mukesh Dharsibhai Thakkar* (supra), the learned Single Judge has discussed the scheme of proceedings under

Section 24 of the Rent Act in Paragraph Nos.5 to 8 which 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 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)

(ix) Thus, the Scheme of the Rent Act regarding Special provisions for recovery of possession in case of landlord entitled to recover possession of premises given on leave and license for residence on expiry of the period of license as provided under Section 24 of the Rent Act is as follows:

(a) 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.

(b) 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 otherwise when such evidence is made conclusive.

(c) Once an execution of the agreement of leave and licence is not disputed before the Competent Authority in an application under 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.

(d) 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.

(x) Thus, it is clear that as per settled law, 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 License Agreement. It is a settled law that once it is provided by the legislature that an Agreement of License 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 law 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 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 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 Rent Act. Therefore, a document which requires registration under Section 55 of the Rent Act does not become an invalid document. The presumption under clause (b) of explanation to Section 24 of the Rent Act is applicable only when an Application for eviction is filed relating to the premises given on license for residence. In other proceedings, the said presumption may not apply. Therefore, notwithstanding the non-registration of an Agreement in writing of leave and license in respect of the premises given for residential use, when an Application under Section 24 of the 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.

(xi) Thus, it is settled law that non-registration of a document required to be registered under Section 55 of the 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 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 Rent Act. Therefore, a document which requires registration under Section 55 of the Rent Act does not become an invalid document. The presumption under Clause (b) of explanation to Section 24 of the Rent Act is applicable only when an Application for eviction is filed relating to the flat given on leave and license for residential use. 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 flat given for residential use, when an Application under Section 24 of the Rent Act is made, the said Clause (b) of the explanation 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.

Thus, there is no substance in the contention raised by Mr. Sanglikar,

learned Counsel for the Petitioner that the proceedings under Section 24 of the Rent Act are not maintainable as the Leave and License Agreement is unregistered. However, it is made clear that as set in hereinabove, the presumption under Clause (b) of explanation to Section 24 of the Rent Act is applicable only when an Application for eviction is filed relating to the flat given on leave and license for residential use. Thus, the maintainability of the Application filed under Section 24 is still dependent on the answer to the second point raised by Mr. Sanglikar, learned Counsel.

8. SECOND POINT:

Whether the jurisdictional fact as required under Section 24 are pleaded and proved and whether the Competent Authority has got jurisdiction to decide the eviction proceedings?

(i) Mr. Sanglikar, learned Counsel for the Petitioner, to substantiate the contention that the jurisdictional facts are not set out in the Application filed under Section 24 of the Rent Act, has relied on the decision in *Arun Kumar* (supra). He more particularly relied on Paragraph Nos.75, 76, and 77 of the said decision, which read as follows:

“75. A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an

administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

76. *In Halsbury's Laws of England, it has been stated; "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".*

77. *The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."*

(Emphasis added)

(ii) Mr. Sanglikar also relied on the decision of *Raj Prasanna Kondur* (supra) and more particularly on Paragraph Nos.15 and 17 of the same.

The relevant portion of the said paragraphs, read as follows:

"(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...”

*(17.) IT is also argued that the procedure provided under section 24 are of summary nature. There is no appeal provided against the order to be passed in such proceedings. The orders passed by the competent authority under section 24 are not appealable in view of the provisions in that regard under section 44(1). However, they are revisable under sub-section (2) of section 44 provided that the application in that regard has to be presented within 90 days of the date of order sought to be revised. The jurisdiction of the Civil Court to deal with such matters is barred under section 47. Any order passed under section 24 in favour of the landlord would result in dispossession of the person in occupation of the premises. Being so, the provisions are to be liberally construed bearing in mind the drastic effect thereof. The contention is devoid of substance. **The competent authority created under the said Act to order eviction of the licensee on the expiry of the period of license in terms of section 24 does not speak of eviction of a person in occupation of the premises otherwise than as the licensee and whose license has expired or terminated.***

(Emphasis added)

