

MHAK020043772022



Presented on : 12-10-2022
Registered on : 12-10-2022
Decided on : 30-10-2025
Duration : 03 -Y, 00-M, 18-D

Exh. No.

IN THE COURT OF 7th JT. CIVIL JUDGE (SENIOR DIVISION)

AKOLA

(Presided over by Smt. S. S. Jambhale)

Small Cause Suit No. 08/2022

Atul Maganlal Patel

Aged about 65 years, Occ. Business,

R/o. Radhakishan Plots, Akola,

Tq. and Dist. Akola.

----- **Plaintiff**

- V e r s u s -

Mr. Gaurav Anilkumar Chandwani,

Aged about years, Occ. Business,

R/o Kachhi Kholi, Sindhi Camp, Akola,

Tq. and Dist. Akola.

----- **Defendant**

Learned Adv. Shri A.T. Parwani, for plaintiff.

Learned Adv. Shri R.P. Ramnani for defendant.

J U D G M E N T

(Delivered on this 30th day of October, 2025)

This is a suit for eviction, possession, recovery of amount due, damages and mesne profit.

The description of suit property :

Two storied two shops bearing no. 1 and 2 each admeasuring 160 sq. ft. on each floor, having total built-up area admeasuring 640 sq. ft which is jointly bounded by:-

To the East	:- Open Air Theater,
To the West	:- Basam Stand Road,
To the North	:- Shop No. 3 of Shri Sachin Zope,
To the South	:- Open Air Theater Main Gate.

(The aforesaid property shall be referred as 'suit shops')

The plaintiff's case is as under :

- 1) Plaintiff is lawful owner and possessor of suit shops.
As per request and requirement of defendant, plaintiff granted the suit shops on leave and license basis to the defendant initially for one year with effect from 01.04.2018 to 31.03.2019 on yearly license fees of Rs. 1,00,000/- payable in advance. The defendant and plaintiff have agreed upon the

terms of leave and license agreement dated 05.05.2018 which was duly executed and notarized. After completion of said leave and license agreement on 31.03.2019, no any agreement for leave and license came to be executed in between plaintiff and defendant. However, at the request of defendant the period of license has been orally extended from time to time lastly up to 31.03.2021. The defendant has paid increased license fee Rs. 1,60,000/- for the period on 01.04.2020 to 31.03.2021. At the time of accepting the license fees of Rs. 1,60,000/- in November 2020, plaintiff specifically intimated the defendant thereafter 31.03.2021 there will not be any extension of license and the defendant has to remove himself from the suit shops on or before 01.04.2021 and use of suit shops by defendant after 31.03.2021 shall be of tress-passer. Thus, the defendant shall not be entitled to use and occupy the suit shops since 01.04.2021 and the defendant has no right to continue to use and occupy the suit premises after 31.03.2021.

- 2) In spite of that, defendant illegally and unauthorizedly continued using and occupying the suit shops without permission of plaintiff and therefore occupation of defendant over suit shops is illegal & of a tress-passer after 01.04.2021. Therefore, the defendant is liable to be evicted from the suit shops and also liable to damages and compensation at the rate of Rs. 2000/- per day since

01.04.2021. Until he has been ejected or evicted from the suit shops and the plaintiff receive the vacant physical possession of suit shops defendant is also liable to pay agreed amount of license fees i.e. 1,60,000/- from 01.04.2021 until he had been evicted and plaintiff got physical possession of the suit shops.

3) Plaintiff thought it necessary to give reasonable time to defendant to remove himself from the suit shops with his belongings, therefore, plaintiff had issued legal notice to defendant through his Adv. Shri A. T. Parwani on 08.08.2022 by RPAD and thereby informed him about completion of tenure of license on 31.08.2021 and also informed him to remove himself with all his belongings from the suit shops on or before 31.08.2021, failing which plaintiff shall take drastic legal action against the defendant. The defendant was called upon to pay Rs. 2,26,666/- towards agreed amount of license fees for the period from 01.04.2021 to 31.08.2022 and also Rs. 10,36,000/- towards damages and compensation for the period from 01.04.2021 to 21.08.2022.

