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IN THE COURT OF SMALL CAUSES AT MUMBAI
(APPELLATE COURT)

P APPEAL NO.155 OF 2014
IN
L.E.&C. SUIT NO.120/156 OF 2010

(Networth Stock Broking Limited)

Deleted as name changed.

a Company incorporated and registered under the provisions of the Companies Act, 1956 having its registered office at 5, Churchgate House, 2nd floor, 32/34 Veer Nariman Road, Mumbai-400 001 and also having address at Office Premises bearing No.1A on the Ground Floor, "A" Wing Mittal Court, 224, Nariman Point, Mumbai-400 002.

Monarch Network Capital Limited

901-902, 9th Floor, Atlanta Centre, Sonawala Lane, Opp, Udyog Bhawan, Goregaon (East), Mumbai-400 063.

...Appellants
(Orig. Defendants)

Vs.

Gold Castle Realtors Private Ltd.

a Company incorporated and registered under the provisions of Companies Act, 1956 and having its registered Office at Nirmal 21st Floor, Nariman Point, Mumbai-400 021.

...Respondents/
(Orig. Plaintiffs)

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Shri. Mayur V. Faria, Advocate for the appellants.

Shri. Subhash K. Vyas, Advocate for the respondents.

AND

IN THE COURT OF SMALL CAUSES AT MUMBAI

(APPELLATE COURT)

CROSS OBJECTIONS NO.9 OF 2014

IN

P APPEAL NO.155 OF 2014

IN

L.E.&C. SUIT NO.120/156 OF 2010

Networth Stock Broking Limited

a Company incorporated and registered

Under the provisions of the Companies

Act, 1956 having its registered office at

5, Churchgate House, 2nd floor, 32/34

Veer Nariman Road, Mumbai-400 001

And also having address at Office

Premises bearing No.1A on the Ground

Floor, "A" Wing Mittal Court, 224,

Nariman Point, Mumbai-400 002.

**...Appellants
(Orig. Defendants)**

Vs.

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Under the provisions of Companies Act,

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"Nirmal", 21st Floor, Nariman Point,

Mumbai-400 021.

**...Respondents/
(Orig. Plaintiffs)**

Shri. Mayur V. Faria, Advocate for the appellants.

Shri. Subhash K. Vyas, Advocate for the respondents.

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**Coram:- Smt. T. G. Mitkari, Addl. Chief Judge,
&
Shri. R.V. Bhakta, Addl.Chief Judge
C.R.No.3.
Date : 07.01.2023.**

ORAL JUDGMENT (Per Smt. T. G. Mitkari, Addl. Chief Judge).

1. The L.E.&C. Suit No.120/156 of 2010 was filed by the plaintiffs against the defendants for recovery of vacant possession, damages, forfeiture of security deposit, monthly compensation, recovery of licence fee, amenities charges and for future mesne profits. The plaintiffs are the members of a Co-operative Housing Society known as “Mittal Court Premises Co-operative Society Ltd.” registered under the provisions of the Co-operative Societies Act, 1960. On its basis the plaintiffs claimed to be entitled to the right, title and interest in office premises bearing No.1-A admeasuring 3770.98 sq.ft. or thereabouts carpet area on the ground floor in the A-Wing of the building known as Mittal Court, situated at 224 Nariman Point, Mumbai-400 021 (For short, “suit premises”) together with two car parking spaces bearing No.8 and 39 respectively in the basement of the building Mittal Court and one car parking space bearing No.91 in the compound of the building Mittal Court (For short, car parking spaces No.8, 39 and 91 respectively).

2. An Indenture of Lease dated 15.02.2008 was executed between the plaintiffs and one M/s. Sopariwala Exports a partnership firm, registered under the Indian Partnership Act, 1936, the plaintiffs demised unto the said M/s. Sopariwala Exports, the suit premises together with car parking spaces for a period of 9 years with effect from 01.04.2007 expiring on 21.03.2016. The licensor vide clause 7

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in the agreement has authorized the lessee irrevocably and unconditionally to sub-lease, assign, let out or alienate or part with possession of the suit premises or any part thereof to any person(s) or party as the lessee may deem fit, for consideration and on such terms and conditions as the lessee deems fit and proper.

3. The sublease was executed in favour of defendant of the suit premises by the M/s. Sopariwala Exports, thus, the defendants as licencees were granted leave and licence to use and occupy the suit premises and registered in accordance with law and was irrevocable by either party during the entire period of 60 months of the licence. It was agreed between the parties that the licencee shall pay to the licensor licence fee and/or compensation as per this licence.

4. The claim of the plaintiffs against the defendant is for the payments due and payable on or before 07.06.2010 in terms of the leave and licence agreement dated 15.02.2008 read with the agreement of amenities after execution of deed of surrender dated 22.06.2009 between M/s. Sopariwala Exports and the plaintiff. That the from June, 2010 the defendants failed to pay even the basis licence fees to the plaintiffs lawfully due and payable by the defendants for the use and occupation of the licenced premises as the defendant-company ran into serious financial crises which substantially affected their operations from the suit premises. . The plaintiffs through E-mails dated 11.06.2010 and 13.06.2010 to the defendants reminding them of non-payment of the licence fee in respect of the suit premises for the month of June 2010. The plaintiffs vide letter dated 14.06.2010 addressed to the defendants

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with reference of their earlier debit notes for licence fees and amenities charges for the month of June 2010 for use and occupation of the suit premises. These payments were not received from defendants despite earlier e-mails dated 11.06.2010 and 13.06.2010.

5. The defendants vide a letter dated 15.06.2010 to M/s. Sopariwala Exports although as per the case of plaintiffs M/s. Sopariwala Exports had ceased to be the licensors of the defendants in respect of the suit premises, admitted that the company had incurred huge losses and was facing financial difficulties and consequently, on its basis plaintiffs claim that defendants expressed their inability to pay the licence fee and other dues. The defendants have admitted that they have committed default in their obligation to pay the licence fee and amenities charges also their inability and/or unwillingness to perform the terms and conditions of the agreement. The plaintiffs without prejudice to any other rights and remedies pleaded that they are entitled to terminate the leave and licence agreement, forfeit the entire security deposit and claim the arrears as well as licence and amenities charges for the balance term of lock-in-period together with the compensation and liquidate damages as per clause 19 of the leave and licence agreement.

6. It is emerge from the pleading of the parties that the defendants replied the notice dated 18.06.2010 of the plaintiffs by reply dated 24.06.2010 denied the title of the plaintiffs as their licensors in respect of the suit premises alleging that there was no privity of contract between the defendants and the plaintiffs in respect of the suit premises. Further, that extent of impugning even the effect of Deed of Surrender dated 22.06.2009 executed between

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the plaintiffs and Sopariwala Exports by virtue of which the plaintiffs became the licensors of the defendants and pursuant thereto the defendants had themselves attorned in favour of the plaintiffs by unconditional tenders of licence fees and amenities charges to the plaintiffs. The plaintiffs stated that after repudiating the untenable arguments of the defendants contained in issued to defendants letter dated 24.06.2010, the advocates and solicitors for the plaintiffs recorded the fact that as period of seven days for rectifying the breach had expired on 25.06.2010 and the defendants had failed to rectify the same, the leave and licence agreement an amenities agreement stood terminated under the provisions of clause 19 of the leave and licence agreement read with clause 7 of the amenities agreement and the entire security deposit stood forfeited in addition to the defendant's incurring the liability to pay the agreed amount of compensation of Rs.2,00,00,000/- and other dues as stipulated in the agreements including payment of licence fees and amenities charges for the full balance period of the lock-in-period.

7. The plaintiffs further pleaded that in the circumstances, the defendants were called upon forthwith to handover the peaceful possession of the suit premises leaving therein the furnitures, fixtures and amenities provided by the plaintiffs according to the list annexed to the amenities agreement. The defendants addressed a letter dated 01.07.2010 to the M/s. Sopariwala Exports purporting to terminate the leave and licence agreement on the alleged ground that by virtue of the deed of surrender dated 22.06.2009 the leave and licence had been unilaterally altered by the licensor as a result of which the leave and licence had come to an end.

8. The plaintiffs replied letter dated 01.07.2010 through their advocate on 06.07.2010 to inform the defendants that he has committed breach of terms and conditions of leave and licence agreement. The plaintiffs had become entitled to forfeit the entire security deposit of Rs.3 crores as well as agreed amount of compensatory damages fixed at the rate of Rs.2 crores in terms of clause 19 of the leave and licence agreement and also become entitled to recover from the defendants the agreed liquidated damages of Rs.5,00,000/- per day with effect from 28.06.2010 until the delivery of quiet vacant and peaceful possession of the suit premises and handing over the amenities by the defendants to the plaintiffs.

9. The plaintiffs pleaded that the defendants had at no time acquired the status of deemed tenant and/or protected licensee in respect of the suit premises under the provisions of Section 5-A r/w Section 15A of the Bombay Rent Act, 1947, therefore, the provisions of Maharashtra Rent Control Act, 1999 are not applicable to the case of defendants. Even Chapter 8 of the Maharashtra Rent Control Act, 1999 also did not apply. In background of these facts and circumstances, the plaintiffs prayed for decree of eviction and other reliefs in original L.E. & C. Suit No. 120/156 of 2010.

10. The defendants filed their written statement to resist the claim of the plaintiffs. The defendants admitted that the plaintiffs are the owners and they had given the suit premises to M/s. Sopariwala Exports under the agreement of leave and licence and M/s. Sopariwala Exports also given the suit premises to them under leave and licence agreement dated 15.02.2008. The amenities

agreement was executed between M/s. Sopariwala Exports and the defendants. The defendants further admitted that M/s. Sopariwala Exports has sent the letter dated 06.07.2009 intimating them that they surrendered their lease hold rights in favour of the plaintiffs and had paid the compensation in respect of the suit premises to the plaintiffs. The defendants contended that there is no privity of contract and there is no relationship of licensor and/or licensee or ex-licensor and ex-licensee between the plaintiffs and the defendants.