(iii) Mr. Sanglikar relied on the decision of *Rekha Pramodrao Deshmukh* (supra). Paragraph Nos.6 and 9 of the said decision are relevant and set out herein below for ready reference:

*“6. Perusal of aforesaid provisions makes it clear that though the term “landlord” has been defined by section 7(3) of the said Act, for the purposes of Chapter VIII of the said Act, the term “landlord” has been defined by section 41(c) of the said Act to mean a person who has given premises on license for residence as referred to in section 24. **Section 24(1) of the***

said Act also refers to a license given for residence and the duty of such licensee to deliver possession to the landlord on expiry of the period of license. Sub-section (2) of section 24 of the said Act contemplates the consequence of failure to deliver possession on the expiry of the period of license and makes the licensee liable to pay damages at double the rate of the license fee or charge as fixed under the agreement of license. It is thus clear that section 24 restricts its applicability only to premises given on license for residence. By defining the term "landlord" under section 41(c) of the said Act and restricting the same for the purposes of Chapter VIII under which such landlord is required to make an application for evicting a licensee, this position is made further clear. Even provisions of section 7 of the said Act stipulate that the terms defined would be subject to anything repugnant to the subject or context. Thus, the provisions of section 7(3) of the said Act that define "landlord" cannot be taken into consideration while considering the expression "landlord" under section 24 of the said Act. When provisions of section 24 and section 41(c) of the said Act are read together, it is crystal clear that the landlord for the purposes of section 24 of the said Act is a person who has given premises on license for residence and only such landlord can recover possession of premises given on license for residence under section 24(1) of the said Act. Provisions of section 24(2) of the said Act are only in aid of provisions of section 24(1) of the said Act and the same contemplate payment of damages for continuing in possession after expiry of the period of license. It is, therefore, held that provisions of section 24 of the said Act would be applicable only to premises given on license for residence.

...

9. Thus, in the light of aforesaid conclusion, it is clear that the proceedings initiated by the respondents under provisions of section 24 of the said Act seeking possession of the premises that were admittedly given for conducting business were not tenable. The impugned order, therefore, cannot be sustained and the same is liable to be set aside."

(Emphasis added)

In the said decision of *Rekha Pramodrao Deshmukh* (supra), the said premises in question were given for conducting business and therefore

the Court has held that the provisions of Section 24 of the Rent Act are not applicable.

(iv) Mr. Sanglikar also relied on the decision in *Carona Ltd.* (supra) and more particularly on Paragraph Nos.21 to 24 of the said decision, which read as follows:

“21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

22. In Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114-15, it has been stated:

"Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

23. The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal.

JURISDICTIONAL FACT AND ADJUDICATORY FACT

24. But there is distinction between 'jurisdictional fact' and 'adjudicatory fact' which cannot be ignored. An 'adjudicatory fact' is a 'fact in issue' and can be determined by a Court, Tribunal or Authority on 'merits', on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish 'jurisdictional fact' and 'fact in issue' or 'adjudicatory fact'. Nonetheless the difference between the two cannot be overlooked."

(Emphasis added)

(v) Thus, what has been held in all these decisions is that a 'jurisdictional fact' is a fact which must exist before a Court, Tribunal or an Authority which assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence, or non-existence of which depends jurisdiction of a court, a tribunal or an authority. If the jurisdictional fact does not exist, a Court, Tribunal or Authority cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. It has been further held that the underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

(vi) Section 24 of the Rent Act is already set out herein above. As per Section 24, the following are the jurisdictional facts:

(a) The said flat regarding which the eviction proceedings is filed has to be given on the leave and licence basis only for

residence. Thus, the jurisdictional facts which are important are that the said flat should be given to the licensee by the licensor / landlord on leave and license basis for residence.

(b) Failure of the licensee to so deliver the possession of the licenced flat to the landlord on expiry of the period of licence.