4) The notice issued by plaintiff on the residential address of defendant returned back with endorsement 'Left/address not known' but the notice sent on the business address of defendant is duly served upon him on 16.08.2022. Defendant falsely replied said notice through Adv. Shri G. G. Agrawal on 07.09.2022 and refused to vacate the suit shops.

Therefore, plaintiff is constrained to file the present suit. Plaintiff has prayed for decree of arrears of license fees of Rs. 2,41,338/- for the period from 04.01.2022 to till filing of the present suit. Plaintiff has also prayed for legal notice charges Rs. 5000/- i.e. total Rs. 2,46,338/-. Plaintiff has also prayed for decree of Rs. 11,04,000/- towards damages of compensation at the rate of Rs. 2000/- per day for the period from 01.04.2021 till filing of the present suit. Plaintiff has also prayed for mesne profit and costs of the proceedings.

- 5) Defendant filed their written statement at Exh. 18. Defendant resisted suit claim and denied all the adverse averments made in the plaint. Defendant has denied execution of leave and license agreement on payment of license fees of Rs. 1,00,000/-. As per defendant, the said agreement is not proper. Defendant has denied the extension of agreement on oral request and agreed license fees amount of Rs. 1,60,000/-. Defendant has further denied the entitlement of plaintiff to get compensation and damages and also the license fees. As per defendant, plaintiff has issued false notice & the claim of plaintiff is not tenable. Plaintiff is not entitled for any amount towards damages, mesne profit or any other relief. The present suit is not properly valued.
- 6) It is further submitted that, the defendant is tenant and carrying on his business of ready-made cloth since 2013-14

as tenant. Defendant has regularly paid rent of Rs. 1,00,000/- per year to plaintiff. The Akola Municipal Corporation had illegally damaged the structure of suit shops which has caused great loss to the defendant. Furniture and goods of defendant were also damaged and lost. The defendant co-operated with plaintiff for litigating against the corporation. The business of defendant was required to be closed for long time. Plaintiff got the alleged document and various other documents from the defendant in order to file suit against Municipal Corporation, Akola. All such documents are therefore illegal.

- 7) Since March 2020, there was Corona-19 *pandemic* and there was complete lock-down and due to that all shops were practically closed. Due to said *pandemic*, defendant sustained loss in November 2020. Plaintiff pressurized the defendant for advance payment of rent amount. The defendant was not in good economic condition due to lock-down. Therefore, defendant requested the plaintiff to waive the lease money. However, plaintiff was not ready to waive any money. After persuasion, plaintiff agreed to waive 20% of the rent amount on condition that the payment for the two year of lease money should be paid in advance. The defendant had no alternative but to agree with the demand of plaintiff. Defendant had arranged amount and paid Rs. 1,60,000/- towards advance rent for the period 01.04.2020 to 31.03.2022

vide cheque no. 031794 dated 07.11.2020 drawn on Yavatmal Urban Co-operative Bank.

- 8) After receiving illegal and false notice from plaintiff, defendant has correctly replied said notice. After exchange of notices, defendant further tendered the rent amount for further period to the plaintiff. But, plaintiff refused to receive the rent and issue any receipt. Plaintiff wanted to increase the rent. Defendant wanted reasonable increase in rent. Defendant is regularly paying the electricity charges. But, the present suit is filed to pressurize the defendant.
- 9) The suit shops are located in Akola city and governed by provisions of Maharashtra Rent Act. However, in the present suit, the provisions of Maharashtra Rent Act are not followed. Moreover, the suit is filed as Small Cause Suit but it is not tenable as Small Cause Suit. Hence, the suit is not maintainable and therefore may be rejected with compensatory costs.
- 10) The issues have been framed at Exh. 19. I am reproducing those issues with findings recorded against each issue followed by reasons as under:-

Sr. No.	<u>ISSUES</u>	<u>FINDINGS</u>
1]	Does plaintiff prove that, defendant being tenant of plaintiff is illegally in use and occupation of suit shops and ...	Affirmative

he is tress-passer ?

