

CNR : MHTH070007612013



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Duration on	:	9Ys 01Ms 08Ds

IN THE COURT OF 2nd JOINT CIVIL JUDGE (SR. DN.),
KALYAN, DIST.THANE
(Presided over by : D.J.Endait)

Special Civil Suit No.23/2013
CNR : MHTH070007612013
Exh.70

Hyderabad (Sind) National Collegiate Board,
 Through Dr. (Mrs.) Bhavana Mahesh Motwani
 Principal, Smt. CHM College of Arts,
 Science & Commerce, CHM Campus,
 Ulhasnagar 421 003, Dist.Thane. ... Plaintiff.

Versus

Shri. Lakhmichand Velji Dedhia
 Age : Adult, Occupation : Business,
 R/at : 14/A/5, New Sion Co-operative
 Housing Society Ltd., Sion (West),
 Mumbai 400 022. ... Defendant.

Suit for possession and arrears of
 compensation.

Appearance : Advocate Shri. Sanjay Sonawane for plaintiff.
Advocate Shri. Rajesh Dedhia for defendant.

JUDGMENT

(Delivered on 23th day of February, 2022)

The plaintiff is seeking for relief of vacant possession of the suit premises and also seeking compensation and mesne profit.

2. Brief facts of the case of the plaintiff are as under :

That the plaintiff is registered trust under the provisions of the Bombay Public Trust Act, 1950 and Societies Registration Act, 1850. The management of the plaintiff of the board has authorized the principal Dr.Bhavna Motwani to file the present suit. The plaintiff is running Chandibai Himmatmal Malsukhani of Arts, Science and Commerce at Ulhasnagar. There are others several institutes in the campus of said CHM college. The plaintiff has furnished details of other institutes in the said campus. That the defendant was and is not tenant of the board or any college. For the facility and convenience of students and staff of educational institute within the campus of the college, the plaintiff board allowed the defendant to have facility of keeping books and stationary in the stall provided by plaintiff board. He is not suppose to sell books or stationary to outsider. The stall is admeasuring 24 ft. x 22.6ft. = 540 sq.ft. constructed with brick and wall A.C. room. It is the suit premises.

3. Since last one and half year, the representatives of the

plaintiff board at Ulhasnagar received complaints about misbehaviour and misconduct of the defendant and about selling the books and stationary at higher rates. Therefore, the defendant is called upon to show if he had any document, under which he was running book stall in the name of "College Books Corner". The defendant did not respond. Report was made by principal Dr.C.V.Achhra of Kundanani Pharmacy Polytechnic, situated in the CHM College Campus, to the Secretary of the plaintiff board on 23/09/2011. Therefore, principal Dr.Bavna was instructed to call upon the defendant to vacate the said stall and asked for uses charged payable by the defendant. Accordingly, on 02/11/2011, the letter was issued to the defendant to produce the agreement, if any, as to running book stall and to settle dues and to settle electricity charges.

4. On 20/12/2011, the defendant issued notice to the plaintiff and thereby contended that he had entered into a registered agreement of assignment on 22/09/1997, for allowing the defendant to do lawful business under the tenancy rights. He claimed to be a tenant and that he had been regularly paying rent (compensation) to the plaintiff board. He further stated in the notice that papers of agreement and receipts were destroyed in the flood, on 26/07/2005. It is also stated that the rent till March 2005 is paid. Thereafter, on 10/12/2011, the rent amount from April 2005, i.e. Rs.32,400/- has been sent by money order, but refused by the plaintiff. The defendant did not clearly state as to what was the monthly rent and how he arrived the above figure. The allegations as to harassment and threatening are also made. It is stated that on 15/12/2011, the electricity supply is disconnected and he has been forcibly

dispossessed. He offered to pay monthly rent without interest.

5. On 14/01/2012, the plaintiff sent reply of the notice through advocate and thereby denied existence of registered agreement. That no such agreement is registered. That there is no tenancy right in favour of the defendant. He was called upon to vacate and deliver vacant possession of the suit premises. It was received by the advocate for defendant. He sent counter reply dated 30/01/2012 denying contents of the reply letter.