11. The defendants specifically pleaded that prior to negotiations between the Directors of the plaintiffs and partners of M/s.Sopariwala Exports about the grant of leave and licence in favour of defendants. It was represented to the defendants that the said Sopariwala Exports had irrevocable authority from the plaintiffs for grant of leave and licence of the suit premises. Relying on the said representation, the defendants were made to enter in to the said leave and licence agreement on the terms and conditions as recorded thereto and on the payment of Rs.3,00,00,000/- by way of refundable deposit. During the subsistence of the licence, M/s. Sopariwala Exports had surrendered their tenancy rights by a Deed of Surrender dated 22.06.2009. The defendants alleged that Sopariwala Exports acted in collusion with the plaintiffs and committed the breach of clause 27 of the leave and licence agreement.

12. It is pleaded by the defendants that on the surrender of tenancy rights, licence if any granted by the said Sopariwala Exports came to an end. There is no fresh execution of leave and licence between the plaintiffs and defendants. That during the subsistence of the leave and licence agreement, the defendants have expressed their

intention to return the possession of the suit premises and requested the said Sopariwala Exports to receive the same from the defendants.

13. It is case of defendants that Sopariwala Exports refused to accept the surrender in collusion with plaintiffs. That the Sopariwala Exports has refused to return security deposit to the defendants. Therefore, the defendants claimed before the Ld. Trial Court that they are entitled to hold on possession without payment of licence fee or any other amount till the security deposit is returned to the defendants.

14. The defendants pleaded that they informed to the plaintiffs that leave and licence agreement is personal between the plaintiffs and M/s. Sopariwala Exports and it cannot be enforced by the defendants who were not party to the leave and licence agreement, any change in the terms and conditions of the agreement would only be valid if the same are agreed in writing between the defendants and M/s. Sopariwala Exports.

15. The defendants alleged that the plaintiffs in collusion with M/s.Sopariwala Exports fraudulently executed the alleged Deed of Surrender to grab the security deposit of Rs.3 crores and to foist a further illegal liability upon them. The defendants have pleaded their readiness and willingness to handover possession of the suit premises to M/s. Sopariwala Exports after making accounts as per the provisions of law. The defendants came with a case that the terms and conditions of the Deed of Surrender executed between the plaintiffs and M/s. Sopariwala Exports are not binding upon the defendants. Therefore, payments made to the plaintiffs in respect of licence fees and amenity charges referred do not constitute any

agreements between the plaintiffs and defendants as that of leave and licence and amenities.

16. The defendants specifically pleaded that M/s. Sopariwala Exports has committed breach of clause 27 of Indenture of Lease executed by them in favour of defendants. The defendants have not made any default in their obligation. The defendants by their letter dated 24.06.2010 placed correct facts on record and denied the title of the plaintiff as licensor even prior thereto defendant never recognized the plaintiffs as their licensor.

17. The defendants contended that were ready and willing to handover possession of the suit premises to their licensor i.e. said M/s. Sopariwala Exports as expressed by them by their letter dated 30.06.2010. They also shown their willingness to pay licence fee which was due and payable by them. The defendants prayed to dismiss the suit with compensatory cost.

18. In a L.E.&C. Suit No.120/156 of 2012 the judgment and decree dated 09.08.2012 passed by the Learned Trial Court, Court Room No.17, the suit of the plaintiffs came to be partly decreed thereby directing that the defendant do pay an amount of Rs.4,08,89,978.70 towards the licence fee, amenity charges for the period from June 2010 to 04.08.2011 however, the defendant is entitled to adjust the aforesaid amount in the security deposit of Rs.3 crores. Therefore, the defendant is directed to pay remaining amount of Rs.1,08,89,978.70 to the plaintiff with interest thereon 15% per annum from the date of the suit till the realisation of the aforesaid amount.

19. On the basis of facts pleaded, denied and specific pleas

raised in the original suit, on appreciation of evidence oral and documentary adduced by the parties relied on were appreciated in the impugned judgment and order by the Learned Trial Court wherein the issues framed in the trial of on dated 08.09.2011.

20. In this background, in the impugned judgment and order the Learned Trial Court arrived at conclusion and findings to the issue Nos.1, 2 and 3 that defendant is plaintiffs' licensee in respect of the suit premises, suit is maintainable and this Court has jurisdiction to entertain and try this suit answered in the affirmative. The Learned Trial Court answered the issue No.4 regarding entitlement for decree of possession of the suit premises as does not survive. In the impugned judgment and order the Learned Trial Court answered the issue Nos.5 and 6 in the negative regarding declaration and entitlement for compensatory damages. Consequently, the prayer of the plaintiffs for entitlement of the relief in view of issue No.7 was answered that the plaintiff is entitled to get recover licence fees and amenities charges which comes to Rs.4,08,89,978.70, resulting into suit is partly decreed.

21. In paragraph No.36 of the impugned judgment and order, the Learned Trial Court mentioned recital Exh.62 also goes to show that the original owner i.e. the society did not recognize the sublease of defendants and M/s. Sopariwala Exports as per Exh.31, therefore, it can be said that leave and licence agreement between defendants as well as M/s. Sopariwala Exports has not been approved by the real owner of the suit premises i.e. the society. It is worthwhile to note that Exh.63 further reveals that the present plaintiffs have informed to the society that the Deed of Surrender made on 22.06.2009

between M/s. Sopariwala Exports and plaintiff. The M/s. Sopariwala Exports has surrendered all leasehold right in respect of suit premises on the expressed understanding that leave and licence agreement shall continue to remain valid and subsisting as between plaintiffs (in place) and instead of M/s. Sopariwala Exports and Networth Stock Broking Limited (defendant). Terms of licence and conditions have contained in the leave and licence agreement. It has further lastly mentioned therein that they hope that society will approve the said arrangement and they requested to give NOC to lease the premises to the defendants with effect from 01.07.2009.

22. The Ld. Trial Court in reference to NOC of the society had referred that all Deeds Exh.30, 31, 33 also accompanied by society's NOC, but there is no documents or NOC placed on record for leave and licence between plaintiffs and defendants.

23. In the impugned judgment and order the payment of licence fee as well as amenities charges by the defendant to the plaintiff was held to be not to mean that, the defendants have accepted the plaintiffs as licensor to the documents leave and licence agreement Exh.32 unless the plaintiffs became the licensor as per Exh.31 in writing and signed by the plaintiffs and defendants, it cannot be said that the plaintiffs have right to take action against the defendants for violation or alleged breaches committed by the defendants of leave and licence agreement as pleaded by plaintiffs in their plaint. Therefore, consequences and benefits for committing the breaches of clauses of Exh.31 the plaintiffs were held to be not entitled to recover from the defendants only. And it was concluded that the M/s. Sopariwala Exports has got right to take action against

the defendants for violation and breaches if committed by the defendants as per Exh.31 and Exh.32.

24. The facts that in agreement of leave and licence executed in favour of defendant there was lock-in-period for 5 years which was continued upto 31.03.2013. In the impugned judgment and order it was arrived at conclusion that plaintiffs failed to prove that the defendants have committed breaches and they are entitled to compensation for a period from June 2010 to 31.03.2013, therefore, the plaintiffs claimed in prayer clause (b), (c), (d) and (f) were not granted and it was held that Since the defendants are liable to pay the licence fee and amenities charges as discussed above which comes to Rs.4,08,89,978.70. Learned Trial Court held that the amount of Rs.3 crores towards security deposit with the plaintiffs, and the defendants are entitled to get adjust the said licence fee and amenities charges and remaining amount of Rs.1,14,00,000/- liable to be paid by defendants to plaintiffs.

25. It is necessary to take note that in litigation between the plaintiff and defendant The Hon'ble High Court in Company Petition No.357 of 2011 had directed this Court to pass appropriate order about the bank guarantee which is shown as per Exh.65. In this reference in impugned judgment and order it was expressed that, since the defendants are liable to pay more than that of security deposit to the plaintiffs therefore, the bank guarantee given by the plaintiffs is liable to be discharged. Therefore, in such circumstance, it was held in the impugned judgement and order that, the suit filed by the plaintiffs for recovery of damages, forfeiture of security deposit, abiding of compensation and recovery of mesne profit as

claimed by way of prayer clause (b), (c), (d), (e), (f) not maintainable. However, the plaintiff's suit for recovery of licence fee and amenities charges from June 2010 to 04.08.2011 comes to Rs..4,08,89,978.70 to that extent, it was findings that the suit was maintainable.

26. In paragraph No.43 of the impugned judgment and order the Learned Trial Court held that plaintiffs have proved the defendants by their conduct recognized the plaintiffs as their licensor by paying the licence fee and amenities charges. That the dispute between the plaintiffs and defendants falls under section 41 of Presidency Small Causes Court Act.

27. The order was passed by Hon'ble High Court have reference of fact that the plaintiffs have furnished the bank guarantee of Indian Bank to the extent of Rs.3 crores which is valid upto 25.07.2012 in the L.E. & C. Suit No. 120/156 of 2010. It was admitted by the plaintiffs that the defendants have handed over the vacant possession of the suit premise on 03.08.2011, therefore, the relief claimed by the plaintiffs for recovery of possession in the present suit being redundant, the issue No.4 in the trial of the suit held as redundant or not survived.

28. It is this judgment and order findings arrived and reasons assigned the appellant has challenged in the following mentioned ground of appeal:-

29. It is raised by the appellants in the grounds of appeal that the Learned Trial Court has committed an error holding that this Court has jurisdiction to entertain and try the suit filed by the plaintiffs/respondents. That interpretation of the registered

documents, correspondence and resolutions produced during the course of Trial by the appellants and the respondents was not in proper way and as per claim of the appellant that the Learned Trial Court ought to have held that there is no privity of contract between the appellants and the respondents and ought to have dismissed the suit as a whole.

30. The appellant claim there were no appreciation of the fact in view of that the breach of terms and conditions of Leave and Licence Agreement dated 15.02.2008 by M/s. Sopariwala Exports, the licence between the Sopariwala Exports and the appellants has automatically come to an end and the consequence of breach of clause 27 of Leave and Licence Agreement and upon receipt of the letter dated 06.07.2009, the appellants have never recognized the respondents as its licensor.

