


<p>MHKO080001632025</p> 	<p><u>Order below Exh. 05 in Commercial Suit</u> <u>No.2/2025</u></p> <p>ISC Projects Pvt Ltd Through Authorised Dhananjay Dattatraya Gavali Vs Suryakant Namdev Narvekar</p>
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1. The present application (Exh.5) is moved by the plaintiff seeking urgent interim relief. It is the case of the plaintiff that, the plaintiff is a private limited company based in Pune and undertaking the business of construction of roads, bridges, buildings etc. The plaintiff company has taken up the project of the Government of Maharashtra to Chandgad to Halkarni, Khanapur, Kolhapur, district borders through Chandgad, Ajara and Gadhinglaj Taluka known as 'EPC Chandgad- improvement State Highway-201'.

2. As the plaintiff company was in need of stone and gravel in order to start its work for said projects and the defendant who has abundant stone and gravel in the stone quarry in the suit property approached the plaintiff. After discussion a leave and license agreement was executed and registered with Sub-Registrar, Ajara bearing its Registration No.1622/2024, on 18/10/2024.

3. The leave and license agreement was for five years commenced from 16/10/2024 to 15/10/2029. As per the said agreement 5 acre area out of the suit property was agreed to use to set up a temporary stone crushing plant, weighing scale, sight office, quality inspection laboratory, labour camp, storage room, RMC and other ancillary uses and the remaining 2.90 acre was agreed to use for mining and excavation. For the said use of the suit property, as licence fees, the plaintiff company agreed to pay Rs.7,900/- per year and Rs.10,000/- towards security deposits to the defendant. The defendant agreed to let the plaintiff excavate approximately 10 lakhs metric tons of stones from the suit

property during the five years tenure as mentioned in the agreement. The plaintiff agreed to pay defendant an amount of Rs.20 per metric ton.

4. It was agreed to carry out joint ETS survey for the purpose of determination of earlier excavation in the suit property. During the ETS survey if it is found that, there is any royalty due to the Government for the said earlier excavation, the defendant will have to pay the said amount.

5. Accordingly, the defendant applied for ETS survey of the suit property before the District Mining Officer, Kolhapur on 09/10/2024 and 18/11/2024. By his communication dated 18/11/2024 the District Mining Officer ordered the defendant to deposit an amount of Rs.40,98,240/- towards 6045 brass of earlier excavation, 10% DMF, 2% TCS and ground rent. Thus, it became difficult for the plaintiff to start its further work unless and until said amount is deposited by the defendant. But the defendant did not have the funds to pay the said amount which comes to Rs.45,98,240/- and thus the defendant requested the plaintiff to pay the said amount.

6. As per mutual understanding it was decided that, the plaintiff would pay the said amount which will be adjusted towards future payment to be made by the plaintiff to the defendant as per the leave and license agreement. Accordingly, notarized agreement was executed between the parties on 19/12/2024. However, in spite of deposit of the royalty amount by the plaintiff through the defendant with District Mining Officer, the defendant did not allow the plaintiff to excavate stones from the suit property and insisted to purchase the suit property. However, as requirement of the plaintiff was temporary one therefore the plaintiff was not interesting in purchasing the suit property and therefore said proposal of defendant was refused by the plaintiff. Therefore, the defendant got annoyed and put hurdle in excavation in the suit property and therefore as

the plaintiff was in dier need of stones for the construction of road project and the efforts to convince the defendant have been failed. Therefore plaintiff has no option but to file commercial suit for seeking mandatory injunction from the Court.

7. The plaintiff has also moved the present interim injunction application (Exh.5) seeking urgent relief in the matter as the contract with the Government was time bound one and the attitude of the defendant was beyond any understanding and was against the leave and license agreement. Therefore, the plaintiff has claimed prima facie case, balance of convenience and irreparable loss and therefore prayed that, the defendant or any other person through him may be restrained from obstructing legal work of excavation and mining of the plaintiff in the suit property as per leave and license agreement dated 18/10/2024 bearing its registration No.1622/2024.