6. That the defendant falsely claimed to be a tenant of the suit premises and falsely offered to pay the rent. The book stall is spacious accommodation and is situated at most vital place in the surrounding of 7 to 8 colleges. The students of the colleges are about 15,000 and number of staff is also 4,500, compensation/conducting charges could not be less than Rs.7,500/-. As the license of the defendant revoked from February 2012 and the defendant is called upon by the reply letter dated 14/01/2012 to pay compensation / damages, he is liable to pay amount of Rs.2,70,000/- for last three years at the rate of Rs.7,500/-.

7. Defendant has no right to continue to hold the premises. He is trespasser in the suit premises since February 2012. He is liable to quit, vacate and handover vacant and peaceful possession of the suit premises to the plaintiff board. Therefore, plaintiff is seeking relief of possession and compensation.

8. Defendant filed his written statement vide Exh.11. At the outset, he raised grievance about his name mentioned in the plaint. He contended that his name is Laxmichand Velji Dedhia. He also raised grievance that he did not receive copies of all the documents. It is contended that suit is liable to be dismissed on this point. He raised dispute on the point of jurisdiction of this court to try the suit under the provisions of Bombay Public Trust Act and Societies Registration Act. He further contended that originally the subject premises was in possession of Mr.Jagdish R. Prabhu and the name thereof was M/s. Bharat Book and General Stores, a partnership firm at the time of construction of the premises in the year 1984. Thereafter, Mr.Prabhu had dissolved the firm on 20/08/1993 and Mrs. Malini M. Pai was the sole proprietor thereof. On 22/09/1997, the defendant got registered the Assignment of Business with stock - in - trade and tenancy right from Mrs. Malini M. Pai. Jagdish Prabhu was consenting party to be assignment agreement. The defendant had paid Rs.8,000/- as stamp duty and Rs.1,830/- as registration fees at Mumbai. Mrs. Malini M. Pai had paid Rs.2,000/- to plaintiff board as compensation for five months at the rate of Rs.4,00/- per month.

9. The defendant started the business in the name and style as College Book Corner / Centre inside the premises of CHM College, Ulhasnagar prior to the agreement. The plaintiff and colleges had purchased books and stationary from defendant prior to 1998. On 26/07/2005, heavy rain entered the subject premises for 40 hours. There was heavy flood in Mumbai and nearby area, destroying all the books and

important documents inside the premises. This fact is known to the plaintiff. The plaintiff was regularly purchasing books on credit. In the year 2006-07 there was outstanding amount of Rs.85,454.75/-, due to the plaintiff. Therefore, defendant has sent many letters to the plaintiff. Lastly on 13/04/2010, letter was sent demanding the balance amount payable by the plaintiff. On 22/09/2011, one of the institution of the plaintiff namely K.M.Kunjani Pharmacy Polytechnic had sent letter to the defendant mentioning that he should meet the principal Dr.C.V.Achhra on 23/09/2011. Thereafter on 02/11/2011, the plaintiff sent notice to the defendant stating to sign the agreement copy, if any. The plaintiff later sent one agreement signed by the principal. The defendant did not sign it and sent back to the plaintiff. On 10/12/2011, the defendant sent seven money orders to the plaintiff for Rs.32,400/-. Six money orders were for Rs.4,800/- and one money order was for Rs.3,600/- for compensation for the period of 01/04/2005 to 31/12/2011 in respect of suit premises. The money orders were refused by the plaintiff.

10. Thereafter, on 20/12/2011, defendant sent notice to the plaintiff and incharge of the police station Ulhasnagar, mentioning that the plaintiff had illegally disconnected the supply of electricity. The plaintiff had replied by the notice dated 14/01/2012 denying the allegations. The said notice is not referred in the plaint. On 29/09/2012, the defendant has informed the plaintiff as well as the police incharge of Ulhasnagar police, stating that plaintiff college had illegally disconnected the electricity supply in the shop premises. The defendant by the notice dated 20/10/2012, to the college

and police, conveyed that plaintiff should restore the electricity supply of the suit shop. That now, the plaintiff is demanding exorbitant amount as compensation at the rate of Rs.7,500/- per month. That the monthly compensation of Rs.400/- was collected by the plaintiff in the year 1993-94. The defendant has shown his willingness to deposit actual compensation / rent since last 3 years. That plaintiff did not mention about amount of compensation taken from other premises.