31. It is raised in the appeal that the Learned Trial Court has not interpreted the provisions of Section 115 and 116 of the Indian Evidence Act in its proper prospective in reference to the oral evidence of the appellants in respect of payment of compensation and not thereby accepting the respondents as their licensor. That ratio laid down in the judgments cited on behalf of the respondents in support of their case of estoppel cannot be made applicable to the facts and circumstances of the case are said to not have been considered while the passing impugned judgment and order.

32. The ignorance of letter dated 01.07.2010 addressed by the appellant's Solicitors to Sopariwala Exports whereby the appellants have terminated the Leave and Licence Agreement in view of breach of clause 27 of the Leave and Licence Agreement is raising in the

ground of appeal by the appellant. The findings of the Ld. Learned Trial Court that there is no privity of contract between the appellants and the respondents, are the basis of the claim of the appellant that in the impugned judgment and order the respondents ought to have directed to refund the amount of security deposit of Rs.3 crores in compliance with the directions given order dated 15.07.2011 of the Hon'ble Bombay High Court in Company Petition No.357 of 2010. Appellant raised that the pleadings, both oral and documentary in its proper perspective were not considered while imposing liability upon the defendant.

33. The Learned Trial Court erred in discharging the Bank Guarantee which was already expired during the pendency of the suit. The Learned Trial Court ought to have taken serious cognizance of the conduct of the respondents for non-continuation of the bank guarantee during the pendency of the suit.

34. For these reasons and grounds raised the appellants prayed to set aside the impugned judgment and decree with regard to issue Nos.1 to 3. The Learned Advocate for the appellants submitted written notes of arguments vide Exhibit No.38 on record before this Appellate Court.

35. The plaintiff In L. E. & C. Suit No.156 of 2010 filed cross-objection in this Appeal No.165 of 2014 filed by original defendant It is the case of original plaintiff in cross objection that suit was partly decreed and the other claim of the plaintiff were rejected in a judgment and decree dated 09.08.2012. Therefore, the cross objection is filed in the appeal on the grounds that, the claim of the Plaintiffs for licence and amenities charges charges after 04.08.2011

till 30.03.2013 ought to have been upheld the Ld. Trial Court in the impugned Judgment and order as the period of agreement of licence(Ex.31) and Ex.32 respectively were five years commencing from 01.04.2008 and on expiring on 01.04.2013 was locking period. It is further raised that, in terms of leave and licence and amenities agreement defendants have vacated the premises prior to period of expiry of five years therefore liable to pay licence and amenities charges for the entire period of 5 years. In this regard in cross objection the Plaintiff raised that the learned Trial Court in the impugned judgment and order have not considered the admission of the defendant witness that defendant witness were to have in his cross examination admitted that, the defendant can vacate the premises before five years but they have to make payment for entire period of five years.

36. It is the case pleaded in cross objection that, the words “lock in period” used in the leave and licence agreement are suggest that, even if licence has been put into or the licensee vacates premises the licensee earlier, the licensee would be liable to pay licensee fees and amenities charges for the entire period of five years have not been appreciated in its proper prospective and thereby restricted the plaintiffs claims to licence fees and amenities charges under Exh.31 and Exh.32 only to the 04.08.2011 to the defendants have handed over possession of the suit premises, in ignorance of clause 18 of leave and licence agreement Ex.31.

37. It is further raise in cross objection that as per clause 7 read along with clause 19 to 23 and leave and licensee agreement 31, the licensor were entitled for forfeiture of security disputes of Rs.3 Crores

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for termination of licence. That as per the clause 19 and 23 of Ex.31 the defendants were required to handover possession of the premises. The Cross objector claimed that failure to do so the licensor was entitled to forfeit the amount of security deposit of 3 Crores. Therefore, it is raise that these facts were no appreciated and the learned Trial Court in the impugned judgment and order as per the case in cross objection have not considered that Defendants did not make payment of licence fees and amenities charges for the month of June -2009 and therefore vide letter dtd. 14.06.2010 Ex.37. Defendants were called upon to make the payment of licence fees and amenities charges.

38. It is pointed out that similarly the defendant witness has categorically admitted in cross examination that the payments of licence fees and amenities charges for the month for the month of 2009 was not paid because of the financial loss even after received of letter Exh. 37 and 39.

39. The claim of the plaintiff is reiterated for their entitlement to forfeit security deposits of Rs. 3 Crores to have liquidated damages of Rs.2 Crores and to receive Rs. 5 lack Per day from defendants upon failure to handover possession of premises after termination of licence. On its basis the plaintiff claimed that the learned trial court in the impugned judgment and order ought to have allowed the entitlement of the plaintiff for the prayer clauses B, C and D of the plaint.

40. It is pointed out in the cross objection that, in para No.20 of the impugned judgment the learned Trial Court has held that relationship of licensor or licensee was established from the conduct

of defendants in having paid licence fees and amenities charges from July 2009 till May 2010 by issuing TDS certificate in favour of plaintiff for such payment by having reflected the amount in their books of account and by having claim benefits under the income tax for the said amount and these findings as per the case of the cross objection that cannot be restricted only for a limited purpose and not made applicable to the other reliefs claim by the plaintiffs.

41. The pointed facts are that defendants accepted terms and conditions of Deed of surrender dated 22/06/2009 as well as letter dated 06.07.2009 Exh.33 and Exh.34 and had made payments of the licence fees and amenities charges in accordance with the leave and licence agreement and amenities agreement Exh.32 and 33 respectfully from June 2019 to May 210. Then the findings of the Ld. Trial Court that unilateral decision of the Sopariwala exports was not binding on the defendants or was not in breach of clause (Ex.27) of leave and licence agreement(Ex.31). These findings in the impugned judgment and order can not raise to be in ignorance of communication to the defendant vide letter dated 06.07.2009 and acceptance and act of the defendant upon the same there by making payments of licence fees and amenities charges right from July 2009 till 2010 which amounts an acceptance of arrangements recorded in Deed of surrender and term contained therein and also also amounts to waiver of clauses leave and license agreement Ex.31.

42. The case of objector in the grounds of the cross objection that the issue raised by the learned Trial Court in the impugned judgment and order whether societies permission was required or not was unnecessary in the impugned judgment and order that though

the defendants started making payment of license fees and amenities charges to the plaintiffs it would not mean that all the terms and conditions mentioned in agreement of leave and license as well as amenities agreement would be enforceable by the plaintiff which was not party to the document is challenge in this cross objection.

43. Further ground of challenge is that, issue in the litigation was whether leave and license agreement was executed or not and the same was beyond dispute having been admitted and that the society, ultimate privitiy of Contract viz a contracting party. Therefore the no question of approval of real owner of the property i.e. society as the word licensor under the Leave and License Agreement 31 as well as amenities agreement Ex.32 is to mean and in clause assignments of M/s. Sopariwala exports and being assignee of of M/s. Sopariwala Exports, the plaintiff stepped into shoes and became a licensor of the defendant under the agreement.

44. It is one of the ground of cross objection that on the basis of surrender Deed dated 22.06.2009 Ex.33 as well as attornment letter 06.06.2009 issued by the Sopariwala Exports. The defendants made payment from July 2009 till may 2010 to the plaintiff. Therefore, the agreement was valid and binding on the licensee.

45. It is raised in the grounds of cross objection that the learned trial court has not appreciated the above facts in its proper prospective and also ignored vital admissions of the defendant's witness brought on record in cross examination conducted on behalf of the plaintiff. Therefore, the findings in the impugned judgment

and order all not granting relief in terms of prayer clause B, C, and D of the plaint in favor of the plaintiff is prayed to be set aside. In this cross objection the plaintiff prayed to set aside the impugned judgment and decree to the limited extent of rejecting the prayer of the plaintiff in prayer clause B,C, and D, of the plaintiff.

46. The respondents in original Appeal in this cross objection i.e. the original plaintiff had relied on the written submissions synopsis and arguments on their behalf in Appeal as well as in cross objection pointing out that admitted facts and the elaborate clarification of terms and conditions and clauses mentioned in leave and license agreement Ex.31 and amenities agreement Ex.32 submitted that the amenities agreement was co-extensive and co-terminus with the Leave and Licence agreement.

47. The Respondent have pointed out that in written statement filed by the original defendant/ Appellant it was challenge that there is no Privity of Contract between the original plaintiff and the original defendants i.e. respondent and appellants hearing that the payment make of licence fees and amenities charges from July 2009 at the request of Sopariwala exports would not constituted in agreement between parties and defendant are entitled for fund of Rs. 3 Crores of security deposits and until that time they were entitled to occupy the premises that the in pursuant to the order in Company Petition No. 357 of 2010 and order passed therein dtd. 15/07/2011 . The appellants/ original defendants have handed over the possession of the suit premises on 04/08/2011.

48. It is background in this cross objection, it is argued on

behalf of the respondents/original plaintiff that they are entitled to the liquidated damages of Rs. 5 lack Rs. Per day form 01.07.2010 till 04.08.2011 when the appellants/ original defendants handed over vacant possession to the plaintiff.

49. It is claim that the respondents are entitled to recover Rs.7,32,20,256/- towards arrears of licence fees from 01.06.2010 till 31.03.2013 and respondents are also entitled to recover Rs. 2,84,74,540/- towards the arrears of amenities charges from 01.06.2010 till 31.03.2013 as per the statement of claim produced on record and marked at Ex. 44.

50. It is also claim of the respondent/original plaintiff that they are entitled to forfeit deposit of Rs. 3 Crores and to get the Rs.2 crores as compensatory damages as per clause 19 of Leave and Licence Agreement dtd. 15.02.2008.

51. The defence of he defendant /appellants that there is no Preivity of Contract as no agreement is signed between the original plaintiff and appellants original defendant is challenge on the basis of admission extracted in cross examination of the defendant-witness to the fact that Appellants have claimed benefit of rental expenses pay to the respondent form Income Tax department form July 2009 an issued TDS certificate in faovur of plaint that they have received letter dated 06.07.2009 (Ex34) along with copy of Deed of Surrender dated d22.06.2009. Further that appellants never wrote any letter to the respondent that they have agreed or confirm or consented to the mutual understanding recored in the letter 6th July 2010.