(vii) Perusal of the record shows that various terms and conditions of the Leave and License Agreement dated 4th December 2004 (second Leave and License Agreement) (Page Nos.20 to 24) clearly shows that the said flat was given for the residential purpose on leave and license basis. The relevant portion is as follows:

*“WHEREAS the Licensor is the owner of and absolutely seized and possessed of and otherwise well and sufficiently entitled to **Two Bedroom, Hall and a Kitchen Flat** No.A/201 in the building known as “PALM COURT” situated at Plot No.504, Link Road, Near Swagat Park, Malad (West), Mumbai – 400 064, hereinafter referred to as the Licensed Premises.”*

*“AND WHEREAS the Licensee has represented and assured the Licensor that **the Licensee has purchased it’s own residential premises and the said residential premises is not ready and fit for occupation.**”*

*“2. It is clearly agreed, understood and declared that this agreement is **purely a license granted to the Licensee only to occupy and use of flat.**”*

*“5. The **Licensee** agrees to pay to “**THE LICENSOR**” the sum of **Rs.10,500/- (RUPEES TEN THOUSAND FIVE HUNDRED ONLY) per month**, being the License Fees or compensation amount **for the use and occupation of the said Flat** payable on or before _____ day of every English*

Calender month. The Licensee has agreed to pay a Deposit of Rs.1,00,000/- (RUPEES ONE LAKH ONLY) as a security deposit free of interest refundable after the expiry of the said licence against peaceful possession of the said premises.”

“10. The Licence hereby granted shall be effective from 1st day of November 2004 to 30th day of September 2005 for eleven months only and the Licensee has to vacate the said flat on expiry of this Licence.”

*“14. The Licensee shall not use the said premises for any illegal, immoral or improper purposes and **shall maintain cordial relations with neighbours** and shall not create any nuisance to others.”*

*“19. In case, the Licensee do not vacate and **remove his family**, their agent or agents or any one purporting to act under the Licence on revocation or determination of this Agreement, the Licensor shall be entitled and herein authorised to **remove all the goods, furniture, articles and things lying in the said premises belonging to the Licensee, his family or to his agents** and keep them in the compound of the said building at the risk of the Licensee and the Licensor shall not be responsible for any loss or damage therein.”*

“20. The Licensee shall abide by all the rules and regulations of the society.”

“21. The Fixtures and Fittings in the said premises as per the Annexure ‘A’. All the fixtures and fittings is in working conditions and Licensee shall take care of the same and will handover the same in good condition to the Licensor.”

“24. This Agreement shall be subject to the provisions of Section 24 of the Maharashtra Rent Control Act, 1999 as amended upto date, whereby it is mentioned that if the Licensee fails to deliver possession of the Licensed premises on expiry of the Licence period, the Licensee shall be liable to pay damages/compensation at double the rate of

compensation provided under this Agreement from the date of such failure to the actual date of handing over the possession of the said premises.

PROPERTY SCHEDULE

“Flat No.A/201 admeasuring _____ sq. ft. area in the building known as “PALM COURT” situated at Plot No.504, Link Road, Near Swagat Park, Malad (West), Mumbai – 400 064 constructed on all that pieces and parcel of land bearing C.T.S. No._____ of Village Malad, Taluka : Borivali.”

(Emphasis added)

(viii) As far as the Eviction Application filed under Section 24 of the Rent Act is concerned, title of the Application and various contentions in the Application filed before the Competent Authority show that the said premises is the flat that is being used for residential purpose.

*“CAUSE TITLE – Mr. Harish Kumar Narang, aged About 45 years, presently **Residing at Flat No.A-21, Palm Court, Plot No.504, Link Road, Malad (West), Mubai 400 064.***

“ The Applicant states that she is the owner of flat No.A-21, Palm Court, Plot No.504, Link Road, Malad (West), Mumbai 400 064 (hereinafter referred to as the said flat) which she is holding as a member of the Palm Court Cooperative Housing Society Ltd.”