11. It is contended by defendant that the books and stationary are provided only to the college students who are allowed to enter the college premises and not to outsiders, as they are not allowed to enter into the premises, without valid identity card or other proof. That if plaintiff failed to check valid proof, defendant would not be able to know as to whether that person is outsider or not. Moreover, it is also plea of defendant that in the agreement of assignment nothing is so mentioned that defendant has to sell the books and stationary at discount rate, to the students. Defendant has denied allegations of misbehaviour and misconduct made by plaintiff. Defendant further states that electricity bill is included in the compensation amount from the inception. The plaintiff had not replied to the letter of the defendant sent in September and October 2012. That the plaintiff had made false allegations that defendant is liable to pay the rent during period of April 2005 to December 2011. The defendant was offering monthly rent at the rate of Rs.1,600/- per month. Nothing is mentioned by the plaintiff as to when the license was entered and conditions of the license. Rest of the allegations contrary to what is stated above.

12. It is further contended that plaintiff has not brought the license agreement on record. Details thereof are not furnished. That the plaintiff shall produce balance-sheet from 1993 onwards regarding collection of amount for suit premises. No cause of action has been arose as cited in the plaint. Defendant also raised the plea of territorial jurisdiction as board of the plaintiff is at Mumbai. The defendant is seeking dismissal of the suit with costs.

13. My learned predecessor framed issues vide Exh.32. Those are reproduced below alongwith findings thereon.

<u>Sr.No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether the plaintiff proves that the defendant is given facility to keep book and stationary in the suit premises for students ?	...Yes.
2.	Whether the defendant proves that he is tenant in the suit premises since 1997 ?	...No.
3.	Whether the plaintiff entitled for compensation as prayed ?	..Partly Yes... Inquiry is to be conducted.
4.	Whether the plaintiff is entitled for relief of possession of the suit property ?	...Yes.
5.	What order and decree ?	... The suit is partly decreed with costs.

: R E A S O N S :

As to issue Nos.1 and 2 :

14. The plaintiff has examined one witness on its behalf i.e. Mrs.Manju Lalwani Pathak (PW-1). It did not examine any

more witness on its behalf. The defendant did not step into witness box. He did not examine himself on of and did not examine any witness on his behalf. The witness of the plaintiff is cross-examined by the defendant. Thus, there is only one oral evidence i.e. of Manju Lalwani Pathak. As far as, documentary evidence is concerned, plaintiff has filed four documents alongwith list at Exh.38. Those, includes the resolution of the management body of the plaintiff (Exh.40), whereby, Mrs. Manju Lalwani Pathak was authorised to look after the present suit. Earlier, resolution is also placed on record alongwith list at Exh.14, whereby, Mrs. Bhavna Motwani was authorised to proceed with the suit. The notice sent by defendant, dated 20/12/2011 (Exh.41), envelop thereof (Exh.42) and reply sent by plaintiff (Exh.43), dated 14/01/2012 are also placed on record. The further correspondence includes the notice sent by defendant (Exh.44), dated 30/01/2012. The defendant has also produced copies of total 17 documents. However, all those documents are photostat copies and not proved in evidence. I have gone through all above evidence and written notes of arguments filed by the parties on record.

15. It is the case of plaintiff that the since it runs educational institution in the CHM campus, the defendant is allowed to have facility of keeping books and stationery for students and staff in the stall provided by the plaintiff. Thereby, the defendant is allowed to run business of selling books and stationary there at book corner, in the campus for selling books and stationary to staff and students. In that regard, the pleading, oral evidence of the witness of the plaintiff and documents on record are required to be seen. It is required to be noted that

possession of the defendant over the suit property i.e. the book corner in the CHM Campus, is not denied by the defendant. On the other hand, himself furnished details as to how he has been inducted in the suit premises. In that regard, it is pleading of the defendant that earlier, the suit premises was in the possession of one Jagdish Prabhu in the year 1984. His partnership firm was dissolved in the year 1993. Thereafter, Mrs. Malini Pai was the sole Proprietor. On 22/09/1997, she executed documents of assignment the defendant and thereby he has been inducted in the suit premises. Thus, it is admitted that the defendant is possessing the suit premises since 1997.