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52. It is also highlighted in the written notes of the argument that the letter Ex,39 dtd 18.06.2010 issued by the Appellants there is no express about the Deed of Surrender dated 22.06.2009 and the mutual understanding under which respondent/plaintiff became licensor and the appellants/original defendants were required to make payment of licence fees and amenities charges to plaintiffs from July 2009. Therefore, it is raised that the contentions of the appellants that mutual agreement was not binding upon them and that there was no agreement of leave and licence agreement between them and the respondents dishonest in their of own conduct and not because of they have not agreed and confirm of the agreement recorded in Deed of Surrender dated 22.06.2009 but because they were in financial crisis as recorded in letter dated 18.06.2010 Exh.10 issued by the Appellants.

53. It is pointed out that there was no any former possession taken by the appellants not to pay or recognized the plaintiff as there licensor on the other hand in admitted facts to the appellants that as per the instruction of M/s. Sopariwala Exports contained in letter dated 06.07.2009 Ex.34 started making payment of licence fees and amenities charges from July 2009 onwards till end of May 2010 and therefore, is is emphasize that contention raised by the appellants about privity of contract and not recognized the respondent as their licensor has not substance.

54. It is argued that in the light of Section 116 of Evidence Act,1872 there is a estoppel created against the appellants to disputes relationship of the licensee and and licensor between them and the respondents. Relying on the ration of **Uttam Gulabrao Sakhre Vs.**

C. G. Gavand, Reported in AIR 1960 Bom.238. It is further submitted that relationship of licensor and licensee between the respondent and the appellants they have paid the licence fees and amenities charges from July 2009 till May 2010 to the respondents. This conduct of the appellants is highlighted as estoppel by conduct and the support of this argument. The respondent relied on ratio laid down in case of **Team Consultant Pvt. Ltd. Vs. Swapna Lahiri and Ors. 2006(2)-- Rent Control Reporter 122(Calcutta) High Court (DB).**

55. Relying on the ratio laid down in case of **National Spiritual Assembly of India Vs. Maharashtra State Khadi and Village Industries Board – 1996 (1) All India Rent Control Journal 634(SC).** The contention raised by the appellant that their was breach conduct by M/s.Sopariwala Exports and hence, the Leave and Licence Agreement stood canceled and respondents are not licensor has challenge on the basis of the term licensor mentioning Ex.32 and the assign to it containing that the respondent became licensor by virtue of “assignment of Leave and Licence” by M/s. Sopariwala Exports in their favour as per Deed of Surrender dated 22.06.2009 which explains that Leave and Licence Agreement dated 15.02.2008 shall continue remain valid and subsisting between the plaintiff and defendants with effect from 01.07.2009 for the balance of term of licence and on the same terms of contentions in the Leave and Licence Agreement. Admittedly the copy of the Deed of Surrender was served upon the Appellants by M/s. Sopariwala Exports along with it letter dated 06.07.2009(Ex.34). Therefore from July 2009 onwards defendants were aware about the respondents have no become licensor by virtue of being “assignee” and on

acceptance of these facts the appellants started making payment of licence fees and amenities charges from July 2009 and paid the same till the May 2010 to the respondents. The plea that M/s. Sopariwala Exports did breach of clause-27 of Leave and License Agreement dated 15.02.2008 for the first time raised in the letter issued by the learned advocate of the original defendant on dated 24.06.2010(Ex.44) reported in the letter dated 01.07.2010(Ex42).

56. In this regard it is highlighted that the admissions of the defendant witness that in cross examination of the fact of commission of breach of agreement that respondent did not come to take the possession of the suit premises in July 2010 and respondent did not refund the amount are canvassed as the admission on the part of appellants of the fact that the respondents were the licensor and otherwise there was no question of offering possession of the premises and refund of security deposits from them.

57. Further in the argument of Cross objector it is highlighted that respondents did not take delivery of possession of the premises falsified as the defendant witness has admitted that, though the appellants/original defendant shifted in June or July 2010 from the suit premises but they did not hand over possession to the respondent/original plaintiff and there were no documents to show that, appellants/original defendants had handed over possession to the plaintiff. However the admission of the defendant witness that the refund of security deposits was required to be adjusted as per the terms agreement on its basis, it is highlighted that the grounds of cross objection are valid and are to be considered claim of

the original plaintiff/respondent from the arrears of license fees and amenities charges from June 2010 till 31.03.2013.

58. It is argued that there was lock in period of 60 months under which the Leave and License agreement was not determinable and vide clause-19(Ex31) on sooner determination or expiry one of the consequences is that appellant have to pay license fees for the entire period of 60 months till 31 March 2013. The cross objection and written synopses of the objector to the admission extracted of the defendant witness are relied, emphasised to support their claim for entitlement to recovery arrears of license fees till 31.03.2013 as per the statement(Ex.43) filed on record along with the liability of the defendants to pay the amenities charged till 31.03.2012 between the lock in period of entitlement of the plaintiff to recover the total amount of Rs.10,16,94,796/-towards the amenities charges for the period of 01.06.2010 till 31.03.2013.

59. The claim is that on the ground of forfeiture of security of deposits of Rs. 3 Crores paid under clause of Leave and License agreement as per the Clause 7 agreed to remain with the licensor and ignored by clause 19 and 23 of Leave and license agreement as per the clause of 19 in case of default or breach conduct by the license 7 days notice required to be given and therefore if the breach was not which was not done then the license could be terminated by the licensor and it is consequence the security deposits on 3 Crores would be forfeited apart from every claim.

60. These aspect is highlighted in the submissions of respondent in answer to grounds of Appeal and in support of grounds

of cross objection relying on the admission of the defendants witness in cross examination that deposit of Rs. 3 Crores is to be adjusted as per the terms of agreement. It is argued that defendants did not pay license fees and amenities charges from the month of June 2009 therefore plaintiffs by the letter dated 14.06.2016 demanded the amount of their Advocates and vide letter dated 18.06.2010 again demanded the amount from the month of June 2010 as stated that if the amount was not paid within 7 days the license was terminated as per the clause 19. However, the appellants did not make payment after May 2010 and since the license was terminated, respondent became entitled to forfeit the amount of 3 Crores of security deposits hence the respondent are entitled for the same on the point of compensatory damages of Rs. 2 Crores.

61. The respondent relied on clause 19 of the Lease and License agreement wherein, it is enumerated that on termination of license and in case the appellants did not handover of the possession of the premises licensor became entitled not only forfeit the security deposits but also liquidated compensatory damages of Rs.2,00,00,000. Admittedly as there is no document to show that appellants has offered possession of the suit premises till then hand over the same to the respondent as per the Hon'ble High Court Order and respondent became entitled to decree of 2 Crores by way of compensatory cost.

62. In cross objection and the written synopsis of the claim of the respondent for liquidated damages of Rs. 400,000 per day from 01.06.2010 till, the defendants deliver possession of the premises from the order of Hon'ble High Court dated 04.08.2011.

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The respondent highlighted the clause 19 of Leave and License Agreement submitting that it provides that if appellants failed to handover possession of the premise after the termination of the license fees they will pay liquidated damages of Rs. 5,00,000/- per day for each of the day commencing from 01.06.2010 till 08.05.2013.

63. In this regard, it is emphasis that there is no dispute that from 01.07.2010 till the possession of the premises was handover on 04.08.2011. Hence the respondent are entitled to the liquidated damages and Rs.5,00,000/- per day multiplied by 400 days i.e. 20 Crores. In support of the claim of liquidated damages the respondent relied on ratio laid down in **Loreal India Pvt. Ltd Vs. Global Earrth Propertis and Developers Pvt.Ltd-2009(3) All MR Page53.**

64. This aspect is canvassed with submissions that M/s. Sopariwala Exports are form the same group of family relying on the documents enumerated as Leave and license agreement(Ex.30) executed between the plaintiff and M/s. Sopariwala Exports by one of the same person namely Aarif A. Fazlani both on behalf of lessor as director and for lessee as partner of M/s.Sopariwala Exports. So also Leave and License Agreement(Ex.31) and amenities agreement (Ex.32) are signed by Aarif A. Fazlani on behalf of the M/s.Sopariwala Exports as partner and on behalf of Gold Castle Realtors Pvt as director.

65. The respondent in this regard also relied on the document Ex.63 produced in this cross examination of the defendant's witness in the extract of Registration wherein, the

director name of the Gold Castle Retailers Pvt Ltd, Ex.67 extracted of registration certificate of M/s.Sopariwala Exports shows the name of Aarif A. Fazlani as partner and director. The admission brought on record in defendant's witness that Appellant/original defendants were fully aware of the fact that the M/s.Sopariwala Exports is also known to the respondents.

66. On these grounds and submissions the respondent/original plaintiff prayed for grant of relief and prayed for as per the prayed clause B, C and D in the plaint and setting aside the reasons and findings in the impugned judgment and order wherein, these claims of the original plaintiff/respondent were not granted by the learned Trial Court .

67. The leaned Advocate for the respondent has countered the grounds of appeal and arguments of the learned advocates arguments advance on behalf of the appellant with further to prayer to dismiss the appeal with cost.

68. The Learned Advocate for the appellants to support their case relied upon the following cited cases vide Exhibit No.42.

(1) State Bank of Travancore Vs. Kingston Computers India Private Limited reported in (2011) 11 Supreme Court Cases 524, wherein it is held that, *“Not produced any evidence to prove that Shri Ashok K. Shukla was a Director of the Company and he had been authorised by the Company to file the suit.”*

(2) Aries Advertising Bureau Vs. C.T. Devaraj (Dead)

By LRS. reported in (1995) 34 Supreme Court Cases 250, wherein it is held that, *“Section 70 of the Act provides thus: “70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.””*

(3) Bharat Karsondas Thakkar (2) Vs. Kiran Construction Company and others reported in (2009) 13 Supreme Court Cases 46, wherein it is held that, *“A Contract and Specific Relief – Contractual obligations and rights – Privity and third parties obligations and rights – No contract between third party (Respondent 1) and original owners (V) – Effect.”*

69. We have heard the Learned Advocates for both the parties at length and have considered the ratio and cited cases relied by respective parties in support of their arguments in the present appeal. The appellant had filed written notes or argument vide Ex.38 and the respondent relied on synopses and arguments Ex.39 in support of Cross objection to the Appeal and to contrast the prayer of the appellant. Relying on following citations vide Exhibit No.40.