8. The application is strongly opposed by the defendant by filing say/W.S. at Exh.13 and contended that, the leave and license agreement as well as MOU was obtained by playing fraud on the defendant and therefore same is not binding on the defendant and therefore submitted that the application moved by the plaintiff is devoid of merit and needs to be rejected with costs.

9. Perused the record. Heard both the parties. The following points arise for my decision and I have recorded my findings thereon with reasons as under.

<u>Sr.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the plaintiff proves prima facie case?	.. In the affirmative.
2)	Whether the plaintiff proves balance of convenience in his favour?	.. In the affirmative.

3	Whether the plaintiff proves that it will suffer irreparable loss if interim injunction order is not granted in his favour?	.. In the affirmative
4)	What order ?	Application (Exh.5) is allowed.

REASONS

As to Point No. 1 and 2 :-

10. The Ld. Counsel Shri. R.A.Patil submitted that, the plaintiff has enter into road project with a State Government of Maharashtra and said project is time bound. If, the said project is not completed within stipulated time the plaintiff will suffer heavy losses. However, the completion of project is depending upon the leave and license agreement enter in to in between the defendant and the defendant in spite of execution of duly registered leave and license agreement is not allowing the plaintiff to carry out excavation work in the suit property as per terms and conditions of leave and license agreement. He submitted that, the defendant failed to point out for what reason he is obstructing the defendant from carrying out excavation work in the suit property. Therefore, he submitted that, the interim injunction is required to be issued in favour of the plaintiff so as the much delayed excavation work is required to be initiated to complete the road project within time.

11. On the other hand the learned Counsel Shri. M.V.Patil for defendant has pointed out that, the plaintiff has played fraud misrepresentation and coercion on the defendant and had taken undue advantage of their rural background. The defendant is unknown about the said commercial transaction and if the said leave and license agreement was implemented the defendant will suffer huge losses. He also pointed out that, the defendant is already burden with bank loan and this

additional burden of huge loss will ruin the future of the defendant. He submitted that the father of defendant has already approached to the Ld. Civil Judge Senior Division by filing Regular Civil Suit No.30/2025 against the present plaintiff and State Government and the said suit is pending for hearing.

During his course of arguments he placed reliance on-

i) **Mumbai International Pvt Ltd Vs. Golden Chariot Airport and another [2011(2) Civil LJ 291**, it is held that-

“The very idea of a license being irrevocable is a bit of a contradiction in terms. From the clauses of the license referred to above, it is clear that by its terms the license is revocable. It is well-known that a mere license does not create any estate or interest in the property with which it is concerned. Normally, a license confers legality to an act, which would otherwise be unlawful. A license can be purely personal, gratuitous or contractual. Whether a contractual license is revocable or not, would obviously depend on the express terms of the contract. A contractual licence is normally revocable, except in certain circumstances that are expressly provided for in the Indian Easement Act, 1882.

A license has been defined in Section 52 of the Indian Easement Act, 1882 as a right to do or continue to do in or upon the immovable property of the grantor something, which, in the absence of such right, could be unlawful, but such right does not amount an easement or an interest in the property.

Following the aforesaid principles and the clauses in the licence agreement, this Court holds that the license by its very term is revocable.”

ii) **M/s. Vaishnavi Sai Shri Mahalaxmi Jagdamba Shikshan Sanstha Vs. Purva Vidarbha Mahila Parishad., (2022) 1 Mh.L.J. 519**, wherein it is held that-

“ Much emphasis was placed by the learned Senior Counsel for the petitioner on the wore exclusive’ used in above quoted clause(6) of the agreement, to claim that the petitioner was and continued to be in exclusive possession of the premises,

thereby showing that in substance it was a lease agreement. But, reading clause(6) in its entirety, this Court finds that prima facie the petitioner was granted exclusive use and occupation of the building in question for lawful academic purposes and that the relationship between the parties even prima facie comes out to be that of licensor and licensee. The lawful possession of the building in question, prima facie continued to be that of the respondent, with the petitioner only having a right to use the same on specific terms and conditions. The petitioner was fully aware about the terms and conditions, including the term that the leave and license could be revoked before the expiry of the stipulated period by giving an advance notice.”

