

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL No. 474 OF 2006**

Vasant M. Kalan & Ors.

**APPELLANT**

**Vs.**

**Parshuram P. Tupe**

**RESPONDENT**

Mr. P. S. Dani, Advocate for Appellant.

Mr. R. L. Patile, Advocate for Respondent.

**CORAM : Dr. S. RADHAKRISHNAN, J.**

**DATE : JULY 14, 2006.**

P.C.

. Heard the learned counsel for the Appellant  
and Respondent. Appeal is admitted on the  
following substantial questions of law.

- i) Whether the learned lower Appellate court  
was justified in not even considering the  
question with respect to decree sought  
for specific performance only on the  
ground that, no cross-objection were  
filed before the learned Appellate Court?
- ii) Whether in order to sustain the decree  
and also in order to show to the court  
that the findings of the learned Trial  
Court are erroneous, whether it is  
necessary to file cross-objection or  
whether such points can be argued before  
the learned Appellate court under the  
amended provision of Order 41 of Civil  
Procedure Code?
- iii) Whether provision of Order 41 of Civil  
Procedure Code after its amendment,  
debars the party from arguing on certain  
issues which were held against that party

by the learned Trial court, but when other issues were held in his favour and against the said entire judgment the appeal was already filed before the learned Appellate Court and as the entire suit was open before the learned Appellate court, whether it is expedient for such party to file cross-objection or whether he can be heard on the issues which have been answered against him even without cross-objection ?

- iv) Whether in view of the findings of the learned Appellate Court itself that the present Appellant was inducted into the premises as licensee, whether such licence ought to have been protected by virtue of Section 15-A of the Bombay Rent Hotel Lodging and Housing Rates Control Act, 1947, and whether non considering the said provision on the basis of finding as given by the court itself amounts to failure of justice ?
- v) The fact that possession of the present Appellant was long standing and the fact that there was evidence on record to show payment of rent has been completely ignored leading to miscarriage of justice?

2. The learned counsel for Respondent waives service. Hearing expedited. Parties to maintain

status-quo untill further order.

[ Dr. S. RADHAKRISHNAN, J.]