(1) Uttam Gulabrao Sakhare Vs. Champatrao Gulabrao Gawande reported in AIR 1960 BOMBAY 238 (V 47 C 68) wherein it is held that, *“Evidence Act (1872) S. 116 – Estoppel between licensor and licensee. The rule that tenant cannot deny his landlord's title extends to the case of a person coming in by permission as licensee. Now, it is true that the Court holds that*

the defendant is not liable to pay any rent but it also holds that the defendant was let into possession by the plaintiff. No doubt, it characterizes the relationship between the parties as that of licensor and licensee and not that of landlord and tenant. But that was merely an interpretation placed by the Court on the evidence of the plaintiff. It may well be that the defendant was a tenant of the plaintiff but was not liable to pay rent. However, even assuming that he was merely a licensee, it does not mean that the estoppel created by S. 116 of the Evidence Act does not apply. If authority were needed for this proposition, it would refer to the following passage from Sarkar on Evidence, 9th edition, p.1002. The rule that tenant cannot deny his landlord's title extends to the case of persons coming in by permission as a mere lodger, a servant or other licensee. (Doe d Johnson Vs. Baytup, (1835) 3 A and E 188)."

(2). Team Consultants Private Limited Vs. Swapna Lahiri & Ors. Reported in 2006(2) Rent Control Reporter 122, wherein it is held that, "*Transfer of Property Act, Section 105- Evidence Act, Section 116- Title- Estoppel – Relationship of landlord and tenant – Tenant inducted by a person other than owner - Tenant is estoppel from disputing title of inductor – Tenant can, however, dispute the derivative title of a person who claims to have acquired title from the inducting landlord – If the tenant himself pays rent to the derivative title-holder, he cannot dispute the title of such derivative title-holder-of Course, if through mistake he made payment, he is not so estopped.*"

(3). National Spiritual Assembly of India Vs. Mah. State Khadi & Vill. Ind. Board reported in 1996(1) All India Rent

Control Journal 634, wherein it is held that, *“The second appellant is collecting the rent and it has passed on receipts is evidence of such payment right from 1967. It stands to reason that the second appellant alone was the landlord within the meaning of Section 5(3). It is incorrect to hold that it was collecting rent on behalf of first appellant. One more point to be put against the tenant is, it was a tenant even prior to the purchase by the first appellant in March, 1967. After purchase in whose favour did the respondent attorn had not been pleaded anywhere. However, as we held above, by long established conduct of payment of rent from 1967 the second appellant has been recognized as a landlord. It would amount to attornment in law. Therefore, Section 116 of the Evidence Act would apply as against the tenant.”*

(4). In the matter of winding up of Lonza India Pvt. Ltd. (Formerly known as Camber India Pvt. Ltd.) Company
Petition No.898 of 2008 dated 12.02.2009 reported in
2009(3) ALL MR 770, wherein it is held that, *A. Maharashtra Rent Control Act (1999), S. 55 – Contract Act(1872), S. 10 – Agreement – Obligations under an agreement – Held, merely because obligation under an agreement are to be performed at a future date, it does not that the agreement has not come into existence upon execution thereof or upon the terms and conditions thereof being agreed upon.*

B. Maharashtra Rent Control Act (1999), S. 55 – Contract Act (1872) S. 10 – Contract – Construction of terms and conditions of contract, held, question of law – A Court cannot be bound by an erroneous construction of the contract.

C. Maharashtra Rent Control Act (1999), S. 55 – Leave and license agreement – Damages – Only manner in which damages in a leave and license agreement can be mitigated is by actually letting out the premises again.

D. Companies Act (1956), S. 434(1)(a)- Whether the debt is undisputed or not will depend upon the decision of the Court.”

Pradeshiya Industrial & Investment Corporation of Uttar Pradesh Vs. North India Petrochemicals Ltd. [(1994)3 SCC 348] wherein it has been held that, “ it is thus not always possible or easy to assess the loss in the case of a breach of a leave and licence agreement by the licensee. Indeed, for these reasons, it is not always necessary for a licensor to mitigate loss in the case of a breach of a leave and licence agreement by the licensee. Unlike in the case of a sale it would not always be permissible to compel a licensor to let the premises to another with a view to mitigating the loss.

(5). Loreal India Pvt. Ltd. Vs. Global Earth Properties & Developers Pvt. Ltd. & Anr. Reported in 2009(3) ALL MR 53, wherein it has been held that, “D. Civil P.C. (1908), O. 39 Rule 1, 2- Injunction – Leave and licence – Agreement between the parties of leave and license which only gives a right to enjoy the property without creating any right and/or interest in the property – Right of plaintiff to get another conveyance on renewal of license, is not right in the property – Therefore, if the injunction is not granted there will not be any irreparable loss – Plaintiff, held not entitled to interim relief of injunction. The suit is based on efflux of time of the leave and license agreement and thereby the entitlement of the defendant No.1 for possession of

the suit premises. If the decree is passed in the suit filed in the Small Causes Court, Mumbai on efflux of time of the leave and license agreement dated 21st June, 2004, and that if the decree is passed in a suit for specific performance the said decree cannot be enforced, since the plaintiff will be entitled to get renewal of the leave and license agreement and amenities agreement and security deposit agreement by way of specific performance. If the suit is dismissed the said decree can very well be executed and therefore, what we find is that, the learned Single Judge was right after considering the submissions on both sides to hold that the suit in the Small Causes Court, Mumbai can proceed independently and that is not necessary to stay the said suit pending for specific performance of the agreement. One thing is very much clear that even if the suit for specific performance is dismissed, yet in order to get possession of the property the defendant No.1 will have to approach to the Small Causes Court, and the dismissal of the suit itself will not entitle the defendant No.1 to directly enter into possession of the suit premises, and therefore on proper analysis we find that the suit in the Small Causes Court, Mumbai independently proceed and it is not necessary for this Court either to stay the suit in the Small Causes Court or transfer that suit to this Court invoking the powers under Section 24 of C.P.C. 1908. We are aware that the suit from the Small Causes Court can be transferred to this Court and this Court can dispose it of as the Small Causes Court, but as a result of that the remedies available against the said judgment will be prejudiced. Because this Court being the highest Court, once deals with the matter, the further remedies available

against the judgment and order of the Small Causes Court will not be available to the parties.

“No doubt, that the plaintiff has been inducted in the suit premises as a result of the agreement of leave and license coupled with the amenities agreement and the security deposit agreement, all dated 21st June, 2004. Therefore, the entry of the plaintiff in the suit premises is lawful entry. It is also a fact established on record that the period of 33 months as contemplated under the leave and license agreement dated 21st June, 2004 has come to an end by 31st May, 2007 and 30 days prior to that date there should have been a renewal or extension of the leave and license agreement period. As per the case of the plaintiff the same has not taken place, and therefore the plaintiff has approached to this Court for specific performance of those agreements and thereby he is claiming a decree of renewal of the leave and license agreement period as stated in the agreement of addendum. So on plain analysis of facts, undisputedly the plaintiff is entitled to remain in possession of the suit premises till 31st March, 2007.

Therefore, if the plaintiffs possession on the basis of an agreement, the plaintiff himself claims, is found to be unauthorized or of trespasser's is possession after the expiry of the license period, it will not be possible for this Court to issue an order of temporary injunction against the defendant. Because, prima facie we find that the plaintiffs possession is of the trespassers possession on the basis of the documents which he claims the possession, namely the leave and license agreement dated 21st June, 2004 and the above referred to clauses from the said document. Therefore, even assuming that the agreement of

leave and license is irrevocable, after the expiry of the license period, the possession of the plaintiff turns out to be the trespasser's and/or unauthorized possession. What is interesting to be noted is that, that the leave and license agreement. Security deposit agreement and amenities agreement, reading themselves do not provide for an extension or renewal of agreement between the parties. Therefore, analyzing the case of the plaintiff on the basis of these three documents it is crystal clear that on the expiry of the period of license the possession of the plaintiff in the suit premises will be that of the trespasser or unauthorized occupant."

70. The Learned Advocate for the respondents also relied upon the following judgments vide Exhibit No.41.

(1). Indiabulls Properties Pvt. Ltd. Vs. Treasure World Developers Pvt. Ltd. reported in 2014(4) Bom. C.R.76, wherein is held that, *"This will depend on an interpretation of contract in question and an assessment of conduct of parties. Treasure World has, without valid justification, neglected to pay amount to Indiabulls."*

(2). Daksha s/o. Jyotindra Patel & Ors. Vs. Big V. Telecom Pvt. Ltd. reported in 2019(6) ALL MR 1036, wherein it is held that, *"The plaintiff is liable to pay license fees of Rs.10,000/- per month as well as maintenance charges of Rs.25,000/- per month."*

71. In the light of grounds of appeal and of the cross objection the submissions on record arguments of learned advocate for the respective parties, documents relied and pleaded facts,

evidence adduced on record in support of the pleadings and claims of the parties to the litigation supported with ratio and observations of the cited cases on behalf of the appellants and respondents, following point has arisen for our determination. In the appeal and cross objection we have assign our findings and reasons therein. To arrive at conclusion of the appeal and cross-examination.

Sr. No.	POINTS	FINDINGS
1.	Whether there was privity of Contract between the Plaintiff and Defendant ?	In the Affirmative
2.	Whether the plaintiffs/respondents prove that they are entitled for the relief claimed in the plaint and Cross Objection No.9 of 2014 ?	Partly in Affirmative
3.	Whether appellants/defendants proved that they are not liable to pay the license fees and amenities charges to the plaintiff ?	In the Negative.
4.	Whether the defendants were liable to follow the terms and conditions of Leave and License Agreement dated 31.03.2014 executed in their favour by M/s. Sopariwala Exports and consequently under obligation to fulfill the terms and conditions of the same in favour of plaintiff by virtue of Deed of Surrender executed between M/s. Sopariwala Exports and plaintiffs under sub lease of the suit premises ?	Partly in Affirmative.
5.	Whether interference is required in the impugned judgment and order?	In the Affirmative
6.	What order ?	As per final Order

REASONS

As to Point No. 1 to 4:-

72. These points are interconnected with each other and it is appropriate and necessary to discuss it together to avoid the repetition on facts and evidence to decide the merits of the appeal.