*“The Applicant states that the said license came to an end by afflux of time on 30th September, 2005 whereafter the Applicant called upon the Respondent to vacate and handover possession of the said flat to the Applicant. The Respondent has been giving one or the other excuse and delaying handing over possession of the said flat. The Applicant states that on expiry of the license the Respondent had **no right to continue in possession of the said flat and the occupation of the Respondent in the premises is illegal and without any right.**”*

“ The Applicant is in the aforesaid circumstances entitled to

recovery of peaceful and vacant possession of the said Flat from the Respondent and the Respondent being ex-licensee is bound and liable to hand over vacant possession thereof. The Applicant is therefore entitled to a Decree against the Respondent directing the Respondent to deliver up quiet, vacant and peaceful possession of the said flat being Flat No. 201 A, Palm Court, Malad (West), Mumbai – 400 064 forthwith.

“Cause of action for filing the present Application arose to the Applicant within the jurisdiction of this Hon’ble authority as the said flat is situated at Malad (West), Mumbai and provisions of Section 24 of the Maharashtra Rent Control Act, 1999 are fully applicable. This Hon’ble authority has therefore exclusive jurisdiction to entertain and try the present Application.”

(Emphasis added)

[Note: In the said Eviction Application at some places said Flat is incorrectly described as Flat No.A-21 instead of Flat No.A-201.]

(ix) Thus, what is important to note is that various clauses of the Leave and License Agreement specifically mention that the flat in question i.e. Flat No.A-201 consists of 2 Bed Rooms, 1 Hall and 1 Kitchen. Thus, it is clear that the said flat is a residential premises which is specifically mentioned in the Leave and License Agreement. It is also mentioned in the Leave and License Agreement that as the licensee has purchased a residential flat and as the said residential flat is not ready and fit for occupation, the said flat is required by the licensee. In the entire Leave and License Agreement, the said premises is described as ‘Flat’. Clause No.10 of the Agreement specifies that the license granted by the said Agreement shall be for the period of 1st November 2004 to 30th September 2005. Clause No.19 of the Agreement specifically

contemplates that licensee to vacate and remove his family, their agent or agents from the said premises on revocation or determination of the Leave and License Agreement. Clause No.20 of the Agreement provides that the licensee shall abide by all the rules and regulations of the Society which is a Housing Society. It is also important to note that Clause No.24 of the Leave and License Agreement specifically stipulates that the said Agreement is subject to the provisions of Section 24 of the Rent Act. As already set out Section 24 is concerning eviction of the premises given on leave and licence only for residential purpose. The schedule of property specifically mentions the said flat as 'Flat No.A-201'. Thus, various terms and conditions of the Leave and License Agreement specify that the said premises is a residential flat. Apart from that, there is a specific reference to Section 24 of the Rent Act in the Leave and License Agreement. Section 24 of the Rent Act is applicable only if the flat is given on leave and license for residential purpose and also makes a provision regarding damages at double the rate of the license fee or charge of the premises fixed under the agreement of license. Thus, various terms and conditions of the Leave and License Agreement clearly show that the said premises is a flat consisting of 2 Bed Rooms, 1 Hall and 1 Kitchen and the said premises has been given for residential purpose to the Petitioner on the leave and license basis.

(x) The various averments in the Application seeking eviction show

that it is mentioned in the title itself that the present Petitioner is residing in Flat No.A-201. It is also mentioned that said Flat No.A-201 is in Palm Court, Co-operative Housing Society Ltd. In the entire Application seeking eviction the said premises is mentioned as Flat. It is specifically mentioned that the provisions of Section 24 of the Rent Act are fully applicable and therefore the Competent Authority before whom the Eviction Application is filed has exclusive jurisdiction to entertain and decide the present Application. Thus, plain reading of various terms and conditions of the Leave and License Agreement to which extensive reference is made in the Application seeking eviction filed under Section 24 of the Rent Act, clearly show that the said flat is given to the present Petitioner as licensee for the residential purpose. The said Flat is a residential flat consisting of 2 Bed Rooms, 1 Hall and 1 Kitchen. A specific reference to Section 24 of the Rent Act in the Leave and License Agreement as well as in the Application filed before the Competent Authority clearly shows that the same is given for the residential purpose. It is expressly mentioned in the Application that even after the expiry of the period of Leave and License Agreement, the Petitioner has not vacated the said flat.