- | | | | |
|----|--|-----|--|
| 2] | Is plaintiff entitled to decree of ejection, eviction and possession of suit shops against defendant ? | ... | Affirmative |
| 3] | Is plaintiff entitled to decree of damages and compensation as prayed ? | ... | Affirmative |
| 4] | Is plaintiff entitled to decree of arrears of license fees and notice charges as prayed ? | ... | Affirmative |
| 5] | Is plaintiff entitled to get order of enquiry into mesne profit as prayed? | ... | Affirmative |
| 6] | What order and decree ? | | Suit is decreed as per final order. |

REASONS

11) Plaintiff has examined himself on affidavit of examination-in-chief at Exh. 20. Apart from oral evidence, plaintiff has also relied upon certain documentary evidence, that will be referred at the relevant stage of discussion. Plaintiff closed his evidence as per pursis Exh. 36.

12) On behalf of defendant, only one witness i.e. his father Anilkumar being power of attorney for defendant is examined at Exh. 42. The evidence of defendant is closed as per order below Exh. 1 dated 19.06.2025. Apart from oral evidence defendant also relied upon certain documentary

evidence which will be referred at the relevant stage of discussion.

13) Ld. advocate from both side have argued at length. It is argued on behalf of plaintiff that relationship as licensor and licensee is not disputed. Exh. 23 is also not disputed document. As per oral consent the license continued till 31.03.2021. Defendant has taken false and frivolous stand regarding license fees. Since 01.04.2021 possession of defendant becomes of tress-passer. Plaintiff has terminated tenancy of defendant by issuing notice Exh. 24. Moreover, as per terms of Exh. 23 after termination of license, the defendant was bound to remove himself from the suit shops. But, defendant continued in possession of suit shops and therefore plaintiff is entitled for decree of ejectment, eviction and possession of suit shops as well as damages and compensation and arrears of license fees alongwith mesne profit.

14) It is argued on behalf of defendant that the provisions of Maharashtra Rent Control Act are applicable in the present case but plaintiff has not followed the requirements given in Maharashtra Rent Control Act. No admission brought on record in cross-examination of defendant which would benefit to plaintiff. Hence, plaintiff failed to prove their case and hence the suit may be dismissed with costs.

- 15) In support of their oral argument, plaintiff has also relied upon following judgments:-

1) Shyam Rampati Pandey Versus Maharashtra State Road Transport Corporation, through its Divisional Controller, Station Road, Bombay High Court Nagpur Bench. Writ Petition No. 5863 of 2017.

2) Raj Prasanna Kondur Versus Arif Taher Khan & others 2005 (4) Bom. CR 383.

- 16) In judgment of Raj Kondur (Supra) it is held that non-registration of the agreement will not affect the right of landlord to seek eviction of the licensee on the expiry of license period nor the delay in presenting the agreement for registration will come in the way of competent authority in taking cognizance of the application of the landlord.

As to issue no. 1:-

- 17) It is not disputed that the plaintiff is licensor and defendant is licensee, in respect of the suit shops. The suit shops were owned by licensor plaintiff and on request of licensee defendant, the plaintiff has permitted the defendant to use and occupy the suit shops for his business purpose for temporary basis i.e. leave and license basis for the period from April 2018 i.e. 01.04.2018 to 31.03.2019. The said leave and

license agreement is at Exh. 23. The defendant witness has admitted that Exh. 23 is the agreement executed between plaintiff and defendant. That the defendant witness Anilkumar is the Power of Attorney of his son i.e. defendant Gaurav. Defendant witness Anilkumar is having personal knowledge of transaction between plaintiff and defendant. Anilkumar has admitted that the license fee for agreement Exh. 23 was Rs. 1,00,000/- per year and was paid by defendant in advance by way of cheque. Agreement Exh. 23 is thus admitted by defendant witness Anilkumar. During cross-examination of plaintiff, defendant put his defence that Exh. 23 is nominal document and defendant was never came before the notary and the said document is prepared later on in order to file the present suit. However, as the defendant witness Anilkumar has clearly admitted execution of Exh. 23 in his cross-examination, the said agreement Exh. 23 is undisputedly proved.