73. The controversy between the parties revolves around the leave and licence agreement Exhibit-30 dated 15/02/2008 (for short referred as Exhibit-30) which was executed between the owner of the suit premises, original plaintiff i.e. present respondents and M/s. Sopariwala Exports. The period of Exhibit -30 was of nine years i.e. from 01/04/2007 to 21/03/2016. The licensee M/s. Sopariwala Exports under Exhibit-30 by virtue of its clause No.-9 executed sublease of suit premises in favour of defendants/present appellants for period of 60 months from 01/04/2008 to 31/03/2013 and had executed registered leave and license agreement Exhibit-31 (for short herein after referred as Exhibit-31) alongwith amenities agreement Exhibit-32 (for short Exhibit-31) and had agreed to pay the monthly licence fee and compensation according to Clause -4 of exhibit-31 and para 2 of Exhibit-32.

74. The M/s. Sopariwala Exports had surrendered the lease rights accrued under leave and license agreement Exhibit-31 in favour of present respondent original plaintiff vide registered surrendered deed Exhibit-33. In this reference M/s. Sopariwala Exports had informed the defendant in letter dated 06/07/2009 Exhibit-34 about the surrender deed and letter of attornment of the leave and license agreement and amenities agreement.

75. The plaintiff had received the payment of licensee fee from the defendant with effect from May 2009 to May 2010. and amenities charges from July -2009 to May -2010 through cheque Exh-35(1) to 35(11) and 36(1) to 36 (11) even the defendants have deducted the TDS and had taken entries transaction in their financial statement submitted to the income tax Department.

76. The plaintiff to secure the payment for the month of June-2010 and onwards issued a letter dated 14/06/2010 Exh-37 from the defendants i.e. the appellants under Exhibit-33 and sublease created under leave and license agreement and agreement of amenities Exh-31 and 32 as they have step into the shoes of M/s. Sopariwala Exports which was replied by the defendant immediately by issuing a letter dated Exhibit-38 on 15/06/2010. On its perusal it reveals that, it was addressed to M/s. Sopariwala Exports wherein attendance was referred to Mr. Arif Abdul Kadar in reference to the rental payment for the month of June-2010 of the suit premises. This letter was issued by the Chief Financial officer Mr. Manish Ajmera for Networth Stock Broking Ltd. The recitals therein are reproduced for clarity “ *That the company has incurred huge losses during the last two financial years and facing financial difficulties. In view of the same, we request you to kindly adjust the rent for the month of June, 2010 from the Security Deposit of Rs. 3,00,00,000/- lying with you.*”

77. However, it is to be noted that, the Networth Stock Broking Ltd., issued a legal notice Exh-40 through M/s. Manga & Co. Advocates and Solicitors on 24th June, 2010 in reply to the letter issued by plaintiff 18/06/2010 Exh-39 had specifically claimed that

it have no Privity of Contract with plaintiff in respect of suit premises as the Mittal Court Premises Co-Operative Society Limited have not issued 'No Objection Certificate' for letting out the suit premises. In this letter the defendants have stated that they have not aware of any approval of the leave and license agreement dated 15th February, 2008 i.e. Exhibit-30. Further that, the Deed of Surrender dated 22 June, 2009 is not binding upon them as they were not party to the same. Thus, The defendants by issuing this letter challenged the legal rights of the plaintiff to demand the payment of rental amount and amenities charges and forfeit the deposit amount lying deposited with M/s. Sopariwala Exports.

78. The argument of the Ld. Advocate on the point of Privity of Contract has to be attended in view of the fact that, by virtue of letter dated 15/06/2010 Exhibit-38. There was no dispute raised by the defendants either on the point of right of the plaintiff to claim the rental amount and amenities charges of the suit premises or binding force of the Deed of Surrender dated 22 June, 2009. The non-payment of the rental amount is said to have occurred as the defendant's company had incurred losses and had faced financial difficulties therefore they have requested to adjust rent amount from the moth of June-2010 from the security deposit of Rs.3,00,00,000/- lying with plaintiff.

In its addition, it is brought to the notice of this court that defendant witness in his cross-examination has categorically admitted that, prior to issuing the legal letter Exh-40 they never informed the plaintiff that they are not agreed or consented to mutual understanding

recorded in a letter dated 06/07/2011 Exh-34 and of the Deed of Surrender dated 22/06/2009 Exh-33.

79. In appreciation of these factual background it is to be infer that the defendant had not objected for Deed of Surrender between the original licensor and licensee of leave and license agreement dated 15/02/2008 Exh-30. On basis of this Leave and Licence Agreement of the year 2008 and the unconditional authority to sublease the suit premises given to the M/s. Sopariwala Exports Registered Deed of Leave and License Exh-31 and amenities agreement Exh-32 was came to be executed in favour of defendants. This agreement between M/s. Sopariwala Exports and defendants had been surrender to the plaintiff and the rights therein vested to the plaintiff. The defendant had acknowledge the assignment of rights and its liability to make payment of rental amount and amenities charges and had paid the same for a certain period.

However, the defendant from the month June- 2010 could not made payment and have shown their inability to pay the same due to financial crisis faced by the defendant's company. After receipt of termination letter and calling upon the defendant to pay the amount due and to vacate the premises the defendants had issued a letter through their advocate and solicitor Exh-40 denied the right of the plaintiff and its liability to make the payment in accordance with leave and licence agreement under such circumstances defendants are not permitted under the law of estoppel which has been enumerated in section -116 of Indian Evidence Act 1872. The defendant made payments of license fee

and amenities charges through cheque from July-2009 to May-2010 and July-2009 to May-2009 respectively. This conduct of the defendant certainly falls within the ambit of Section -115 of Indian Evidence Act 1872.

80. In this view of the matter we infer that the Ld. Trial Court relying on the ratio of the cited cases on behalf of plaintiff and in consideration of the above noted conduct of the defendants rightly arrived at conclusion that defendants have admitted the relationship of licensor and licensee between the plaintiff and defendant in para No. 25 of impugned judgment and order.

81. In the impugned judgment and order the Ld. Trial Court while assigning the reason in answer to resolve the controversy of enforcement of the registered documents of Exh-31 and 32 in para No. 29 of impugned judgment and order has noted admitted fact that, Annexure-A was attached to the Deed of Leave and License Agreement Exh-31 which was letter dated 15/02/2008 issued by the Society of Mittal Court Building with specific mentioned have 'No Objection' to grant lease in favour of defendants by the M/s. Sopariwala Exports. The admission of the defendant's witness also noted by the Ld. Trial Court that "*the reason mentioned in the Exh.34 letter dt. 06/07/2009 for surrendering the lease hold rights in favour of plaintiff by the M/s. Sopariwala Exports for non approval or non recongnization of sublease arrangement between M/s. Sopariwala Exports and present defendants by the society appears to me not correct.*".

82. On perusal of impugned judgment and order it reveals that, the Ld. Trial Court *further* attended the arguments of Ld.

Counsel for the defendant in reference to the recital of Exh-31 that the leave and license agreement between the defendant and M/s. Sopariwala Exports was irrevocable and no authority was given to the M/s. Sopariwala Exports to take such decision without consent of the affective party i.e. the defendant. Furthermore, before taking such decision, it is necessary on the part of M/s. Sopariwala Exports to take the defendant in confidence. Before this Court, Ld. Advocate for the appellant argued on the same line as it is mentioned in the written submissions Ex.38.

83. In the impugned judgment and order under challenge in this Appeal the aspect of no resolution passed by the defendant being a Public Limited company about attornment of the lease, leave and license agreement as per letter dated 06/07/2009 Exh-34 of M/s. Sopariwala Exports was attended and in reference of these facts of these aspects if the findings in the impugned judgment and order that the defendants company estopped from denying the title of the plaintiff over the suit premises as licensor, it is surprisingly to us how the Ld. Trial court was of the view that merely by paying the license fee and the amenities charges by the defendant to the plaintiffs, it does not mean that all the terms and conditions mentioned in the leave and licence agreement (Exh.31 & Exh.32) executed between defendants and third party are enforceable by plaintiffs who is not party to the said document. Further that, there must be Privity of Contract between the parties, and conclusion arrived at that admittedly, there is no direct contract between plaintiff and defendant and third party, the terms and conditions of the said contract are binding upon the defendants but plaintiffs cannot get enforce the said agreement against the defendants.

84. In this reference, it is necessary to scrutinize what has been further noted by the the Ld. Trial Court that, there is no document on record to show that the society has approved the deed of surrender and lease between plaintiffs and defendants though the there was NOC of society was annexed to the Deeds Exh. 30,31 and 33 but NOC of the society was not placed on record for leave and licence between the plaintiffs and defendants. On its basis the Ld. Trial Court arrive at conclusion that leave and lincese agreement cannot be enforce as there was not leave and license agreement between the parties and there was no Privity of Contract between the plaintiffs and defendants about the execution of documents Exh.31, 32 and 33 therefore plaintiffs cannot enforced these document against the defendants.

85. Above noted findings has to be compared with the findings arrived at by the Ld. Trial Court that plaintiff is entitled to get recover the license fees and amenities charges from the defendant as the defendant willfully agree to pay the license fees and amenities charges as per agreement and there is no case of defendant that as the plaintiffs are enjoying the deposit of Rs. 3,00,00,000/- that the defendant not liable to pay the licence fees and amenities charges to the licensor.

86. It was held that in the impugned judgment and order that defendants are liable to pay licence fees and amenities charges amounting to Rs. 4,08,89,978.70/-.

87. In this backdrop, we are of the view that, the findings

on the point of NOC noted in the above mentioned paras of Ld. Trial Court are contradictory itself because in pursuance of surrender deed and attornment letter issued by M/s. Sopariwala Exports the defendants had acted and had accepted the plaintiffs as a licensor and further made payment of licence fees and amenities charges from July-2009 to May- 2010 and July-2009 to May-2009 respectively. At that time, the defendant never disputed the relationship of licensor and licensee. The conduct of the defendant and even the acknowledgement of relationship and their liability to pay the licence fees and amenities charges was noted in a letter Exh-38 wherein it is specifically mentioned that rental payment of the suit premises for the month of July-2010 be adjusted from the security deposit. This letter Exh-38 was addressed to M/s. Sopariwala Exports with attention to Arif Abdul.