(xi) As already noted herein above in the Eviction Application filed before the Competent Authority, specific reference is made to Section 24 of the Rent Act. Section 24 of the Rent Act is applicable to the premises

given on the Leave and License Agreement for the purpose of residence. Various contentions raised in the Application clearly show that the premises in question i.e. Flat No.A-201 is situated in a Co-operative Housing Society. The Respondent is residing in the said flat which is on the 2nd floor of the said Society and he had not handed over possession of the same even after the said leave and license came to an end by efflux of time on 30th September, 2005. Thus, it is clear that necessary jurisdictional facts are set out in the Application which is specifically filed before the Competent Authority under Section 24 of the Rent Act.

(xii) Although the jurisdiction is required to be ascertained by examining the averments in the Application at the initial stage, it is also settled law that while considering whether the authority has jurisdiction to entertain the Application, the averments in the Written Statement / Reply also can be seen in those contexts. It is important to note that in the Written Statement filed by the present Petitioner, the same title is repeated as mentioned in the Application filed under Section 24 i.e. it is specifically mentioned that the Petitioner is residing in the said Flat No.A-201. It is not clarified in the Written Statement that the premises is not given on leave and license basis for the residential purpose. It is important to note that it is not pleaded that the premises are given for any other purpose than the residence.

(xiii) Apart from that what is important to note is that in Paragraph

No.4 of the Written Statement the said premise is described as “home” and the averments are as follows:

“4. The Respondent states that on 3.3.2007 in the evening when he returned home, he found notice pasted on the door. The notice was issued by this authority and was dated 13.2.2007 and had returnable date of 28.2.2007. The Applicant deliberately and mala fide pasted it after the date given so that it would be separate and the Respondent would not be able to defend himself.”

(xiv) In Paragraph Nos.10 and 11 of the Written Statement, it is specifically admitted that the premises has been taken for residence.

The said Paragraph Nos.10 and 11 read as follows:

“10. The true facts are that the Respondent was required to sell his residential flat for financial reasons and was looking out for a place on tenancy basis. The Respondent has no other place of residence. Through the brokers Rattan and Allwyn the Respondent met the Applicant and had discussions and negotiations. The Respondent always made it clear and it was agreed and understood that the Respondent was taking the flat on tenancy. The terms of tenancy were agreed as the usual terms. The Applicant’s husband then told the Respondent that he would prepare the agreement and that the Respondent should come to the application premises with the moneys and sign the agreement and start staying there.

11. Accordingly the Respondent left his flat and took all his articles and belongings and went to the application premises and gave to the Applicant the sum of Rs.1,00,000/- for deposit and Rs.10,000/- for one month’s rent. The Respondent was shocked when agreement of leave and licence was taken out. The Respondent protested that the agreed transfer was of tenancy. The applicant however stated that she did not want to approach the society for permission for tenancy and also the Municipal Taxes would increase and therefore the agreement was not made for tenancy but for licence. The applicant however gave specific assurance to the Respondent that the transaction was of tenancy and he could stay in the premises as a regular tenant. Accordingly the Respondent has been in exclusive use occupation and

possession of the application premises as a regular tenant thereof.”

(Emphasis added)

Thus, even the contentions raised in the Written Statement also do not support the contention of Mr. Sanglikar, learned Counsel for the Petitioner that the Competent Authority has no jurisdiction to decide the eviction proceedings.

Thus, jurisdictional facts as contemplated under Section 24 of the Rent Act are adequately specified in the Application filed under Section 24 of the Rent Act. Therefore, there is no substance in the contention raised by Mr. Sanglikar, learned Counsel for the Petitioner that the jurisdictional facts as required under Section 24 of the Rent Act are not set out and therefore the Competent Authority has no jurisdiction to decide the eviction proceedings.

9. **THIRD POINT:**

What is the effect of not refunding the deposit amount and whether eviction Order cannot be passed as the Respondent has not refunded the deposit amount?