iii) **The Corporation of Calicut Vs. K. Sreenivasan., (2002) AIR (SC) 2051.**, it is held that-

“16. It is true that a licensee does not acquire any interest in the property by virtue of grant of licence in his favour in relation to any immovable property, but once the authority to occupy and use the same is granted in his favour by way of licence, he continues to exercise that right so long the authority has not expired or has not been determined for any reason whatsoever, meaning thereby so long the period of licence has not expired or the same has not been determined on the grounds permissible under the contract or law. Occupation of licensee is permissive by virtue of the grant of licence in his favour, though he does not acquire any right in the property and the property remains in possession and control of the grantor, but by virtue of such a grant, he acquires a right to remain in occupation so long the licence is not revoked and/or he is not evicted from its occupation either in accordance with law or otherwise. Main thrust of Section 2(f) of the Act is upon the expression ‘occupation’ with authority or without authority. If a person without any authority occupies any public building he would be a trespasser and his case would be covered by first part of Section 2(f) and would be liable to be evicted under the provisions of the Act instead of taking recourse to ordinary law by filing a properly constituted suit which is dragged on for years together. Second part of Section 2(f) deals with cases where a person is in occupation by virtue of an authority granted in his favour irrespective of the fact whether the authority is in the form of lease or licence or in any other

form. So far as case of lease of a public building is concerned, upon expiry of the period limited thereby or its determination in accordance with law, the special procedure prescribed under the Act providing speedy remedy for eviction would apply even though some interest in the immovable property is created in favour of the lessee by virtue of creation of lease in his favour. But in a case of licence, no interest in the property is created by virtue of the grant, but a person acquires a right to continue his occupation by virtue of the authority granted in his favour under the licence unless the period of licence has expired or the same has been determined or licence has been revoked and/or the licensee is evicted by the grantor. If it is held that Section 2(f) would apply only in case of lease and not in the case of licence, the position will be very incongruous as in the case of lease, though a lessee acquires interest in the property which is a higher right, but he can be evicted under the special procedure prescribed under the law providing much speedy remedy whereas in case of licence, a licensee, who does not acquire any interest in the property and has only some sort of right of occupation by virtue of the nature of grant in his favour so long he is not evicted, can be evicted through long drawn ordinary procedure of filing a civil suit. This could not have been the intention of the Legislature. Apart from that, out of the expressions 'whether by way of lease' or 'any other mode of transfer', the expression 'any other mode of transfer' is very wide and would not necessarily mean only that mode of transfer whereby a right has been created in immovable property. The expression 'transfer' under the Transfer of Property Act connotes creation of some interest in immovable property. But under Section 2(f) of the Act such a restricted meaning would defeat the purpose of legislation which is impermissible. The expression "any other mode of transfer" would definitely bring within its sweep the case of a licensee where right of the grantor to occupy and continue to occupy immovable property is transferred though under law, the property remains in possession and control of the grantor. In view of the foregoing discussions, we hold that the expression 'unauthorised occupation' within the meaning of Section 2(f) of the Act would embrace within its ambit the case of licensee as well after expiry of the period of licence or upon its determination for any reason whatsoever, as such the Estate Officer was quite justified in initiating proceeding under the Act and passing eviction order therein."

iv) **Eldho Vs. Manual (2014) 4 Civil J 907.**, it is held that-

“As per S. 61 of the Indian Easements Act, revocation of a license may be express or implied. Even when the conduct of the licensor, clearly depicts that he had revoked the license, it can be treated as an implied revocation. The licensor was contending from the beginning that the licence was revoked. In such a case, in the absence of any document to prove such revocation, it has to be treated as an implied revocation within the meaning of S.61, When PW.1 has admitted that the licensor had demanded vacant possession on 23.11.2009, any further evidence is not required to prove that the license was revoked within the meaning of S.61 of the Indian Easements Act. Over and above it, the repeated assertions made by the licensor in the written statement as well as in the Writ Petition also clearly reveal that the same constitute revocation within the meaning of S.61 of the Act. In a case of license simpliciter, the license cannot protect his possession against the licensor. Of course, he could protect his possession against other person, other than the licensor. A premature revocation, may at the most gives a right to the licensee under S.64 of the Indian Easements Act for claiming damages. Matters being so, this Court does not find anything to interfere with the impugned judgment. This appeal is devoid of merits, and is only to be dismissed, and I do so.”