88. In this regard it is necessary to attend arguments on facts that M/s. Sopariwala Exports are form the same group of family relying on the documents enumerated as Leave and license agreement(Ex.30) executed between the plaintiff and M/s. Sopariwala Exports by one of the same person namely Aarif A. Fazlani both on behalf of lessor as director and for lessee as partner of M/s.Sopariwala Exports. The Leave and License Agreement(Ex.31) and amenities agreement (Ex.32) were signed by Aarif A. Fazlani on behalf of the M/s.Sopariwala Exports as partner and on behalf of Gold Castle Realtors Pvt as director. The extract of Registration Ex.66 M/s. Sopariwala Exports reveals the Directors name of the Gold Castle Retailers Pvt Ltd, and Ex.67 extracted of registration certificate of M/s.Sopariwala Exports shows the name of Aarif A. Fazlani as

partner and director. Therefore, we are in the agreement with the arguments submitted on behalf of respondent that as admitted to the defendant's witness Appellant/original defendants were fully aware of the fact that the M/s.Sopariwala Exports is also known to the respondents. The agreements though are in different names of the legal entities but, the parties i.e. the Directors who had acted on behalf of plaintiff and M/s. Sopariwala Exports was one and the same and the letter refer in the financial crisis reason for inability to make the payment of the defendant was though referred to the M/s. Sopariwala Exports but, it was in fact sought attention of Mr. Aarif A. Fazlani.

Therefore, it is submitted that the defendant was well aware and have knowledge of these facts, therefore in agreement with the submissions of Ld. Advocate for the respondent that only with a view to avoid the liability to make the payment to the plaintiff of the Leave and Licence Agreement and to enjoy the use, occupation and possession of the suit premises free of cost had disputed the rights of the plaintiff by issuing letter by their Advocate and solicitors. This conduct of the defendant/ appellant is not permitted to be use as a shield to avoid the enforcement of terms and conditions accrued in favour of plaintiff vide the Deed of Surrender.

89. In these facts and circumstances when the defendant has admitted their liability to pay the plaintiffs licence fees and amenities charges of the suit premises then legally speaking there

arose no question of not being Privity of Contract between the plaintiff and defendant. If there would not have been Privity of Contract and the right of the plaintiff then there was no question on the part of payment of rental amount and amenities charges by the defendant to the plaintiff even for a single month after execution of deed of surrender has been intimated and informed by letter of attornment Exh-34 dated 06/07/2009 and supplying the copy of surrender deed Exh-33 by M/s. Sopariwala Exports to the defendant. The defendant had made payment to the plaintiff by cheque since July-2009 till May-2010 and thereafter had informed their inability to pay the rental charges of the month of July-2010 due to financial crisis faced by the defendant's company.

90. These undisputed facts on record unerringly points towards the inference to be drawn in consequences of the conduct of the parties then there is no scope to accept and agree with the arguments advanced by the Ld. Advocate for the appellant on the point of no Privity of Contract between the plaintiff and defendant.

91. The NOC of Mittal Court Premises Co-Operative Society Limited was annexed to the original leave and licence agreement between the parties. There was no leave and licence agreement executed between the plaintiff and defendant. What had happen is that the sublease created of the suit premises in favour of defendant by the M/s. Sopariwala Exports who was original licensee of the leave and licence agreement Exh-30 dated 15/02/2008 for a period of nine years and by virtue of this agreement sublease was created in favour of defendant which has been surrendered in favour

of plaintiff by virtue of deed of surrender Exh.33. If the original leave and licence agreement executed between plaintiff and M/s. Sopariwala Exports and in between the defendant and M/s. Sopariwala Exports were registered deed of leave and licence agreement to which the society had issued NOC then there was no logical and legal reasons for arriving at conclusion that NOC was not issued by the society to the leave and licence agreement between the plaintiff and defendant which was never executed and it is not case of the either party of litigation that any such document is in in existence. On the other hand non execution of the Leave and Licence Agreement between the parites is the basis of the plea of defence of the defendant challenging the Privity of Contract with the plaintiff. The Privity of Contract between plaintiff and defendant has arose out of deed of surrender and letter of attornment and assignment of the rights of M/s. Sopariwala Exports in favour of plaintiff.

92. In this view of the matter we are of the opinion that the findings arrived at in the impugned judgment and order based on the NOC of the society certainly was unwarranted for as it is not in consonance with case of the parties and facts proved on record in a peculiar circumstances of the case

93. These findings of the impugned judgment and order are certainly in ignorance of the legal effect of the Deed of Surrender and letter of attornment issued to the defendants and further their conduct and acknowledgement of the liability to pay the the rental amount and amenities charges to the plaintiff. It is also necessary to take note of the findings in the impugned judgment and order at

para 38 that unless the plaintiff became the licensor as per Exh.31 in writing and signed by the plaintiffs and defendants it can not be said that the plaintiffs have rights to take action against the defendant for violation for alleged breaches committed by the defendant of Leave and license agreement as pleaded by the plaintiff in their plaint. In our view the above referred findings in the impugned judgment and order are contrary to the proved facts on record because the M/s. Sopariwala Exports by executing the Deed of Surrender (Ex.33) had transferred the rights accrued to it against the defendants by virtue of sub lease created of the suit premises in favour of defendants after execution of leave and license agreement dated 31.03.2014 (Ex.31). The legal effect of the attornment of tenancy will be the same even if the parties are liable to pay the heavy compensation under the leave and license agreement or the licensee had accepted the heavy liabilities under the agreement of leave and license. In legal consequences of Deed of Surrender and attornment of tenancy the plaintiff had stepped in to the shoes of M/s. Sopariwala Exports and had acquired all rights under the leave and license agreement dated. 31.03.2014 against the defendant who had also acknowledge its liability and rights of the plaintiffs followed the terms and conditions of the Leave and Licence dated 31.03.2014 in its compliance made payment to the plaintiff of rental amount and amenities charges of the suit premises for a considerable period then there arose no question of letter of confirmation of deed of surrender(Ex.32) neither there was any need for any writing signed by the plaintiffs and defendants to take action for violation of terms and conditions of the leave and license agreement(Ex.31) dated 31.03.2014.

94. The material aspects of the litigation brought to the notice of this Court by placing the reliance on the judgment of Hon'ble High Bombay High Court passed in Company Petition No.357 of 2010 and the admitted facts to the defendant that, defendant vacated the suit premises on 04.08.2011 on its basis the Ld. Trial Court has held that plaintiff are entitled for the leave and license fees from June 2010 to 04.08.2011 and arrived at conclusion that plaintiffs are liable to pay licence fees and amenities charges total of Rs. 4,08,89,978.70/- and the defendants are entitled to get adjusted this amount against the security deposit of Rs. 3 Crores with plaintiffs.

95. Further it was arrived at conclusion in the impugned judgment and order that the plaintiffs are not entitled for recovery of damages, forfeiture of security of deposits, abiding of compensation and recovery of mesne profits.

96. In this regard the claim of the appellant before this Court is that plaintiffs were not entitled at all for the relief granted by and in its contrast the claim of the cross objector/ respondent is that as per definition of the Licensor mentioned in Ex.31 and 32, the Leave and License Agreement and Amenities Agreement the word “Licensor includes *unless it be repugnant to the context or meaning thereof be deemed to mean and include the partner or partners for the time being of the said partnership firm, the survivors or survivor of them and the heirs, executors, administrators of the last surviving partner and his successors-in-title and assigns.*”

97. In this view of the matter it is necessary to attend the facts canvassed that, by virtue of assignment of Leave and Licence as per Deed of Surrender dated 22.06.2009 having specific mentioned about validity and subsisting Agreement of Leave and License dated 15.02.2008 to be continued between the plaintiff and the original defendants with effect from 01.07.2009 for the balance amount of licence period on the same terms and conditions as contained in the Leave and License agreement on its basis from July-2009. The defendants were aware about the fact that the plaintiff became the licensor by virtue of being assignee. These facts were admitted by conduct and in categorical admissions of cross examination of the defendants witness DW No.1, that two breaches had committed in the agreement the plaintiff did not come to take the possession of the premises on July 2010 and secondly the original plaintiff did not refund the amount. If these aspects is considered it certainly indicates that defendant had impliedly accepted the plaintiffs as its licensor of the suit premises.

98. In result of the above discussions of the foregoing paras the claim of the appellant that they are not under obligation and liability to make the payment of compensation and amenities charges to use and occupation of the suit premises to the plaintiff can have no legal force.

99. The claim of the respondents for the arrears of license fees and amenities charges from June 2010 till 31.03.203 are based on the submissions that it is admitted to the defendants witness No.1 that original defendant/ appellant shifted in June or

July 2010 from the suit premises to Andheri but they did not handed over the possession to the respondents/original plaintiffs. It is to note that there is no documents on record to show that earlier to the concerned decree passed in the Company Petition before the Hon'ble High court at any point of time prior to 04.08.2011, the defendant had handed over possession of the suit premises to the plaintiff.

100. Thus, it is clear on record that from the 01st July 2010 till 04.08.2011 the defendants are under obligation and liability to pay the arrears of licence fees and amenities charges. In this regard in cross objection it is highlighted that the lock in period under the agreement was 5 years and the licensee was not permitted to vacate the premises before the 5 years, and if vacated prior to lock in period but they have to make payment for entire period of 5 years till 31.03.2013 as per statement Ex.43. The claim of the plaintiff including the arrears of licensee fees and amenities charges has been calculated by the plaintiff to the total amount of Rs. 10,16,94,796/-.

101. In reference to the security deposits of 3 Crores paid under Clause-6 of Leave and License Agreement Ex.31. It is highlighted in the arguments of cross objector that as per clause 19 of the Ex.31 of the Leave and Licence Agreement, in case of default or breach committed by the Licensee, a seven days notice was required to be given and thereafter if the breach was not remedied then the Licence could be terminated by the Licensor and upon termination of Licence one of the consequences was that the Security Deposit of Rs. 3 Crores could be forfeited apart from other claims. In this reference the admission in cross examination of defendants witness that the

deposit of 3 Crores is to be adjusted as per the Terms of Agreement has been relied on and further the cross objector relied on the letter 14.06.2010 and demand made in a letter of Advocates and Solicitors of the plaintiff dated 18.06.2010. On its basis it is argued that since the licence was terminated the plaintiff became entitled to forfeit the amount of Rs. 3 Crores paid by security deposits.