- (i) Mr. Sanglikar, learned Counsel for the Petitioner submitted that the eviction Order cannot be passed as the Respondent has not refunded the deposit amount.
- (ii) In this behalf, it is important to note Clause No.5 of the Leave and License Agreement, which reads as under:

“5. The Licensee agrees to pay to “THE LICENSOR” the sum of Rs.10,500/- (RUPEES TEN THOUSAND FIVE HUNDRED ONLY) per month, being the Licence Fees or compensation amount for the use and occupation of the said Flat payable on or before _____ day of every English Calender month. The Licensee has agreed to pay a Deposit of Rs.1,00,000/- (RUPEES ONE LAKH ONLY) as a security deposit free of interest refundable after the expiry of the said licence against peaceful possession of the said premises.”

(Emphasis added)

The said Clause No.5 specifies that the licensee had agreed to pay an amount of Rs.1,00,000/- as security deposit free of interest, refundable after the expiry of the said Leave and License Agreement against peaceful possession of the said flat. Thus, what is contemplated in the Leave and License Agreement is that the said deposit will be refunded simultaneously when receiving peaceful possession of the said flat. It is an admitted position that the Petitioner had never vacated the said flat. It is very clear that the said deposit is to be refunded only against receipt of the peaceful possession of the flat in question. Therefore, there is no substance in the contention raised by Mr. Sanglikar, learned Counsel for the Petitioner that an eviction Order cannot be passed as the Respondent has not refunded the security deposit amount.

10. FOURTH POINT:

Whether there is a novation of contract and what is the effect of the same on the eviction proceedings filed under Section 24 of the Rent Act?

(i) Mr. Sanglikar, learned Counsel has also raised the contention regarding novation of contract and contended that therefore the eviction proceedings under Section 24 of the Rent Act are not maintainable.

(ii) As far as the said contention is concerned, it is settled law that for the purpose of Application filed under Section 24 of the Rent Act, an Agreement of license in writing shall be conclusive evidence of the facts stated therein. The second Leave and License Agreement specifies the period as 11 months period i.e. from 1st November 2004 to 30th September 2005. Admittedly, the second Leave and License Agreement came to an end on 30th September 2005. The said Leave and License Agreement specifies an amount of Rs.10,500/- per month as license fees.

(iii) Mr. Sanglikar, learned Counsel for the Petitioner has relied on the following averments in the Application seeking eviction, to raise the contention regarding novation of the contract:

“The Applicant states that originally the Respondent was paying license fee of Rs.10,500/-. However on execution of the 2nd Agreement at Exhibit “A”, the Respondent has been paying a sum of Rs.10,500/-. The Applicant states that on expiry of the said agreement the Respondent sought some time to vacate and agreed to pay Rs.16,000/- per month which he has been paying and paid upto 30th September, 2006.”

(iv) Mr. Panicker, learned Counsel for the Respondent has stated that the said licence fee amount mentioned as Rs.16,000/- is a typographical

error and that it ought to be Rs.10,500/-. He pointed out the averment in the next paragraph in the Application seeking eviction which is as under:

“The Applicant states that instead of vacating and handing over possession of the said flat to the Applicant, the Respondent send money order for Rs.21,000/- alleging that the same was for the months of October and November 2006. The Applicant states that as the Respondent prior to expiry of the said license was a licensee, there was no question of payment any rent which money order was accepted by the Applicant’s mother unknowingly which was accepted without prejudice and on account.”

(Emphasis added)

Thus, it is specifically mentioned in the Application that the Petitioner had sent a money order of Rs.21,000/- contending that the same was for the months of October and November 2006 i.e. at the rate of Rs.10,500/-. Thus, it is clear that what is stated as Rs. 16,000/- in the Eviction Application is a typographical error and even the same is not the case of the Applicant i.e. present Respondent.

(v) It is significant to note that in the detailed Written Statement it is not sought to be contended even by the Petitioner that the said contention is correct or no case is pleaded in the Written Statement to the effect that the Petitioner had agreed to pay Rs.16,000/- per month.