16. In that regard, even question is asked to Mrs. Manju Lalwani Pathak (PW-1) in her cross-examination. She deposes that defendant is using the suit premises since the year 1997-98. She further deposes that she is not aware as to who was possessing the suit premises, earlier, to that of 1997. It is also seen that as per case of the plaintiff, the defendant is only allowed to use the premises to run the business of books and stationary for limited purpose i.e. it was licensed as defined in section 52 of Easement Act, 1882. On the other hand, it is plea of the defendant that he was tenant of the premises and the protected by Rent Act. In that regard, the point of license fee / compensation / rent is also required to be seen. It is pertinent to note that although defendant has pleaded so much things including earlier possessor of the premises, execution of assignment thereof to himself and rent at the rate of Rs.400/- per month, nothing is brought on record in support thereof and nothing is proved by the defendant. On the other hand, during cross-examination of the above witness of the plaintiff at page

No.6, in para No.16, the witness deposes that the suit premises was never let on rental basis. Moreover, the defendant did not bring any such documents on record as to assignment of agreement between himself and plaintiff.

17. The pleadings and evidence would show that even plaintiff is unaware of details as to how the defendant is inducted in the suit premises and what are the documents available in relation thereto. The entire correspondence i.e. notices and replies thereof sent by plaintiff and defendant to each other. Even it can be seen that by the notice reply at Exh.43, the defendant is called upon to supply copies of receipt as well as, alleged agreement of tenancy rights and agreement of assignment. It is also seen that the defendant, in his notice as well as in his written statement stated that all the relevant documents in respect of the suit premised were destroyed during the deluge in the year 2005. However, no attempt are made to place copies of the documents on record as secondary evidence and to depose in support thereof. Therefore, the only fact emerged from the record and evidence that the defendant is using the suit premises since the year 1997 and in turn, he is not paying anything to the plaintiff. Even there is no unanimity between the parties as to what is the exact sum to be paid by the defendant as compensation.

18. On this point it is seen that initially the defendant pleads in his written statement that the monthly compensation was at the rate of Rs.400/- per month. It is also pleading of the plaintiff and defendant that the defendant has offered to pay the rent from April 2005 to November 2012, amounting to

Rs.32,400/-. The said fact is also admitted by the witness of the plaintiff, during her cross-examination. It would show the monthly rent as Rs.450/- per month. The plaintiff has interpreted it at the rate of Rs.1600/- per month. However, interestingly even plaintiff is not seeking recovery of the compensation by considering that rate. It is seeking at the rate of Rs.7,500/- per month, which has no basis at all. Thus, none of the party is aware of the exact amount of license fee / compensation / rent, if any. Even, there is nothing on record that it was agreed between the parties that defendant shall pay certain amount to the plaintiff at monthly rate. There is no written agreement placed on record in that regard. Even it is not the case of plaintiff that there was any oral agreement between the parties regarding particular amount to be paid by the defendant. Therefore, in these circumstances, the status of the defendant cannot be held to be of tenant. He is only permitted to use the premises on oral license. Therefore, the status of the plaintiff and defendant is of licensor and licensee. I, therefore, answer issue No.1 in the affirmative and issue No.2 in the negative.

As to issue No.3 :

19. As seen earlier, plaintiff failed to prove that there was any subsisting agreement between the parties that the license was given for consideration i.e. for license fee or charge. Even, the pleading and notice reply on record, would show that the plaintiff, before filing of the suit, called upon the defendant to furnish document thereof. Thus, it is not the case that plaintiff is aware of the existence of particular license fee and only documents in support thereto are not available. On the other