102. It is to be made clear that the adjustment of the amount of security deposits and the forfeiture of the amount of Rs. 3 Crores are two different aspects. Though it is not clear on record what was the claim of the parties in the Company Petition No. 357 of 2010 and what were the consent terms of the parties which lead to passing of the order by the consent of the parties before the Hon'ble High Court, wherein the Petitioner present respondent had undertaken to furnish the bank guaranty of the nationalized bank in the sum of Rs.3 Crores in the name of The Registrar of Small Causes Court, Mumbai. The respondent company therein i.e. present appellant had undertaken to handover the peaceful and vacant possession of the suit premises. Record reveals that the parties abided themselves to the consent terms which was recorded in the order dtd. 15.07. 2011 of the Hon'ble High Court at Judicature Bombay in Company Petition No.357of 2010. On basis of record available, and the correspondence between the parties by virtue of letter Ex.39 issued by the respondent to the appellant it was informed that the license was terminated and security deposit was forfeited. Then, we could not found any logical explanation as to why the respondent had agreed to submit the bank guaranty of 3 Crores before the Hon'ble High Court, this aspect needs consideration on the rival

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claim of the parties. Admittedly, the suit premises were vacated on 04.08.2011 in accordance with the order of the Hon'ble High Court and this Ld. Trial Court and this Court has arrived at conclusion that the plaintiff is entitled to receive the license fees and amenities charges from 01.07.2010 till 04.08.2011. The agreements arrived between the parties and terms and conditions therein are highlighted and accordingly on perusal of the documents Ex.31 of Leave and Licence Agreement and its clause 19, it was agreed between the parties that in case of default of payment, the licensor have right to forfeit the amount of security deposits. However, when the parties have consented before the Hon'ble High Court to abide by certain terms and conditions as noted above and further what is admitted to the defendants witness in the cross-examination is about the liability to pay and its failure if any was subject to adjustment from the amount of security deposits.

103. In this backdrop, it is clear on record that as per agreement Ex.31 Clause-19, there was agreement between the parties for forfeiture of the security deposits but, the issue of termination of licence was under challenge as the status of the licensor was disputed by the defendant and the plaintiff were agitating their rights in pending litigation and before the Hon'ble High Court parties have consented to certain terms and conditions. Therefore, prior to decision on merits of the rival claims the issue of forfeiture of security deposits can not be determined only on the basis of Clause 19 of Ex.31.

104. This Court has arrived at conclusion that findings

of the findings in the impugned judgment and order regarding the liability of the defendant and rights of the plaintiff in respect of license fees and amenities charges. However, in the background of the facts noted above, we are of the opinion that, this claim of the plaintiff has to be adjusted to be paid from the security deposit because in general the security deposit is taken to secure the payment of license fees in case if the licensee makes default of payment of license fees and other charges. The default of payment is always secured by secured by acquiring the security deposits. Therefore, it is not desirable in the given facts and circumstance of the present case to allow the claim of the plaintiff to forfeit the security deposit of 3 Crores in addition to the right of the plaintiff for securing the payment of licence fees and amenities charges. It certainly requires to be adjusted from the security deposits and latter on the plaintiff will be entitled to forfeit the remaining amount of the security deposits if any.

In its consequences, we do not found any error in the findings arrived in the impugned judgment and order in reference to the payment of directions issued to secure the unpaid the license fees and amenities charges to be adjusted from the amount of security deposits of Rs. 3 Crores. Hence, we are not in agreement of the submissions and arguments of the Ld. Advocate for the respondents/ cross objector to allow the prayer clause (b) of the plaint.

105. The arguments of the appellants and their written submissions at Ex.38 are mainly disputing the liability of the

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appellant for the payments and compensation claimed by the plaintiff submitting that the appellant has not entered in any agreement with the respondent/plaintiff and plaintiff is not licensor of the defendant and defendant is not licensee of the plaintiff therefore, defendant is not liable to the claim of the plaintiff. In this regard if the argument submitted are that, attornment is always of title of the landlord it being an actionable claim money, in the present case, money and receivables can only be assigned or entered in a fresh agreement but there can not be attornment of an amenities agreement. This argument is of no use in the circumstance of the present case as the landlord of the suit premises is the plaintiff and there was no change in the status of the plaintiff since inception. The conduct of the defendant for the payment of license fees and amenities charges for a certain considerable period after attornment left no scope to accept this argument as the status of the parties as landlord licensor and the licensee has been established on record. Therefore this argument has no legal force.

106. In reference to the claim of the plaintiff for the plaintiff of Rs. 2 crores by way of compensatory damages needs consideration of the fact that, the defendant since July 2010 have not paid the amount of license fees and amenities charges either to plaintiff or to the M/s. Sopariwala Exports and have not vacated the suit premises till 04.08.2011. Therefore, the claim of the plaintiff for compensatory damages is justified. Hence we are of the view that, in the admitted facts of non payment of license fees and amenities charges and holding the possession of the suit premises by the defendant from June 2010 till 04.08.2011 certainly gave rise to the

right of the plaintiff to claim the compensatory damages of Rs. 2 Crores. Therefore we hold that plaintiffs are partly entitled to relief claim in prayer clause (c) of the plaint to the extent of sum of Rs.2 Crores as compensatory cost.

107. The claim of the plaintiff in reference to liquidated damages of Rs. 5,00,000/- each per day from July 2010 till 04.08.2011 has to be considered in reference to the facts that, Ld Trial Court and this Court has granted relief to the plaintiff by confirming the entitlement of the plaintiff for recovery of license fees an amenities charges from the defendant for the period mentioned and its adjustments from security deposits. Thus, the plaintiff will get the agreed amount for the use and possession of the suit premises during the period. The termination of the Leave and License agreement will be effected from the date of passing of the judgment and Order in the LE&C Suit No. 120/156 of 2010 dated 09.08.2012 i.e. from the date of passing of impugned judgment and order. The claim of the plaintiff of termination of licence was determined on this date therefore, it is not a case of determination of the license period by efflux of time. The determination of the right of the plaintiff as a licensor will decide the status of the defendant to be an illegal occupant between the period parties to the leave and license agreement and its attornment were litigating their rights in the pending litigation. Therefore, we do not agreed with the submissions that on the date of termination letter issued by the plaintiff to the defendant as they defaulted the payment of July 2010 their presence in the suit premises became of tress-passers or illegal occupant. In present case in hand prior to decision in the L.E.C. suit 120/156 of

2010, the defendant had handed over the vacant possession of the suit premises in favour of the plaintiff on 04.08.2011 and latter on on dated 09.08.2012 the rights of the Licensor and Licensee were determined under the provisions of Section 41 of Presidency of Small Causes Court Act, 1982, therefore in present facts and circumstance there arose no question of payment of liquidated damages of Rs.5,00,000/- per day from July 2010 to August,2012.

108. The rights of the licensor to claim for damages can not be disputed as canvassed by the appellant relying on the ratio of case of **Loreal India Pvt. Ltd. Vs. Global Earth**, *supra*. However, it is to be noted that present case is not the case of licence expire by efflux of time and the claim of termination of licence was legally determined in a original suit filed by the plaintiff that too after the vacating the suit premises in possession of the plaintiff. Therefore we are of the view that, the ratio of the cited case is not helpful to the plaintiff/cross objector to support their claim of damages as prayed in the prayer clause (d) of the plaint.

109. In consequence of the discussion of the foregoing paras we answered point No.1 in affirmative, Point no. 2 and 4 in partly affirmative and point No. 3 in negative.

As to Point No.5

110. The findings and reasons assigned in the impugned judgment and order, challenge before us on the point of Privity of Contract as discussed in the foregoing paras has been inferred by this

Court as being contradictory therein based on appreciation of the facts pleaded and evidence adduced, documents produced and law applicable. Therefore we arrived at conclusion that the reasons assigned of Id. Trial Court that there exists no Privity of Contract between the parties and the consequential findings in this respect requires interference. In its results the reasons assigned and findings arrived at by the learned Trial Court to this extent of issue of Privity of Contract between the parties requires to be set aside.

111. This Court has determined the rights of the parties and arrived at conclusion that plaintiff is entitled for the compensatory cost of Rs. 2 Crores which was not recognized in the impugned judgment and order under challenge in this Appeal, consequently interference in the reasons assigned and findings arrived at by the Id. Trial Court on this issue and to its extent requires to be set aside. In this view of the matter we answer point No.5 in affirmative. In answer to point no.6 we proceed to pass the following order.

ORDER

1. The appeal stands dismissed.
2. Cross Objection is partly allowed.
3. The defendant is directed to pay to plaintiff or deposit in the Court amount of Rs. 2,00,00,000/- (Rs. Two Crores only) within 6 Months from the date of this order. On its failure the defendants shall pay to plaintiff interest at the rate of 15 % per annum till realization of the amount.

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4. The judgment and order dated 09.08.2012 is passed in L.E. & C. Suit No.120/156 of 2010 is modified as under :-

1. The defendant do pay an amount of Rs.4,08,89,978.70 towards the licnece fee, amenity charges for the period from June 2010 to 04th August 2011 however, the defendant is entitled to adjust the aforesaid amount in the security deposit of Rs.3 Crore. Therefore, the defendant is directed to pay remaining amount of Rs. 1,08,89,978.70 to the plaintiff with interest thereon 15% per annum from the date of the suit till the realization of the aforesaid amount.

2. The bank guarantee furnished by the plaintiff stands discharged.

3. The claim of the plaintiff as per prayer Clause (c) is partly allowed to the extent of compensatory damages of 2,00,00,000/- (Rs. Two Crores only) and rest of the claim of the plaintiff stands dismissed.

5. Decree be drawn up accordingly.

I agree,

(R.V. Bhakta)
Addl.Chief Judge
Court Room No.3.
07.01.2023

(T. G. Mitkari)
Addl. Chief Judge
Court Room No.3.
07.01.2023