(vi) In any case, it is very clear that the provision of Section 24 of the Rent Act clearly specifies that the Agreement of Leave and License in writing shall be the conclusive evidence of facts therein and no party can adduce evidence contrary to the terms and conditions of the written

Leave and License Agreement. In any case, such type of evidence regarding novation of contract cannot be even led in the proceedings filed under Section 24 of the Rent Act. Thus, there is no substance in the contention regarding the novation of contract.

11. FIFTH POINT:

Whether there is a violation of principles of natural justice and therefore any prejudice has been caused to the Petitioner and whether impugned Orders are liable to be quashed and set aside on that aspect?

SIXTH POINT:

Whether the Petitioner is entitled for remand of the case in view of Order IX Rule 13 of the CPC?

SEVENTH POINT:

Whether both impugned Orders are liable to be quashed and set aside and matter is to be remanded back to the Competent Authority?

(i) Mr. Sanglikar, learned Counsel for the Petitioner submitted that there is a violation of the principles of natural justice and therefore prejudice has been caused to the Petitioner. Mr. Sanglikar, learned Counsel submitted that the matter is required to be remanded to the Competent Authority by quashing and setting aside the impugned Orders, so that the Petitioner will get an opportunity.

(ii) The factual position on record shows that the cross-examination of the Respondent was completed on 4th April 2008. The Respondent

closed her evidence on 2nd July 2008 and the matter was adjourned for evidence of the Petitioner. Thereafter, the Petitioner and his Advocate had consistently remained absent on the next 4 to 5 dates and therefore the Competent Authority passed the following Order on 14th August 2018:

“Today Applicant present with Adv. Respondent and his Adv. absent till 3.35 p.m. No evidence led by Resp. On last date also Resp. was absent. Hence right of Resp. to lead the evidence stands forfeited.”

Thus, it is clear that as the Petitioner and/or his Advocate has failed to remain present before the Competant Authority, the Petitioner’s right to lead the evidence has been forfeited.

(iii) In this behalf, it is significant to note that the following contentions are raised by the Petitioner in Paragraph No.3 of the Revision Application:

“The Applicant attended the Tribunal regularly, filed leave to defend application and there after also filed Written Statement and after that the Issues were framed. The Respondent filed examination in chief and the Advocate of the Applicant conducted the Cross of the respondent. On 2-07-2008 the respondent has closed her evidence and the matter was kept for the evidence of the Applicant. The Applicant was ill as he got lever problems so since 4 to 5 dates he was absent. The Applicant craves leave to refer to and rely upon medical papers. Thereafter it was adjourned to 14-08-2008 for evidence of the Applicant.”

(Emphasis added)

(iv) Thus, it is clear that even as per the admission of the Applicant,

the Applicant has failed to appear before the Competent Authority.

(v) The Supreme Court in *State of U.P. v. Sudhir Kumar Singh* ²², while considering the aspect of principles of natural justice, has held as follows:

“42. An analysis of the aforesaid judgments thus reveals:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

(Emphasis added)

Thus, as held by the Supreme Court, natural justice is a flexible tool in

²² (2021) 19 SCC 706

the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the *audi alteram partem* rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(vi) Thus, even on the touchstone of the above principles laid down by the Supreme Court, it is clear that in this case no prejudice has been caused to the Petitioner. As already noted herein above Explanation (b) to Section 24 of the Rent Act clearly specifies that the Agreement of Leave and License in writing shall be conclusive evidence of the facts stated therein and therefore, no evidence which is contrary to the written Leave and Licence Agreement can be given. Thus, the evidence with respect to the contentions raised in the Written Statement by the Petitioner to the effect that the real intention was to create tenancy and not leave and licence cannot be allowed to be led and no such contention can be examined by the Competent Authority. It is settled law that the words 'conclusive evidence' of the facts stated in the Leave

and License Agreement has 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 Rent Act, the Court cannot go beyond the document to find out the intention of the parties, the circumstances of the case, the nature of the possession etc.