- 18) From Exh. 23, it transpire that plaintiff has granted suit shops to the defendant on leave and license basis for the period from 01.04.2018 to 31.03.2019 on yearly license fees of Rs. 1,00,000/- payable in advance. This aspect is also admitted by defendant witness in his cross-examination. As per plaintiff on request of defendant, the period of license has been extended orally from time to time landlord up to 31.03.2021. Thus, after completion of agreement on 31.03.2019, no any

agreement came to be executed between plaintiff and defendant. Defendant witness has admitted that on 05.05.2018 he has paid Rs. 1,00,000/- towards rent for the period mentioned in Exh. 23 i.e. period from 01.04.2018 to 31.03.2019. As per the terms of agreement Exh. 23 it was up to plaintiff to extend the period of agreement or not to extend the period of agreement. This aspect is admitted by defendant witness. After expiration of agreement Exh. 23, it was orally extended up to 31.03.2021. Defendant witness has admitted in his cross-examination that they have paid Rs. 1,00,000/- towards rent for the period 01.04.2019 to 31.03.2020. It indicates that after 31.03.2019 the license was extended for further one year and defendant have paid Rs. 1,00,000/-, to plaintiff towards license fees for the said period. Therefore, for the period of 01.04.2019 to 31.03.2020 Rs. 1,00,000/- has been paid by defendant towards the license fees. However, at the same time, it is the contention of defendant that he has given rent of Rs. 1,60,000/- by way of demand draft for the period from 01.04.2020 to 31.03.2022. In that regard, defendant would have brought on record his bank details to substantiate his claim but no such evidence is brought on record by defendant.

- 19) Moreover, as per plaintiff, defendant has paid increased license fees of Rs. 1,60,000/- for the period from

01.04.2020 to 31.03.2021. However, there is no documentary evidence on record. In that regard, defendant has not denied the increased license fees of Rs. 1,60,000/-. If defendant is claiming that he has paid Rs. 1,60,000/-, he is not disputing that the license fees has been increased to Rs. 1,60,000/-. Defendant has not brought on record any documentary evidence of bank to support his claim that he has paid Rs. 1,60,000/- for the period from 01.04.2020 to 31.03.2022. For the period 01.04.2020 to 31.03.2021, amount of Rs. 1,60,000/- has been paid towards license fees by defendant and it is the contention of plaintiff himself. Since 01.04.2021 up to 31.03.2022 the license fees of Rs. 1,60,000/- fee if paid by defendants, he should have brought something on record to prove the same. If defendant is claiming that he has paid Rs. 1,60,000/- from 01.04.2020 to 31.03.2022, he is admitting that the agreement Exh. 23 was orally extended for 01.04.2019 to 31.03.2020 and thereafter 01.04.2020 to 31.03.2021. Till 31.03.2021 the plaintiff has received the increased license fees amount of Rs. 1,60,000/- from defendant. There is nothing on record to show that defendant has paid license fee for the period from 01.04.2021 to 31.03.2022.

- 20) As per plaintiff, the license was not extended after 31.03.2021 and he has orally intimated the same to defendant that there will not be extension of license after 31.03.2021.

The evidence brought on record only indicates that the agreement of leave and license was orally extended till 31.03.2021 and thereafter there was no any extension. Moreover, as per Exh. 23 it was the plaintiff to decide whether to extend the period of agreement or not. Therefore, the defendant had right to continue and occupy the suit shops only up to 31.03.2021.