iv) **Hindustan Petroleum Corporation Ltd Vs. Sri. Sriman Narayan and Another., (2002) AIR (SC) 2598**, it is held that-

“ The decision whether or not to grant an interlocutory injunction has to be taken at a time when the exercise of the legal right asserted by the plaintiff and its alleged violation are both contested and remain uncertain till they are established on evidence at the trial. The relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before which that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to

be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the “balance of convenience lies”.

Therefore, he submitted that the application is devoid of merit therefore needs to be rejected with costs.

12. Now the point for consideration is whether the plaintiff has made out case for urgent interim relief or not? On careful perusal of the agreement dated 09/10/2014 executed in between MSIDC and the plaintiff. The construction work of the road in Gadhinglaj Taluka was assigned to the plaintiff with a specific condition to comply the same within 912 days from the scheduled completion date i.e. on 09/10/2024. Thus, the work needs to be completed by the plaintiff within 912 days from 09/10/2024 and it requires stones for road construction and therefore plaintiff has enter into leave and license agreement in respect of the suit property.

13. Though the defendant has claimed coercion misrepresentation and fraud however at this stage of initial proceeding the defendant failed to point out as to how the plaintiff has played fraud coercion and misrepresentation while executing leave and license agreement particularly on the background that the agreement is duly registered with Sub-Registrar, Ajara.

14. The defendant has not made any grievance against the plaintiff except of filing RCS No.30/2025 with the Ld. Civil Judge Senior Division, Gadhinglaj, wherein his father is the plaintiff in the matter.

15. So far as the loan taken by the defendant from the credit society but the said subject is not a core issue of the present litigation not

the said credit society is party to the present litigation. The subject matter of pending loan is altogether different and it is in between defendant and credit society and the plaintiff has nothing to do with said loan transaction.

16. Therefore, to my view the plaintiff has made out prima facie case in his favour. Though Ld. Counsel Shri.M.V. Patil has placed reliance on the reported case laws on the point of leave and license wherein no right title interest involves or occurs in favour of the licensee but in the present case the plaintiff being licensee is not claiming any title or interest but he is only insisting to implement leave and license agreement. The Ld. Counsel Shri. M.V. Patil relied on the Hindustan Patrol Corporation (Supra) on the point of irreparable loss. As present transaction is commercial one. Therefore, the aspect of irreparable loss is not applicable to the present case. However, the said argument cannot be accepted because the plaintiff has already entered into time bound agreement with the State Government and if said project is not completed within the stipulated period the plaintiff may face serious financial consequences and therefore if interim injunction is not granted the plaintiff will certainly suffer irreparable loss in the transaction.

17. Therefore, the Ld. Counsel Shri. R.S.Patil has rightly relied the case laws on the point referred to above. Consequently, ratio relied on by Ld. Counsel Shri. M.V.Patil for the defendant is not helpful to the defendant in the present proceeding in view of above discussion and peculiar facts of present case. The plaintiff has made out prima facie case in his favour, balance of convenience also lies in favour of the plaintiff and irreparable loss will suffered by the plaintiff if interim injunction is not granted in its favour. Thus, I answer point Nos.1 to 3 in the affirmative. Therefore, following order is passed.

ORDER

1. Application Exh.5 is allowed with costs.
2. The defendant or/ an any other person claiming through him is temporarily restrained from obstructing the legal work of excavation and mining of the plaintiff in the suit property situated at village Shrungarwadi, Tal. Ajara, Dist. Kolhapur bearing Gat No.170, admeasuring 12.84.00 Hector out of which an area admeasuring 3.20.00 Hector till final disposal of the present suit.

Kolhapur.
Dated :- 05/01/2026.

(**M.A.Shinde**)
District Judge-1, Gadhinglaj.