hand, the plaintiff is not aware about those facts at all, including existence of license fee and quantum thereof. Therefore, whatever amount is sought to be recovered is calculated only on the basis of assumption and presumption that the license fee of the premises cannot be less than Rs.7,500/- per month. In fact, such calculation has no basis at all. The plaintiff has come to the conclusion about the said figure by considering location of the premises and existence of surrounding educational institutional in the campus. However, it is not the case of plaintiff that Rs.7,500/- was agreed to be paid by the defendant as license fee and the agreement is subsisting. It is not the case of any of the party that the defendant is gratuitous licensee in the suit premises. On the other hand, defendant himself offered to pay the rent/ compensation by sending money order. The only thing is that there is vast difference between the amounts offered and claimed by the plaintiff. There is no documents on record showing particular licence fees/ compensation/ charges/ rent on record. The plaintiff is claiming the compensation of last 3 years, @ Rs. 7,500/- p.m., by considering various aspects including location and surrounding of the suit premises. Here it is also seen that the plaintiff, has also claimed mense profit by way of an amendment in the plaint. The said prayer is in respect of inquiry as to future mense profit to be recovered from the date of suit till delivery of possession of the suit premises. The perusal of concerned provision under Order XX Rule 12 would show that Sub clause (b) thereof is in respect of passing decree for rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rents. Sub clause (ba) is in respect of mense profit or directing an enquiry as to such mesne profit. Thus, all these

aspects including location of the suit property and surrounding thereof, which are to be considered for deciding compensation/ charges/ mense profit, can be considered in the inquiry itself, as contemplated under Order XX Rule 12 (b)(ba) of Code of Civil Procedure. Accordingly, plaintiff will be entitled to recover the said amount. I, therefore, answer the present issue accordingly.

As to issue No.4 :

20. Looking to the findings of above issues, it is seen that the plaintiff has proved that it has allowed the defendant to use the suit premises to run business of books and stationary and the relationship inter-se between them is of licensor and licensee. It has also further came in the pleading and evidence of the plaintiff that the license was given for limited purpose that is to run the business of books and stationary for staff and students. The further allegations would show that the defendant, in contravention of the license, started selling it to outsiders. Therefore, the plaintiff issued notice to the defendant and thereby revoked the license. It is pleading and evidence of the plaintiff that the said license was revoked. In that regard the contents of the notice reply (Exh.43) dated 14/01/2012, sent by the plaintiff would also show that thereby the defendant was called upon to quit, vacate and hand over peaceful possession of the suit premises within one week. Therefore, the fact of revocation of the license is on record. In that regard, there is provision as to revocation of license under section 61 of the Easement Act, 1882. As per the said provision, the revocation of the license may be express or implied. As per section 60 of the said Act, a license may be revoked by the grantor, unless it is coupled with a transfer of property and licensee acting upon the

license, as executed a work of permanent character. Here, no such thing is happened. No such plea is raised by the defendant on the point of revocability of the license. Therefore, it is held that the license was revocable and it has been expressly revoked by sending notice reply, as mentioned above. Since the license is proved to be revoked, the plaintiff is entitled to the relief of vacant possession thereof. I, therefore, answer issue No.4 in the affirmative.

As to issue No.5 :

21. As seen earlier, the plaintiff is entitled only to the relief of possession of the suit property. As far as, relief of recovery of compensation / license fee is concerned, nothing is brought on record regarding subsisting agreement as to payments of particular amount as license fee. Of course, after revocation of license, the further stay of the defendant in the suit premises is wrongful possession and plaintiff is entitled to the amount of mesne profit thereof. The plaintiff has sought to be recovered compensation for last three years and also seeking recovery of future mesne profit. Therefore, the inquiry as to mesne profit is required to be conducted in terms of Order XX Rule 12(c) of the Code of Civil Procedure. One more objection is raised by the defendant. That is of jurisdiction. According to him, the plaintiff trust is registered at Churchgate, Mumbai. Therefore, this court does not have jurisdiction to try and decide the suit. However, it is to be noted that plaintiff has sought recovery of possession in respect of the suit premises which is immovable property located within territorial jurisdiction of this court. Therefore, I do not find substance in the said objection. Therefore, the suit of the plaintiff deserves to be decreed partly.

In answer to issue No.5, I pass following order-

: O R D E R :

- 1] The suit is partly decreed with costs.
- 2] Defendant to deliver vacant possession of the suit premises described in para 3 of the plaint, to the plaintiff within two months.
- 3] Inquiry of mesne profit be conducted for deciding the amount of mesne profit for the period of 3 years prior to the institution of the suit as well as future mesne profit from institution of the suit until delivery of possession of the suit property to the plaintiff, as per order XX rule 12 of Code of Civil Procedure.
- 4] Decree be drawn up accordingly.

2nd Jt. Civil Judge Senior Division,
Kalyan.