- 21) As per defendant, he has paid Rs. 2,000/- in advance to plaintiff and plaintiff has offered 20% percent discount to him. But to substantiate this claim no documentary evidence is brought on record. Admittedly defendant is carrying business in the suit shops even today. After 31.03.2021 upon termination of license, the licensee and his family members and servants shall remove themselves together with their furniture, fixtures and belongings and shall handover vacant and peaceful possession of suit shops to the plaintiff and if the defendant continued to occupy the suit shops after termination of license, the defendant shall become tress-passer and will be liable to ejectment. Therefore, after 31.03.2021, the use and occupation of suit shops by defendant is illegal and is of tress-passer. Therefore, the plaintiff has proved that the defendant being tenant of plaintiff is illegally in use of occupation of suit shops and he is tress-passer. Therefore, as to issue no. 1, I record my finding in the **Affirmative**.

As to issue no. 2:-

22) As per the terms of admitted document Exh. 23, the defendant being a licensee shall remove himself with all his belongings and fixtures upon termination of license & handover, quite and vacant peaceful occupation of the suit shops to the plaintiff. If defendant failed to do so, he will become the tress-passer and will be liable to ejectment. As it is proved that the defendant is a tress-passer, plaintiff is entitled to decree of ejectment, eviction and possession of suit shops against defendant. Hence, as to issue no. 2, I record my finding in the **Affirmative**.

As to issue no. 3 and 4:-

23) As per terms of agreement Exh. 23 after becoming tress-passer, the defendant being licensee shall be bound and liable to pay to the plaintiff a sum of Rs. 2000/- per day and by way of compensation of the suit shops. Therefore, from 01.04.2021 till filing of suit i.e. till 04.10.2022 plaintiff is entitled to receive Rs. 2000/- per day towards damages and compensation. Further, defendant is entitled to pay arrears of license fees Rs. 1,60,000/- for period from 01.04.2021 to 31.03.2022 i.e. Rs. 1,60,000/- and from 01.04.2022 to 04.10.2022, arrears of license fees will become Rs. 2,40,000/-

plaintiff is also entitled charges of Rs. 5000/-. Hence, as to issue no. 3 and 4, I record my finding in the **Affirmative**.

As to issue no. 5:-

24) Plaintiff has sought the mesne profit for the period from filing of suit till the defendant vacate the suit shops and the plaintiff came in to physical possession of suit shops. Plaintiff have not adduced specific evidence regarding ascertainment of specific quantum of mesne profits. Therefore, separate inquiry is required to be held under Order XX Rule 12(C) of C.P.C. for the purpose of determination of quantum of mesne profit. Therefore, I conclude that plaintiff is entitled to mesne profit and hence I answer issue no. 5 in **Affirmative**.

As to issue no. 6:-

25) In pursuance to the findings above, I am inclined to decree the suit and proceed to pass the following order;-

ORDER

1.	Suit is decreed with costs.
2.	Defendant is directed to remove himself with all his belongings from the suit shops and handover vacant and peaceful possession of the suit shops to plaintiff within 30 days from today.
3.	Defendant is directed to pay Rs. 2,45,000/- to plaintiff towards arrears of licence fees and legal notice charges.

	Defendant is also directed to pay Rs. 11,04,000/- towards damages and compensation @ Rs. 2000/- per day for unlawful and unauthorized use of suit shops from 01.04.2021 till filing of suit within 30 days from today.
4.	A separate inquiry is directed to be held under Order XX Rule 12 (C) of Code of Civil Procedure, for the purpose of determination of quantum of mesne profit.
5.	Defendant shall bear his own costs shall pay the costs of plaintiff.
6.	Decree shall be drawn up accordingly.

Sd/-

(S. S. Jambhale)

7th Jt. Civil Judge (Sr. Dn.)
Akola

Akola
Dated:30.10.2025

Certificate

I affirm that, the contents of this PDF file order are same word to word, as per the original order.

Name of the Court : 7th Jt. C.J.S.D. & A.C.J.M. Akola
Name of Stenographer :
Date of Judgment / Order : 30.10.2025
Order signed by the
Presiding Officer on : 10.11.2025
Order uploaded on : 10.11.2025