(vii) Thus, the contention sought to be raised by Mr. Sanglikar, learned Counsel for the Petitioner that, the flat in question was let-out on tenancy basis to the Petitioner and not on leave and license basis and that the Petitioner has been denied an opportunity to lead evidence to that effect, cannot be accepted as no evidence can be led to that effect.

(viii) Therefore, for the above reasons and in view of the guidelines laid down by the Supreme Court in *Sudhir Kumar Singh* (supra) set out herein above regarding cases in which opportunity is required to be granted in case the party makes out the case of violation of the principles of natural justice, the contention raised by Mr. Sanglikar, learned Counsel for the Petitioner is required to be rejected.

(ix) Mr. Sanglikar, learned Counsel for the Petitioner has further raised the point that the Petitioner is entitled for remedy under Order IX Rule 13 of the CPC. To substantiate the said contention, Mr. Sanglikar, learned Counsel has relied on several authorities. It is his submission

that such an Application for setting aside an *ex parte* Decree was presented before the Tribunal on 4th September 2008 but the Competent Authority refused to take the said Application on record and did not pass any order. Such averment is to be found in Revision Application on Page No.53.

(x) It is the submission of Mr. Panicker, learned Counsel for the Respondent that no such Application has, at any point in time, been served on the Respondent. He submitted that a copy of said Application is not even annexed to the present Writ Petition.

(xi) Several authorities on which Mr. Sanglikar, learned Counsel has relied under Order IX Rule 13 of the CPC are concerning the issue of showing sufficient cause for the absence and that the approach of the Court while considering the sufficient cause should be liberal. There cannot be any two opinions as far as the said legal position is concerned. However, this is a case where, the flat was given on leave and license basis. The period of Leave and License Agreement has come to an end on 30th September 2005. The Applicant has not vacated the licensed premises for almost about 19 years after the license period has expired. As noted herein above special rule of evidence as contained in Explanation (b) to Section 24 of the Rent Act i.e. an agreement of license in writing shall be conclusive evidence of the facts stated therein and no evidence contrary to the written terms of leave and licence can

be led. Thus, in the facts and circumstances of this case, even assuming that the Petitioner has preferred such an Application under Order IX Rule 13 of the CPC seeking setting aside of the *ex parte* order, it is still not necessary to quash and set aside the impugned Order.

(xii) Thus, there is no substance in the contention raised by Mr. Sanglikar, learned Counsel for the Petitioner that both the impugned Orders are liable to be quashed and set aside and the matter should be remanded to the Competent Authority.

12. For the above reasons, the Writ Petition is dismissed with costs of Rs.10,000/-.

13. At this stage, Mr. Panicker, learned Counsel for Respondent states that there is a Civil Application No.319 of 2017 where the Respondent has sought market compensation of Rs.50,000/- per month from the date of filing of the Writ Petition till the final disposal of the Writ Petition. He further points out that the said Civil Application was directed to be heard finally along with the main Petition by the Order dated 5th February 2018, passed by a learned Single Judge.

14. At this stage, Mr. Sanglikar, learned Counsel for the Petitioner fairly states that the Petitioner will deposit an amount of Rs.40,000/- per month with effect from 1st June 2023 till 30th June 2024 and for a further period of 1st July 2024 till 30th September 2024. The Petitioner will deposit said amount in this Court within a period of 6 weeks from

today excluding Rs.25,000/- per month deposited earlier for some period.

15. In view of the said submission made by Mr. Sanglikar, learned Counsel, Mr. Panicker, learned Counsel for the Respondent, on instructions from the Respondent, who is present in the Court seeks withdrawal of the Civil Application No.319 of 2017.

16. In view of the above submission of Mr. Sanglikar, learned Counsel for the Petitioner, the Petitioner shall not be evicted from the said premises for the period upto 30th September 2024.

17. Accordingly, the Writ Petition is dismissed with costs of Rs.10,000/- subject to above.

18. As noted herein above, Civil Application No.319 of 2017 is disposed of as withdrawn. In view of disposal of the Writ Petition, nothing survives for consideration in other Civil Applications, if any, and the same are also disposed of.

[MADHAV J. JAMDAR, J.]